



+ SECTION 27

catalysts for social justice

“Health equity cannot be concerned only with health, seen in isolation. Rather it must come to grips with the larger issue of fairness and justice in social arrangements, including economic allocations, paying appropriate attention to the role of health in human life and freedom.”

Amartya Sen, “Why health equity?”,
Health Economics (2002) vol 11 no 8 p 659

SECTION27: A CATALYST FOR SOCIAL JUSTICE

SECTION27 was established in 2010 as a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. It draws its name from section 27 of the South African Constitution, which locates the right to health within a context of mutually supporting and intersecting rights.

Section 27 says:

- (1) *Everyone has the right to have access to –*
 - (a) *health care services, including reproductive health care;*
 - (b) *sufficient food and water; and*
 - (c) *social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*
- (2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*
- (3) *No one may be refused emergency medical treatment.*

SECTION27's activities include research, advocacy and legal action to change the socio-economic conditions that undermine human dignity and development, prevent poor people from reaching their full potential and lead to the spread of diseases that have a disproportionate impact on the vulnerable and marginalised.

Incorporating the AIDS Law Project (ALP), SECTION27 has a strong focus on human rights in relation to HIV/AIDS and access to health care services. But in doing so, it also recognises that the realisation of all rights – and socio-economic rights in particular – is fundamental to sustainable progress in reducing new HIV infections and ensuring sustained access to treatment.

SECTION27 also works to ensure that the conduct of the public and private sectors accords with the Constitution and the obligations it imposes on their day-to-day conduct. Central to this area of work is a focus on the maintenance of the foundational values of the Constitution, including supremacy of the Constitution and the rule of law.

SECTION27 does not work alone. It is part of a constellation of organisations – including the Treatment Action Campaign (TAC), Equal Education (EE), Community Media Trust (CMT), Students for Law and Social Justice (SLSJ) and the Social Justice Coalition (SJC) – that base their activities on the Constitution and the rule of law. In addition to providing legal services, SECTION27 also assists in building strategic and organisational capacity through leadership training, providing internships for young activists and assisting with strategic analysis and planning.

WHERE WE COME FROM: BUILDING ON THE FOUNDATIONS LAID BY THE ALP

The ALP – SECTION27's predecessor – was first established by Constitutional Court Justice (then Professor) Edwin Cameron in 1993. Until 2010, the ALP used legal research, litigation and advocacy to push government and the private sector to recognise the need for and adopt a rights-based response to HIV/AIDS, as well as to develop appropriate plans and programmes to prevent and treat HIV infection. In so doing, the ALP helped to bring into being a comprehensive legislative and policy framework that protects the rights of people with HIV.

In partnership with its allies, in particular the TAC (which the ALP helped found in 1998), the ALP's work contributed directly to –

- the 2003 launch and progressive expansion of the antiretroviral (ARV) treatment programme which by mid-2011 had placed more than 1.5 million people on treatment;
- the availability in South Africa of affordable generic ARV medicines;
- the development and adoption of the groundbreaking national *HIV and AIDS and STI Strategic Plan for South Africa, 2007-2011* (NSP);
- the restructuring and strengthening of the South African National AIDS Council (SANAC) in 2006/07;
- growing public awareness of the nature and importance of protecting human rights in responding to HIV/AIDS; and



Mark Heywood participates in a plenary session at the XVI International AIDS Conference, Toronto, 17 August 2006 (courtesy of the International AIDS Society / Lise Beaudry)

- social mobilisation to respect, protect, promote and fulfil the rights of people living with HIV.

Over the years, a number of factors – both positive and negative – influenced the direction of the ALP’s work. These included –

- a Bill of Rights in the Constitution that encourages civil society activism and the use of legal action in the development and implementation of a comprehensive rights-based response;
- the embrace of AIDS denialism by former President Thabo Mbeki and the need to fight this;
- the growth of HIV in South African to epidemic proportions; and
- advances in science that led to the development of safe and effective medicines for the prevention and treatment of HIV.



Jonathan Berger and friends

For a decade the ALP focused almost exclusively on HIV/AIDS. This was necessary because of the dearth of law and policy to protect human rights and the need to impress upon government and society the threat that HIV poses to life and rights. But the political and social landscape around HIV did not stand still. The need to secure and build on advances in policy and law required a steady broadening of the scope of the ALP’s activities.

