

**SUBMISSION TO THE SOUTH AFRICAN PARLIAMENTARY PORTFOLIO  
COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT ON THE  
LEGAL PRACTICE BILL [B20-2012]**

**1. INTRODUCTION**

- 1.1 The provision of a legislative framework for the transformation and restructuring of the legal profession in line with constitutional imperatives is a commendable one. This submission aims to support the initiative by making submissions on certain aspects of the Bill that relate to access to justice.
- 1.2 As noted in the preamble to the Bill, access to affordable legal services is not a reality for most South Africans. Overcoming this significant hurdle to the realisation of the rights guaranteed in the Constitution has multiple dimensions. The Legal Services Charter of 2007 explains “access to justice” in terms of access to legal services, access to legal work, access to the courts, and access to the legal profession.
- 1.3 Our submission focuses on a number of aspects of the “legal services” and “legal profession” dimensions of the wider concept of “access to justice”, namely: 1) community service; 2) legal education; and 3) the regulation of paralegals.
- 1.4 Our submission promotes a holistic view of these areas, key to which is an understanding that that these dimensions must be linked. This can be achieved, we submit, through a model of education and training that makes legal services more accessible to all members of South African society, whilst also nurturing more effective and well-trained law graduates and legal practitioners.
- 1.5 Central to our understanding of “access to justice” is a conception that does not rely solely on the state’s provision of legal services. Access to justice entails both the transformation of the legal profession, and transformation of the marginalised groups themselves. It entails equipping communities to represent themselves. One such manner of doing so explored in this submission is the empowerment of community-based paralegals.
- 1.6 In Part Two, we submit that the vision of mandatory community service for legal practitioners and aspiring legal practitioners is an admirable one, and that a legislated programme of community service has the potential to build a culture of service that can lead to true transformation and the advancement of equality.
- 1.7 In support of this vision, we give some suggestions as to how a legislated programme of community service can be structured. These suggestions

relate to, inter alia: 1) remuneration for candidate legal practitioners; 2) supervision of candidate legal practitioners; 3) time required of practicing legal practitioners; and 4) the establishment of a working group dedicated to community service issues.

- 1.8 Part Three of the submission relates to legal education. In essence, we submit that although one of the main professed objectives of the Bill is to regulate the legal profession, in order to achieve its objectives, any regulatory body established under the Bill must consider the adoption of standards and best practices for improving legal education across the country.
- 1.9 We will submit that in order to further the project of "transformative constitutionalism" in South Africa, legal education needs to be reformed. One of our recommendations is to expand clinical legal education and to integrate clinical methodology within existing law faculties throughout the country. Such a model, we submit, serves the twin goals of providing opportunities to aspirant legal practitioners to fulfill community service requirements, as well as offering a dynamic pedagogy that will develop better law graduates.
- 1.10 Finally, Part Four of the submission relates to paralegals. Here, we urge the Committee to treat paralegals as integral to access to legal services and argue for the regulation of those services under the same body as the one that will regulate attorneys and advocates. Underlying this argument is the submission that "access to justice" should entail "legal empowerment" for the communities who require access the most.

## **2. COMMUNITY SERVICE**

- 2.1 We believe that the Bill's vision of mandatory community service for legal practitioners and aspiring legal practitioners is a commendable one, and that a legislated programme of community service has the potential to build a culture of service that can lead to true transformation and the advancement of equality in South Africa, both within the legal profession and beyond.
- 2.2 Section 3 of the Bill sets out the purposes of the legislation. For the purposes of this submission, the relevant objectives in relation to community service are contained in Section 3(b), which seeks to "broaden access to justice by putting in place – (ii) measures to provide for the rendering of community service by candidate legal practitioners and practicing legal practitioners; and... (iii) measures that provide equal opportunities for all aspirant legal practitioners that reflect the demographics of the Republic,' as well as Section 3(g), which seeks to 'create a framework for the development of adequate training programmes for legal practitioners and candidate legal practitioners.'

