MEANINGFUL CONSTITUTIONAL LITERACY TO HELP BUILD SOUTH AFRICA'S CULTURE OF A PARTICIPATORY AND RESPONSIVE DEMOCRACY

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Introduction

This paper builds on reflections from an ongoing collaboration between the authors in the realm of constitutional literacy. In particular, the co-authors have worked together to train law students at the University of the Witwatersrand and University of Johannesburg to facilitate constitutional literacy workshops in the township community of Alexandra in Johannesburg – both for the community members as well as for high school learners. Law students and some lawyers have facilitated three kinds of workshops – ongoing weekly constitutional literacy lessons in high schools, training for high school learners to compete in a national high school constitutional law moot court competition and workshops for the residents of Alexandra on selected constitutional law topics. In their individual capacities, the co-authors have a wealth of experience in the field of community constitutional education. Through these workshops, the co-authors have learned a variety of lessons, ranging from the insufficiency of legal education in South Africa, as currently situated, to properly train law students for meaningful community engagement; the need for rigorous and cross-disciplinary training of facilitators to discuss law in context; and the tendency of a declarationist human rights discourse to hollow out the promise of human rights secured through social and political struggle.

This year marks two decades of ushering in a new democracy in South Africa, and 18 years after a new constitution was established for the new dispensation. Yet a majority of South Africans continue to be unaware of their constitutional rights and/or how these rights apply to the persistent inequalities surrounding them. The legacy of Apartheid endures: law is still viewed by many as a means of control, and not of development and transformation. Moreover, South African society is plagued by a culture of violence that has continued to reproduce itself and now is seen as legitimate. The general lack of an awareness of rights, and how to enforce them, among South Africans, coupled with this normalised resort to violence in a society beleaguered by the highest inequality rate in the world, unbridled corporate power, gross corruption, growing service delivery protests, renewed ethnic and racial and other conflict, populist politics, and attacks on the rule of law and judicial independence together underscore the need for robust and widely accessible constitutional education and training.

Despite this need, a wide gap persists in fulfilling this function, though such education and training squarely falls within the respective mandates of the Department of Basic Education (DBE) and the Department of Justice and Constitutional Development (DoJCD). This is not to suggest these departments are not discharging their responsibilities at all; indeed, they are involved in some important initiatives. However, existing programmes fail to reach most South Africans, and for this reason, civil society

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and community-based organisations continue to fill this gap.

Increasingly, there is a focus on the importance of constitutional literacy programmes in South Africa to bridge the gap between the law and the masses of people who cannot access the promise of the contents of the Constitution. Indeed, a campaign spearheaded by members of civil society in South Africa, entitled the Know Your Constitution Campaign, was launched in 2013 and has blossomed since then, securing some important initial victories. The Departments of Justice and Basic Education have recognised the importance of constitutional literacy programmes and of providing physical access to constitutional booklets, and the South African Human Rights Commission has made constitutional literacy a priority area for advocacy.

Despite this, however, there is still little focus on the pedagogy of constitutional literacy, i.e. *how* programmes should be carried out to be effective, meaningful and contextual for their participants. Indeed, often such workshops are presented in a didactic manner, in which participants are "presented" their rights without meaningful engagement of the limitation or complete failure of the traditional rights-based paradigm in their lives. Moreover, reliance on law students or law graduates to serve as facilitators, whose legal education poorly equips them to serve in this role, can sometimes undermine the objectives of a constitutional literacy programme.

There is also little reflection on *why* such programmes are important for society. The usual refrain is that it is important for people to "know their rights," but the co-authors believe this clichéd expression prohibits a real exploration of the deeper purposes and objectives of such programmes. Some argue about the inherent value of such programmes to allow people to realise their human dignity, and while we support the inherent value located in encouraging the mooting and debating of ideas, we also believe in the importance of an instrumentalist function of such programmes to promote social justice. Our concern is that the dominant manner in which such workshops are conducted tend to reify law as an "other" in people's lives. In a classic neoliberal manner, law becomes a commodity that can only be demystified and accessed through the assistance of a legal expert speaking legalese, and thereby tends to supplant the terrain of rights as inherent in human beings and much of their cultures developed over time or as a contested site of struggle secured directly by communities. Little is done to link constitutional rights with complementary values that communities already live by or with efforts already taken by communities to make life better for themselves and others. Recognition of this can assist immensely in demystifying law, and in particular constitutional law.