As a result, the ALP started in 2004 to focus on the state’s duties regarding the health system as a whole: on health systems law, policy and practice. It increasingly became clear that to sustain the response to HIV it was necessary squarely to start addressing new challenges that have arisen in our society. In particular this means –

- campaigning for equity, equality and quality in the health system: we believe that constitutional rights – and the duties they place on public and private actors – can be used to ensure growing equity in access, equality of treatment and the quality of services provided;
- promoting awareness in and out of government of the obligations the Constitution places on both public and private health sectors, as well as ensuring awareness of and compliance with these duties and their integration into all areas of policy- and law-making;

- ensuring that the public sector provides access to health care services and discharges its mandate in accordance with the Constitution and the National Health Act;
- ensuring that the key social determinants of health, particularly access to nutritious food and basic education, are realised progressively;
- defending the Constitution, its foundational values and fundamental rights from attack – for instance, by seeking to ensure the independence of the judiciary; and
- working with others to expose and campaign against corruption as it leads to the loss of billions of rands that should be used to promote and fulfil rights such as access to health care services and basic education.

COMBINING CONSTITUTIONAL ACTIVISM AND LEGAL ACTION

SECTION27 combines high-quality research and legal work with social movement strengthening and coalition building. We place the Constitution at the heart of our work, focusing on using and developing the law to defend and advance fundamental human rights. We continue to link law to social justice campaigns, recognising that legal action and litigation on their own have only limited prospects of improving people's health and lives.

HIV highlights the deep inequalities and injustices that characterise many societies. Your decision to expand the reach of your efforts to broader social and economic rights issues through SECTION27 is testimony to our commitment to transform society for the better.

...

I am confident that SECTION27 will foster social and economic justice by addressing the underlying causes and consequences of inequity, prejudice and injustice in all aspects of public and private life.

I hope that by building on the experience of the AIDS Law Project, SECTION27 will provide a further opportunity for experience sharing that would inspire struggles for social and economic justice in other parts of the region and worldwide.

Michel Sidibé: Executive Director, Joint United Nations Programme on HIV/AIDS (UNAIDS)

We know that our communities are not yet empowered to challenge [power]. I would rather have an organisation like SECTION27 be empowered to help our communities to know their rights; but also to work with government to strengthen our service delivery in such a way that we are responsive and that we recognise those rights.

Malebona Precious Matsoso: Director General, Department of Health, South Africa



The SECTION27 campaign, the Equal Education campaign and others will open up a new chapter in civil society struggle and I appeal to the media, who are becoming more and more obsessed with the lives of a small elite, to publicise initiatives like the SECTION27 campaign which tackle the challenges facing the majority of South Africans.

I am sure that the new campaign will build on the successes achieved by the AIDS Law Project and the TAC in using section 27 of the Bill of Rights and other laws, combined with mass mobilisation, to bring about the transformation of our approach to HIV/AIDS.

Now we can use that experience to broaden our outlook and use the same strategies to start to transform our whole healthcare system and all other areas of our social life.

Zwelinzima Vavi: General Secretary, Congress of South African Trade Unions (COSATU)

DIGNITY AND EQUAL ACCESS TO HEALTH AND BASIC EDUCATION: OUR VISION

As the name suggests, SECTION27 has a particular focus on the right to have access to health care services. This is tied to the positive duties and negative injunctions that the Constitution places on public and private bodies and the legal and political conditions necessary for sustaining rights under the rule of law. In our view, HIV/AIDS will remain the litmus test for the delivery of health services for many years to come, offering an entry point for tackling the systemic problems that confront the health system more broadly.