- 2.3 Section 29(1) currently provides that “the Minister must, after consultation with the Council, prescribe the requirements for community service from a date to be determined by the Minister, and such requirements **may** include – (a) community service as a component of practical vocational training by candidate legal practitioners; **or** (b) a minimum period of recurring community service by legal practitioners upon which continued registration as a legal practitioner is dependent.”
- 2.4 We submit that Section 29 can be strengthened to achieve the abovementioned objectives of increased access to justice, equal opportunities for aspirant legal practitioners, and the development of adequate training programmes for legal practitioners and candidate legal practitioners, by making the following changes:
- 2.4.1 Change “such requirements **may** include” to “**shall** include”.
- 2.4.2 Change the “**or**” linking subsections (a) and (b) to “**and**” in order to ensure that community service is a requirement for both entry to the legal profession and for continued registration as a legal practitioner.
- 2.4.3 Change the term “**candidate** legal practitioners” to “**aspirant** legal practitioners” to make room for the possibility of community service being performed as part of the LLB curriculum.<sup>1</sup>
- 2.5 Section 29(2) of the Bill already contains a wide vision of the different contexts in which community service may take place, and includes (a) the delivery of free legal services in terms of an agreement between a candidate legal practitioner or a legal practitioner with a community-based organisation, trade union, or non-governmental organisation; (b) the provision of legal education and training on behalf of the Council, or on behalf of an academic institution or non-governmental organisation approved by the Council; (c) service as a judicial officer, including as a commissioner in the small claims court; (d) service to the State; (e) service on the regulatory structures established or recognised in terms of the Act; (f) any other service as may be determined by the Council in the rules; or any other service which the candidate legal practitioner or legal practitioner may want to perform with the approval of the Minister.
- 2.6 Section 29(2)(d), which lists “service to the State” may include work with existing state structures that are geared towards providing access to justice, such as the CCMA, Legal Aid South Africa, the National Prosecuting Authority, the Office of the Family Advocate, and the Chapter 9 Institutions. It

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<sup>1</sup> Changing the term “candidate legal practitioners” to “aspirant legal practitioners” throughout the Bill would provide for the possibility that community service as a requirement for entry to the profession may take place during the LLB, after graduation, or possibly, as a combination of both. Such a change would necessitate a clear definition of the term “aspirant legal practitioner” in Section 1.

is important to note that our conception of community service is not intended to supplant or replace existing pro bono initiatives, and that the areas of service as identified by the Bill should be pursued in addition to pro bono initiatives already in existence. We propose that a working group be established under the auspices of the Council that would be dedicated to community service (of which, see more, at 2.13). Such a group would be responsible for keeping a registry of approved opportunities for placement, as well as facilitating supervision of aspirant legal practitioners by legal practitioners, in fulfillment of both parties' community service obligations.

- 2.7 Section 29 should specify that candidate legal practitioners be remunerated for the community service they perform, as is the case with medical school graduates entering the medical profession, and as has been stipulated in previous drafts of the Bill. If community service by LLB graduates is not remunerated, but is a requirement for entry into the profession, the legislation will fail to meet the objective listed in Section 3(b)(ii). If the aim is to reach a point where the legal profession is reflective of the demographic composition of the country, it can hardly be feasible to require young graduates, many of whom may be from disadvantaged communities, to find a way to support themselves while working without compensation.
- 2.8 If, however, the community service requirement is structured in a manner in which at least part of it may be completed at university level, by way of fulfilling a pre-determined number of hours at a university law clinic,<sup>2</sup> or a legal education and rights awareness programme such as Street Law or CLASI, the need for remuneration by the State will become less onerous. Aspirant legal practitioners who engage in community service programmes during the course of their legal studies would not need to be compensated, although they would receive academic credit. The idea of requiring law students to perform legal community service as part of their academic qualification can be justified by the fact that the State already subsidises a considerable portion of the funding required for a legal education.
- 2.9 As a national programme of community service is developed over time, it may be necessary to combine hours spent during the LLB with further service after graduation. The most practical approach may require a short-term strategy in terms of which participation in community service initiatives at university level become a prerequisite for obtaining the LLB, while building up to a full year of remunerated post-graduate community service over time as resources are allocated to provide opportunities for placement and to build the necessary capacity.

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<sup>2</sup> See information relating to Student Practice Rules for law students attached to law clinics in (2008) 41 De Jure 580-595. It is submitted that if senior law students are allowed to appear in court, with the appropriate supervision, it would address the objectives of increased access to justice as well as more practical legal education.