In our paper, we discuss some alternatives and opportunities we have considered in light of these concerns and reflections. First, we discuss the relevance of the legal education reform debate and the community service provisions of the Legal Practice Bill to ensuring more effective constitutional literacy programmes. Second, we discuss the importance of structuring constitutional literacy programmes in a manner that does not deprive communities of their agency to understand, contest and secure rights through their own interpretation and struggle. Thirdly, we discuss opportunities for enriching the nature of the training provided to facilitators of these programmes, rooted in educational

pedagogy of praxis. In the final analysis, we hope to be persuasive on how the proposals we make are essential for constitutional legitimacy among South African communities and in helping develop the much-desired participatory and responsive democracy.

Context

This paper and the community legal education work the co-authors are generally engaged in, are inspired by the community legal education project that the co-authors have facilitated in community of Alexandra (Johannesburg) in the past year. It is thus fitting that we provide a brief overview of the Alexandra township.

Alexandra is one of the oldest townships in South Africa, having been founded in 1912. The term 'term township" in South Africa is loosely used to refer to residential urban areas set up for black people by the colonial and apartheid governments in South Africa. Unlike most townships, black people came to be residents of Alexandra by buying residential pieces of land in the township. For reasons of "influx control" of people, black people in urban areas and the township being located too close to areas deemed for white people, properties of black people in Alexandra were expropriated by the apartheid government. This resulted in residents (both the original settlers and those who arrived later) either being official tenants of the government or setting up informal and/or illegal structures. Because of its location, Alexandra is used by many as a gateway into Johannesburg (the economic capital of South Africa). Alexandra thus became, and currently is extremely densely populated. Overcrowding (and all consequences thereof) and unemployment are the township's main vulnerabilities.

The residents of Alexandra were also key players in fighting colonialism and apartheid. Strong civic movements developed from this. Many residents of Alexandra (particularly the descendants of the original settlers who had bought property in Alexandra) have a sense of home attachment to Alexandra. For these two reasons, many people in Alexandra have the attitude or dream of "fixing the township," and the only way to do so is to cause development. Like these residents of Alexandra, the co-authors of this paper hold a strong view that the development of the community is key to achieving a better future for the township. We also believe that any sustainable developmental project for Alexandra must be rooted in the community. We think that the following slogan best represents our preferred approach: "In the Community, With the Community, As part of the Community, For the Community".

Interventions

We would like to make example of two main projects we have worked on in Alexandra: (a) the Constitutional Law and Human Rights Course, led by the law firm ENSafrica in Alexandra, and (b) constitutional literacy and moot court / debate coaching in Alexandra high schools.

The Constitutional Law and Human Rights Course is run by ENSafrica's Alexandra *Pro Bono* Office, in partnership with the Constitutional Court Clerks' Alumni Association. The third edition of the course took place in 2014. The Course comprises of six full-day sessions over a period of six months, covering the following topics: (a) Introduction and Constitutional Process; (b) Access to Information; (c) Access to Justice; (d) Equality, Language, Privacy, Freedom of Speech, Assembly and Political Rights; (e) Crime and the Constitution; and (f) Socio-Economic Rights. In between sessions, the participants are given assignments that are then marked by facilitators. Facilitators of the Course are mainly former Constitutional Court judges' clerks who now work in the area of constitutional law, including ENSafrica practitioners.

Participants of the course (about thirty at a time) are usually a diverse and eager very group of individuals. The common thread among all the workshop participants is community activism and development. In 2014, the group included municipal ward councillors, local journalists, local politicians from three different political parties, a senior official in the City of Johannesburg Metropolitan Municipality, a nurse and social worker, the chairman of the Alexandra Community Policing Forum, three teachers from Alexandra schools, and community development workers. The youngest participant was 21 years old and the oldest was 77 years old. After six months, the participants graduate and as part of the festivities are taken on a tour of the Constitutional Court. Those who have completed the course have gone on to use the knowledge they acquired for community development purposes. One example is worth mentioning. The 2013 graduates, with the assistance of ENSafrica, established a non-profit organisation called the Constitution and Human Rights Action Group (COHURI), with the purpose of providing human rights education in the community and to advance the interests of the community insofar as the constitutional rights of members of the community are threatened or violated.