SECTION27's vision is to advance equality of opportunity by working towards –

- a measurable and significant improvement in access to health care services, effective and sustainable HIV prevention and treatment programmes and better health outcomes for the people of South Africa;

- a clear, publicly-known definition of the meaning of the right to basic education and the responsibilities this places on government in relation to investment in and the regulation of education;
- a clear, publicly-known definition of the meaning of the right to sufficient food and the responsibilities this places on government to take measures to alleviate pervasive hunger and malnutrition;
- the deepening of our constitutional democracy by ensuring that law- and policy-making in all spheres of government – but particularly in relation to rights to health and education – is open, accountable, consultative and guided by the state’s duty to respect, protect, promote and fulfil constitutional rights;
- the development of a political culture that places clear constitutional obligations to realise rights and reduce inequality at the forefront of all policy- and law-making; and
- the development of growing capacity within civil society to utilise South Africa’s legal framework to challenge corruption and the misuse of public resources.

SECTION 27 seeks to attain this vision by –

- *working with and strengthening organisations* to ensure the implementation of evidence-informed HIV/AIDS and TB programmes and sustained access to quality health care services;
- *working with partners to develop organisational capacity and legal strategies* to ensure an adequately resourced and equitable school system that enables poor children to realise their potential;
- *monitoring, investigating and publicising* the manner in and the extent to which the rights to health and basic education are realised;
- *initiating litigation and other forms of legal action* to expose and challenge violations of these rights;
- *developing and proposing policy in health and education* that is based on an understanding of the constitutional obligations to realise these rights; and
- *working in alliance with like-minded organisations* to enforce the Constitution and promote constitutional rights and values as an integral aspect of social and economic development.

SECTION27'S AREAS OF FOCUS

SECTION27 is currently working towards the following five short- to medium-term goals:

1) DEVELOPMENT AND IMPLEMENTATION OF THE SUCCESSOR TO THE NSP: Development and implementation of the successor to the NSP (for the period 2012 – 2016), with a particular focus on respect for and the promotion of human rights; and the building and/or strengthening of SANAC structures to ensure good governance and accountability

- Development and implementation of the NSP's successor, with a focus on the centrality of human rights
- Strengthening of key civil society organisations working on HIV/AIDS
- Consolidation of SANAC as an effective and efficient structure primarily responsible for co-ordinating the implementation, monitoring and evaluation of the NSP and its successor
- Appropriate budgeting for and expenditure in relation to ARV treatment and other key interventions identified in the NSP and its successor
- Sustainable and uninterrupted provision of ARV treatment, in part through appropriate monitoring by SANAC and its constituent members

2) REFORM OF PUBLIC AND PRIVATE HEALTH SYSTEMS: Better quality and affordability of public and private health systems as an integral step towards the creation of an NHI system

- An informed civil society aware of the law and the right of access to health care services and the obligations this imposes on public and private actors
- An evidence-based, developed legal framework for the regulation of both public and private health sectors, with a focus on access to and the quality of services
- A reasonable plan on NHI developed by the Department of Health

3) IMPROVED ACCESS TO FOOD AND BASIC EDUCATION: Increased public investment in health-related socio-economic rights such as sufficient food and basic education and their appropriate regulation

- Better utilisation of legal action and human rights advocacy by partner organisations working to achieve rights to food and basic education
- Promulgation by the Department of Basic Education of regulations dealing with minimum norms and standards in schools, including library infrastructure, resourcing and staffing
- A more developed legal framework on the right to sufficient food

4) REGULATION OF PUBLIC AND PRIVATE POWER IN THE INTERESTS OF EQUALITY: Ensuring that the conduct of relevant organs of state and of those who exercise significant private power in relevant fields accords with the Constitution

- More effective parliamentary oversight over the Executive
- The maintenance of the foundational values of the Constitution
- The maintenance of judicial independence
- A better understanding of the constitutional obligations of the private sector in relation to the rights to food, health and basic education
- Increased equality of access to essential services provided by the private sector
- A developed legal framework regulating private power, particularly in the health industry

5) PROMOTION OF HUMAN RIGHTS REGIONALLY AND INTERNATIONALLY: Seeking to influence respect for human rights and the rule of law regionally and internationally

- Strengthened civil society organisations and partners working in the field of human rights in selected developing and middle-income countries, including China and Kenya
 - Research and advocacy on the right to the “highest attainable standard of physical and mental health” aimed at the development and adoption of a new United Nations Framework Convention on Global Health
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SECTION27'S LOCAL, REGIONAL AND INTERNATIONAL PARTNERS