- 2.10 Any programme of community service for aspirant and candidate legal practitioners must be properly supervised, in order to ensure the high quality of legal services rendered, as well as the achievement of the Bill's stated objective of developing adequate training programmes for candidate legal practitioners. It is submitted that this dual objective can be achieved by harnessing the skills, experience, and capacity of practicing legal practitioners to supervise and train candidates in their respective fields of expertise. This model would provide an opportunity for practicing lawyers to fulfill their community service obligations, whilst effectively increasing access to justice and assisting aspirant legal practitioners to build their skills and work experience.
- 2.11 In this way, for example, legal practitioners who are well-versed in family law would be able to train and supervise aspirant legal practitioners to assist poor clients with family law matters. This targeting of established legal practitioners' areas of specialisation could also take place at university level, with the establishment of different specialised law clinics that would each be equipped to deal particularly with issues pertaining to specific areas of the law, such as legal issues that arise in relation to, for example, women, children, farm workers, or rural dwellers. By engaging with members of disadvantaged communities in this way, legal practitioners and aspirant legal practitioners would be given an invaluable experiential learning opportunity during which they learn how to relate to the issues that affect a large number of South Africans. In doing so, we believe that there exists a strong possibility that they would gain a deeper perspective of the challenges facing the country as a whole. This would provide an opportunity for not only in-depth training, but personal and professional growth as well. Ideally, this type of personal development would be complemented by a structured debriefing process by which participants are encouraged to reflect on the meaning, context and importance of the work in which they are engaged.
- 2.12 Requiring all legal practitioners to dedicate a uniform amount of time towards community service initiatives may not be practical, given the differences in the size and scope of different practices. It is therefore submitted that the amount of time a legal practitioner is required to spend performing community service can be determined by way of a sliding scale, much as our tax regime is structured. In this way, the most affluent legal practitioners will be required to spend more time doing community service than, for example, sole practitioners who are struggling to keep their practices afloat.<sup>3</sup>
- 2.13 We propose that a specialised working group be set under the auspices of the Council to deal particularly with all matters relating to community service.

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<sup>3</sup> Although the issue of capping legal fees is beyond the scope of this submission, it is submitted that this proposed "sliding scale" structure may be useful when considering a more nuanced approach to the capping of fees. It may not be necessary to cap legal fees for clients with formidable financial means, such as multinational corporations, as doing so would effectively hinder the amount of time that a legal practitioner with a client base of that nature would be able to dedicate towards community service. It is submitted that the capping of legal fees should be structured in a way that truly advances the objective of increased access to justice.

In this manner, the important objective of community service for practicing and aspirant legal practitioners will not be pushed to the sidelines as the Transitional Council irons out some of the more historically contested areas of the legislation. Such a working group could be guided by Regulations issued in terms of the Legal Practice Act, as well as Chapter 2 of the Legal Services Charter, which sets out some principles that the group could use to perform its mandate. In line with the pre-existing principles as set out in the Charter, the working group could “define and establish a community service programme,” “enhance access to legal services in rural areas [and other areas of need] through initiatives to ensure the sustainable provision of legal services in such areas”, and “co-operate with university law faculties’ legal aid clinics and outreach programmes.”<sup>4</sup>

- 2.14 Some legal practitioners have objected to the concept of legislated community service for lawyers, on grounds that it seems arbitrary to require such service from legal practitioners and not, for example, engineers or architects. We submit that a legislated requirement of community service should, over time, be extended to all professionals in South Africa. The legal profession now has the historical opportunity to join the medical profession and to lead by example by engaging in community service. Such service initiatives, if planned and administered properly, will help disenfranchised South Africans to realise their constitutional rights, will contribute to the much-needed transformation of the legal profession, and will build a social justice ethos on the part of young graduates, while strengthening their practical skills.