In 2014, ENSafrica's pro bono unit in Alexandra has also collaborated with the Constitutional Literacy and Service Initiative (CLASI) to take legal education to high schools in Alexandra, working with three high schools. CLASI, launched in 2011, attempts to build a foundation for a popular culture of active citizenship and engagement with the ideals contained in the Constitution. CLASI provides ongoing training to law students ("teaching fellows") from five law schools to facilitate workshops, classes, public debates and moot competitions in under-resourced schools and community centres around the Western Cape and Gauteng. Our hope is to foster conversations that will help to restore agency and human dignity to people who have long been silenced, to build bridges across difference, and where there is conflict, to promote its non-violent resolution.

Incorporating contemporary constitutional debates in society through moot court competitions (simulated court hearings where participants play role of lawyers and present their case) and through art as a medium, the CLASI curriculum explores South African history and constitutional transformation, both in terms of political and social transformation. Using this curriculum as a base, CLASI encourages the development of critical analysis, reading, writing, and speaking skills, as well as dialogue, as an alternative to conflict. In this way, both the learners and the teaching fellows are

exposed to dynamic, inter-disciplinary, and hands-on learning.

ENSafrica and CLASI's workshops in Alexandra high schools are comprised of a curriculum of ten constitutional and human rights topics in each school for the year. The constitutional literacy classes are facilitated at the respective schools by CLASI teaching fellows in collaboration with ENSafrica practitioners. This is an afterschool activity of which participation in it is voluntary for the learners. A particularly interesting story about project at Minerva High School is worth noting. The learners loved this initiative so much that they established a constitutional literacy club called 'Young Leaders 99', with a convener and a committee, which promotes constitutional literacy in the school. This is a model that we plan to introduce in other schools high schools in Alexandra as well.

Additionally, in 2014, CLASI teaching fellows, in conjunction with ENSafrica practitioners, facilitated the participation of select high school learners in the National Schools Moot Court Competition. This competition, now going into its fifth year, invites Grade 10 and 11 learners across the country to compete in a high school level constitutional law competition based on a hypothetical constitutional law scenario affecting young people in South Africa today. Over the years, CLASI has found the mooting technique to be unparalleled in respect of facilitating the development of critical skills and attributes such as self-confidence, reading, analysis, research, writing and public speaking. This year, all of the Alexandra learners qualified to the provincial rounds for the first time, with one team from Alexandra also qualifying for the national rounds of the competition.

Importance of and Challenges to Constitutional Literacy

The authors view constitutional literacy less about a series of constitutional provisions or cases to commit to memory as it is about facilitating a process of dialogue and exploring a language of contestation. It is worth re-emphasising here the value of constitutional literacy as a fundamental human right in and of itself, intrinsically valuable to the realisation of human dignity. In a report issued in 2013, UN Special Rapporteur Magdalena Sepulveda Carmona declared that there is a right of people living in poverty to fully participate in society and its decision-making processes and that the lack of such participation is both a "defining feature and cause of poverty, rather than just its consequence." Participation undertaken with a rights foundation can encourage people "to be active agents in their own destiny; thus fundamentally important to reclaiming dignity." One CLASI Teaching Fellow described the constitutional literacy process as "planting a seed." But, as with all seeds, water and care are required for the seed to germinate.

Who is meant to water and care for these seeds, and how? The UN Declaration is unequivocal that the DBE and DoJCD have critical roles to play, working together with the Human Rights Commission and civil society. Many challenges remain, however, to the successful implementation of these programmes at the school and community level. First, at the school level, the CAPS (Curriculum and Assessment Policy Statement) LO curriculum for Grades 10-12 prescribes a maximum of 18 hours of Democracy and

Human Rights (DHR) learning over three years – 7 hours each in Grades 10 and 11, and 4 hours in Grade 12. This time allocation is *negligible*, insulting even, in respect of conducting a meaningful engagement with constitutional education. Moreover, the prescribed curriculum itself is scattered and incoherent, making it virtually impossible to incrementally build the constitutional literacy of learners. Within the LO course, which is slotted for a mere two hours per week, the Democracy and Human Rights module competes for space with instruction around life skills, career choices, physical education, study skills, social and environmental responsibility, and something referred to as "development of the self in society."