A GROWING WEB OF ORGANISATIONS WORKING TOGETHER FOR HUMAN RIGHTS AND SOCIAL JUSTICE

SECTION27 employs activist attorneys and researchers to carry out a work plan of activities aimed at achieving this vision. SECTION27 operates in formal and informal partnerships with a number of organisations. In addition to our primary partners – the TAC, EE, CMT, SLSJ and SJC – SECTION27 also works closely with the following local, regional and international partners:

Local partnerships

- The Budget Expenditure and Monitoring Forum (BEMF): BEMF was established by the ALP, TAC and others and has a particular focus on budgeting for and public expenditure on the NSP. It seeks to focus civil society attention on what are arguably the weakest aspects of HIV and TB programmes.
- SANAC: Between 2007 and 2011 SECTION27's executive director served as the deputy chairperson of SANAC. In addition, SECTION27 plays an active role in the development and strengthening of SANAC as an organisation, its human rights sector and its constituent parts.
- The Rural Health Advocacy Project: this originated as a joint project of the ALP, the Rural Doctors Association of Southern Africa (RuDASA) and the Centre for Rural Health at Wits University.
- The Free State AIDS Coalition: in 2009 a six-month moratorium imposed by the Free State Provincial Government on access to ARV treatment led the ALP and others to assist with the formation of this organisation. We continue to assist and promote its work.
- The School of Law at Wits University: SECTION27 is formally associated with the Law School and senior members of SECTION27 staff have honorary researcher/senior researcher status
- ProBono.Org: SECTION27 refers cases it receives to this organisation, which works with private law firms to provide free legal services to refugees and people with HIV.

- Health-e News Service: SECTION27 works with this specialist media organisation in order to publicise its own work and to provide and receive information; it has also provided legal services to the organisation.
- J & J Group Development Trust: SECTION27's partnership with the trust is aimed at furthering campaigns for the achievement of social justice in South Africa.

Regional and international partnerships

- Korekata Law Centre, Beijing: SECTION27 provides Korekata with strategic guidance, training and exchange visits so as to assist with the promotion of the rule of law and human rights in the response to HIV/AIDS in China.
- The Joint Action and Learning Initiative (JALI): Together with the O'Neill Institute for Global and National Health Law at Georgetown University Law Center in Washington DC and the Lawyers Collective in India, SECTION27 is a founder member of JALI, an open network of national and international organisations promoting better health governance globally and the idea of a future Framework Convention on Global Health.
- AIDS and Rights Alliance for Southern Africa (ARASA): the ALP was a founder member of this regional grouping of law and human rights organisations.



Vuyiseka Dubula protesting outside the US Consulate in Johannesburg

SECTION27'S LEADERSHIP AND GOVERNANCE

SECTION27 is an independent not-for-profit company with a formally constituted board of directors. We are funded by a range of public donors and supporters. SECTION27 is also a registered public benefit organisation and law clinic, thus permitting us to practice law.

SECTION27's board of directors is made up of the following distinguished people:

- Vuyiseka Dubula (chairperson) – General Secretary, TAC
- Johann Kriegler (deputy chairperson) – former justice of the Constitutional Court
- Nhlanhla Ndlovu (treasurer) – programme manager, Centre for Economic Governance and AIDS in Africa

- Quarraisha Abdool-Karim – Centre for the AIDS Programme of Research in South Africa, Nelson R. Mandela School of Medicine, University of KwaZulu-Natal and Columbia University
- Brian Brink – senior vice-president (medical), Anglo American
- Sharon Fonn – representing the School of Public Health, Wits University
- Mark Heywood – executive director, SECTION27
- Marius Pieterse – representing the School of Law, Wits University
- Theo Steele – national organiser, COSATU



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Watch a short film about our work
(available upon request and on our
website)

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Top: Health activists at the JALI Regional Activist Dialogue, Johannesburg, 25 March 2011

Middle: Zwelinzima Vavi, Nonkosi Khumalo, Jay Naidoo and Adila Hassim at a SECTION27 activist dialogue, Johannesburg, 5 August 2010

Bottom: Justices Sachs, Nkabinde and O'Regan during the handing down of judgment in *NM and Others v Smith and Others*, Constitutional Court, 4 April 2007