### 3. LEGAL EDUCATION

- 3.1 Section 3(a) of the Legal Practice Bill states that the purpose of the Act is to provide a legislative framework for the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution. Access to justice is one of the fundamental constitutional values that the Bill seeks to achieve, and access to the legal profession represents an important dimension of a holistic trajectory of transformation.
- 3.2 One channel by which the Bill envisions to open access to the legal profession is set forth in 6(5)(f)(i), which mandates the Council to create a mechanism to “provide proper, appropriate, and transformational legal education and training, having due regard to our inherited legacy and new constitutional dispensation.” As explained in the Memorandum on the Objects of the Legal Practice Bill, 2012, “Legal education must extend to *aspiring* as well as experienced legal practitioners. Training is recognized in the Bill as a key transformational imperative.” 3.5.8 (emphasis added).

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<sup>4</sup> Page 8 of the Legal Services Charter, December 2007.

- 3.3 The Legal Services Charter also calls upon stakeholders, including universities and in particular, their law faculties and clinics, to address challenges of entry into the legal profession, with specific emphasis on challenges experienced by HDIs, by ensuring the availability of quality legal training and education [1.1.1(iv)(a), 1.2.2(v)].
- 3.4 We submit that given the foundational role played by legal education within the continuum of legal training, the reform of legal education within the LLB curriculum is key to achieving transformation in the profession.
- 3.5 Professor Geo Quinot identifies that a theoretical framework of “transformative legal education” must be established in order to achieve the broader societal objective of “transformative constitutionalism.”<sup>5</sup>
- 3.6 In this vision of legal education, the new constitutional dispensation requires a shift from the formalistic parameters of legal education and the legal profession to a more substantive one, which considers moral and political values and the social context in which law operates. This model of legal education requires a shift both in terms of what law faculties teach, as well as the methodology by which they are teaching it. Indeed, Professor Karl Klare calls for the need to radically change our legal culture from being “a highly conservative one” to one “that embraces the normative framework put forward by the Constitution in its methodology” and that encourages creativity in the national project to use law to achieve social transformation.<sup>6</sup> The role and responsibility of law teachers, in this regard, is critical for their approach to teaching law has great influence on driving students to think about becoming “innovators under the Constitution.”<sup>7</sup>
- 3.7 Central to this reform is the need to enlarge and embed skills and values training within the LLB curriculum. Indeed, surveys repeatedly reflect that law graduates are emerging from their legal education without the proper skills necessary to practice as attorneys or advocates.<sup>8</sup> The Council of Higher Education undertook a review of the LLB curricula in South Africa revealing that of 3,000 legal academics and practitioners surveyed, six competencies amongst law graduates were rated in the top ten by all surveyed:
- 3.7.1 Ability to understand, analyse, investigate and solve problems;
  - 3.7.2 Proficiency in reading, writing and speaking English;
  - 3.7.3 Ability to read and interpret statutes and legal documents;

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<sup>5</sup> Inaugural Lecture, Stellenbosch University, September 2011 at 5.

<sup>6</sup> KE Klare “Legal Culture and Transformative Constitutionalism” (1998) 14:1 South African Journal on Human Rights 146–157

<sup>7</sup> Quinot at 7.

<sup>8</sup> See e.g. Nivashni Nair, LLB report urges numeracy, literacy training, Times Live, 6 July 2012. Of 500 attorneys interviewed, 69% were concerned that the law degree did not sufficiently prepare young graduates to enter and succeed in the legal profession. The Law Society of South Africa agreed with the survey's findings.

- 3.7.4 Ability to construct and communicate an argument;
- 3.7.5 Understanding of the principles of SA law and how they apply in practice; and
- 3.7.6 Research skills, both in general and specific to the profession.<sup>9</sup>

Despite this recognition of the importance of these skills, law graduates continue to lack mastery of these skills.

- 3.8 While the apprenticeship period post-graduation may not fall under the ambit of higher education, we will submit that law faculties in partnership with the Council must play a more intentional role in rethinking the design and implementation of the LLB curriculum in light of the skills and values desirable in a law graduate.
- 3.9 Indeed, much ink has already been spilled in thinking through some of these issues, as evidenced by the initial findings and recommendations of the CHE Report. One recommendation that the Council should pursue is that universities and representatives of the wide range of legal professions should begin to work together to determine and to flesh out a minimum core curriculum of knowledge, skills and attitudes that all law graduates will be exposed to.<sup>10</sup> As part of this process, defining the required skills outcomes and desirable attitudes will help to define the respective responsibilities of law faculties and professional training, with universities taking responsibility for developing high-level, generic skills, while leaving to the professions the teaching of more particular skills.<sup>11</sup>
- 3.10 University law clinics, we submit, should be examined and expanded, as they promote access to justice and access to the legal profession through their emphasis on “learning by doing.”<sup>12</sup> Indeed, clinics play a dual role of providing opportunities to aspirant law graduates to fulfil community service, as well as offering a dynamic pedagogy that will develop more prepared law graduates. University law clinics engage in a variety of legal services, ranging from legal aid, back-up legal services to paralegal advice offices, constitutional and impact litigation, developmental assistance, advocacy, lobbying and reform, and community legal education.

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<sup>9</sup> The LLB Curriculum Research Report, Council of Higher Education, November 2010, at 92.

<sup>10</sup> Id. at 166. In 2002, a four-year undergraduate LLB degree was registered by the South African Qualifications Authority (SAQA). The qualification is defined as “generic”, meaning that “the essential minimum-required outcomes and their assessment criteria have been identified in an abstract way, and are not linked to a preconceived curriculum (content).” This standard serves as a framework for the four-year LLB qualification.

<sup>11</sup> Id. at 165.

<sup>12</sup> See generally Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham Law Review 1929 (2001); Willem de Klerk, *University Law Clinics in South Africa*, 122 South African Law Journal 930 (2005); Ajay Pandey, *Promoting Human Rights in India Through Law School Human Rights Clinics*, 28-29 Delhi Law Review 67 (2007).



- 3.11 Clinics can “become a means”, as Professor David McQuoid-Mason articulates, “to improve the quality of the legal profession generally.”<sup>13</sup> “Student activities in legal aid clinics expose them on a regular basis to social justice issues in the new South Africa.” Further, these experiences expose students to a high standard of lawyering, as stated by Willem de Klerk of Witswatersrand University Legal Aid Clinic, “A good clinical lawyer should [] practice law in a manner that is conducive to reflection on the values and obligations of legal practitioners in society.”<sup>14</sup>
- 3.12 What is further, we submit, is that clinical methodology needs to be integrated fully into LLB curricula as a dynamic teaching pedagogy that will engage and prepare law students more effectively than at present. Law students must be holistically exposed to the balance between knowledge, skills and values in the course of all their doctrinal, or theory-based courses, and not just reserved for a stand-alone legal practice course in their final year. Indeed, theory-based courses such as Civil Procedure can be infused with critical thinking, practical application and skills exercises to bridge the gap between theory and practice.
- 3.13 The role of the university law clinic and clinical methodology thus is particularly important in South Africa in which legal traditions have traditionally placed more of an emphasis on formalism and rules and less on good lawyering skills, including a robust sense of ethics and professional responsibility, problem-solving and critical thinking skills, building client relationships, and considering the role of law in society. South Africa should advance in the direction of other law faculties around the world, which are increasingly recognising the value of and adopting robust clinical legal education programmes.<sup>15</sup>
- 3.14 We submit that under 6(1)(m), the Council be invested with the authority to allocate additional resources to those law faculties which expand their clinical opportunities for students interested in conducting their community service, and for candidate attorneys who also choose to perform their community service for remuneration at a clinic. This section allows the Council to provide financial support to organisations or institutions providing legal education and training ... with the object of enhancing the standards of legal services and increasing access to justice.<sup>16</sup>

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<sup>13</sup> Combining Learning and Legal Aid: Clinics in Africa, Report on the First All-African Colloquium on Clinical Legal Education, 23-28 June 2003, OSJI October 2003, at 5-6.

<sup>14</sup> Unity in Adversity: Reflections on the Clinical Movement in South Africa, Willem de Klerk, 2007 International Journal of Clinical Legal Education 95, 98-99 (2007).

<sup>15</sup> See generally American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 106 (1992) (the McCrate Report); William M. Sullivan et Al., Educating Lawyers: Preparation for the Profession of Law 6 (The Carnegie Foundation of the Advancement of Teaching 2007); Sally Kift, 21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law, Legal Education Review (2008) 18:1, 1 at 2.

<sup>16</sup> In South Africa, law clinics average 128 students per clinic, supervised by a total of 53 attorneys and 2 advocates, with a student/supervisor ratio of 35:1. See Jobst Bodenstein, The Role of University-Based Law Clinics in the Provision of Legal Aid in South Africa, ILAG Conference, 8 June 2007.

- 3.15 We submit that the Bill strengthen the Council's discretionary functions, in respect of legal education, by requiring it to conduct visits to any educational institution which has a department, school or faculty of law [6(5)(a)]; to advise the Council on Higher Education ... regarding matters relevant to education in law [6(5)(b)], and to consult with the South African Qualifications Authority ... to determine competency standards for the purpose of registration [6(5)(c)].
- 3.16 We further submit that the composition of the Council, as per 7(1)(b), and the Transitional South African Legal Practice Council, as per 96(b), should include two, and not one, teacher of law or legal academic nominated by law teachers, legal academics or organisations representing law teachers or legal academics. We submit that at least one of these two individuals teach in a university law clinic.

#### 4. RECOGNITION AND REGULATION OF PARALEGALS

- 4.1 The Legal Services Sector Charter identified as a key objective “devising and implementing measures to address the provision and availability of pro bono services and community-based paralegal services, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalised, poor and rural communities.” [1.1.1.v.] The Charter furthermore records that the government undertakes to “provide for the regulation of non-commercial, community-based paralegal practitioners so as to provide access to primary legal services in rural, poor and marginalised communities.” [2.2.2] Finally, the Charter provides that a national regulatory body should be established to represent “legal and paralegal practitioners.” [3.3.i.]
- 4.2 Paralegals are, however, excluded from the ambit of the most recent version of the Legal Practice Bill. The stated application of the Bill is to all “legal practitioners”, defined as advocates and attorneys.<sup>17</sup> As such, the Bill's laudable goals of creating standards for the rendering of legal services, the accountability of the legal profession, and the development of adequate training programmes for the providers of those services, do not apply to paralegals. Neither do those provisions relating to financial support for the training and education of those providing the services apply. Finally, there will be no representation of paralegals on the soon to be established Council.
- 4.3 The role of paralegals in South Africa has evolved from its anti-apartheid activist roots to one that provides community education, facilitates community

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<sup>17</sup> Section 2, entitled “Application of Act” states: “This Act is applicable to all legal practitioners.” A “Legal practitioner” is defined as “an advocate or attorney registered [in terms of the Bill].”

development programmes, and plays an intermediary role between formal legal practitioners and institutions and communities.

- 4.4 In an extensive study of community-based paralegal advice offices conducted in 2007,<sup>18</sup> paralegals were documented to have worked towards the establishment of community projects, assisted in drafting constitutions and registering Non-Profit Organisations, and other similar activities.
- 4.5 With regard to education, paralegal groups provide vital training in rights literacy. In their report on public interest litigation in South Africa, Gilbert Marcus and Steven Budlender state that “virtually every respondent identified lack of knowledge about rights as the primary obstacle” to using the law to achieve social change. As one of their interviewees explained, “few of the poor and marginalised (especially in rural areas that lack access to information and communication technology) are aware of their rights, know the law, or have been informed that the law may be able to change their situation.”<sup>19</sup> Paralegals are uniquely situated in their communities to provide training and to facilitate dialogue in this respect.
- 4.6 Another key strategy for social change identified by Budlender and Marcus is “providing advice and assistance to persons claiming their rights”. The authors argue for the support and establishment of advice centres, which should act as “intermediary organisations which enable people to claim their rights, through giving advice, directing them to the appropriate institutions, assisting them with the formulation of their claims, and taking matters up on their behalf.”
- 4.7 Most importantly, and as the name implies, community-based paralegals are *community-based*. The training and engagement of paralegals empowers communities. Efforts to facilitate access to justice through state institutions can be slow, and have the potential to strengthen power imbalances. Writing of his experiences co-directing the Sierra Leonean paralegal project Timap For Justice, discussed below, Vivek Maru explains that “lasting institutional change depends on a more empowered polity.”<sup>20</sup>
- 4.8 Timap for Justice was a joint initiative between the Sierra Leonean National Forum for Human Rights and the Open Society Justice Initiative. Now run as an independent organisation, Timap aims to provide basic legal services through paralegals. Timap employs over 70 staff, who work in 19 offices throughout the country. At the core of Timap’s system is the belief that

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<sup>18</sup> Jobst Bodenstein, Report on the State of Community-based Paralegal Advice Offices in South Africa (2007).

<sup>19</sup> Gilbert Marcus and Steven Budlender, A Strategic Evaluation of Public Interest Litigation in South Africa, Atlantic Philanthropies (June 2008).

<sup>20</sup> Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, Yale Journal of International Law (31), 428.

properly trained and regulated paralegals are uniquely effectual due their “confluence of 1) a knowledge of formal law and government, and 2) a knowledge of the community and facility with more community orientated, social movement-type tools.”

4.9 Vivek Maru argues that paralegals “are much less costly than lawyers. It is possible to train a large and widely-spread cadre of paralegals, while in some places the supply of lawyers is restrictively small and concentrated.” The benefits of paralegals, he argues, goes beyond being “good substitutes in the event that lawyers are not available.” Specifically, he points to the following benefits:

- Paralegals are often closer to the communities they serve. They tend to be “of” those communities, while lawyers are frequently outsiders and elites.
- Paralegals have a wider and more flexible set of tools, including community education, mediation, and community organising.
- Paralegals are more capable than lawyers at straddling dualist legal systems.
- Paralegals need not limit themselves to an adversarial approach.
- Paralegals are generally able to contribute to “empowerment” more than lawyers.

4.10 However, in South Africa the paralegal sector is underfunded, under-recognised and under-regulated. Budlender and Marcus write that “with a few notable exceptions, ... advice offices have now dwindled. This means that either poor people must access fully fledged lawyers, or, for the most part, they are left without any legal advice at all.”

4.11 The exclusion of paralegals from the Legal Practice Bill and the scheme that it creates undermines the status of the group within the legal landscape of South Africa. In order to play the vital role that it should, the sector requires respect, which could be achieved through external recognition and regulation. Access to justice can be enhanced if the credibility of paralegals is fostered, and their role in the profession concretised.

4.12 Separate regulation of the paralegal sector will not achieve this goal, but will, rather, detract from the legitimacy of the profession. Moreover, linkages between the formal legal profession and the paralegal sector should be strengthened, a goal that will be achieved by regulating legal and paralegal practitioners together.

4.13 It is submitted that paralegals should be reinserted into the framework of regulation introduced by the Bill. This can be achieved by taking up the mandate of the Legal Services Charter. Specifically, this entails:

- Providing for the application of the Act to paralegal as well as legal practitioners.
- Providing for the regulation of paralegals, specifically with regards to their training and qualifications, in a separate chapter of the Act; and
- Providing for the representation of paralegals on the South African Legal Practice Council.

4.14 There are a wealth of comparative experiences to draw on in order to develop guidelines for the regulation of paralegals. In addition to the well-documented Timap for Justice project and the resultant newly enacted national legislation recognising the role of paralegals in Sierra Leone, Malawian group Paralegal Advisory Service Institute has also produced extensive materials. Although relating only to the criminal sphere, also very relevant are the UN Commission on Crime Prevention and Criminal Justice's newly adopted Principles and Guidelines on Access to Legal Aid in Criminal Justice System.

4.15 Another model that has been well-tested and documented is that of combining university-based law clinics with paralegal training. In Hungary, for example, at a clinical programme at the Eotvos Lorand University, students were equipped to train community activists and representatives of the highly discriminated-against Roma community as paralegals.<sup>21</sup> Those representatives then returned to their communities, empowering them to access their rights. Similar programmes were established in South Africa at the University of Natal-Durban by David McQuoid-Mason<sup>22</sup> and in India.<sup>23</sup>

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<sup>21</sup> Community-Based Paralegals: A Practitioner's Guide, Open Society Justice Initiative (2010), 25

<sup>22</sup> A Practitioner's Guide, 26.

<sup>23</sup> Ajay Pandey, *Experimenting with Clinical Legal Education to Address the Disconnect Between the Larger Promise of Law and its Grassroots Reality in India* (2011).