LO thus becomes little more than a haphazardly constructed course filled with odds and ends that do not fit elsewhere in the curriculum. It is no wonder then that Professor Jonathan Jansen refers to LO as a "dummy subject" and advises parents to "tell your child not to take life orientation seriously…because there is no positive relationship between high marks in academic subjects and this thing called life orientation." To be clear, while Jansen's remarks are understandable, they are incomplete. Democracy and Human Rights has all the potential to be a rigorous subject on par with any other course in the high school curriculum, but it must be given adequate space and value in the curriculum.

Second, the DBE and National Development Plan (NDP)'s emphasis on the so-called Bill of Responsibilities is misplaced and diverts attention and resources from the real issues. The Bill interprets several constitutional rights in a manner that is fundamentally at odds with the Constitution, and is a feeble attempt to justify a dilution of government responsibility for the realisation of constitutional rights. Promotion of the Bill of Responsibilities should not be conflated with promotion of the right to constitutional literacy.

Third, time and time again, we hear that teachers who rarely have trained in LO are often assigned to teach LO as a 'rite of passage' within a school. Once assigned the subject, they are not properly trained to deliver the DHR curriculum, which is why CLASI started providing LO teacher training for the DHR module. The DBE must develop rigorous and ongoing training programmes for LO teachers who cannot properly teach a constitutional curriculum if they do not understand it.

Fourth, we have encountered similar under-capacitation of community-based paralegals (CBPs), who, despite providing critically important legal services for communities, receive little state support and are not provided adequate training in the area of constitutional education. Perhaps if the state recognised the critical role CBPs play, as outlined in the Kampala Declaration on Community Paralegals, CBPs could receive further support and training in this regard. Many constitutional literacy / human rights education initiatives are once-off interventions that do not result in lasting change for communities. By capacitating community residents to facilitate this learning themselves, a deeper contextual teaching and understanding could result, leading to the possibility for more sustainable change in the long-term.

Fifth, most CLASI teaching fellows participate in this programme on a voluntary basis

because their law schools do not offer academic credit for their involvement. At one law school, students do receive credit towards their community service requirement, but it does not credit ongoing facilitation training, debriefing, and self-reflection. As a result, it is difficult to incentivise law students to maintain a robust commitment throughout the year, whilst they simultaneously juggle full course loads. And yet, the fellows' legal education is enriched by their involvement in such programmes, as they gain a deeper understanding of law in context. The DoJCD could fix this by allowing law students to participate in such constitutional education programmes as part of their mandatory community service, as proposed in the LPB. Moreover, community education could become a compulsory part of a student's law clinic experience, as a tool for expanding beyond individual representation of indigent clients.

For example, the University of Stellenbosch reports using community education to work with groups on evictions and debt counselling. At the University of Northwest – Potchefstroom, the law clinic students assist at the local Magistrate's Court in the domestic violence, maintenance, divorce and small claims court offices by providing education and assisting clients to complete the necessary application forms. Rhodes University has an extensive community education programme. The Clinic provides a training programme for paralegals throughout the Eastern Cape. It also offers training in community facilitation skills to students, NGO's and paralegals, so they may successfully organise community education sessions.

The Way Forward

In the face of these obstacles, we have considered a few strategies to plot the way forward. In particular, we believe it is critical to focus on teaching pedagogies for such programmes, a community development approach to constitutional literacy, and constitutional literacy programmes as falling within compulsory community service under the new Legal Practice Act. Each of these strategies is examined in turn.

1. Constitutional Literacy as a Practice of Freedom

From our limited experience partnering in Alexandra on these constitutional literacy programmes, the authors are particularly concerned about the teaching pedagogies used to train facilitators; indeed, these pedagogies must come under close scrutiny and development. Constitutional literacy must be at least as much about the *process* of constitutional literacy as it is about the substance of constitutional literacy. It is not enough to read out the Preamble to the Constitution in classrooms as the National Development Plan proposes, for this merely promotes the Freirian "banking" concept of education, in which the student is viewed as an empty account into which the teacher deposits knowledge. Indeed, what is needed is a critical teaching pedagogy in which the act of education itself is seen as a political act delivered through dialogic learning – an intense dialogue between theory and the lived realities of the participants. Techniques such as debating and moot courts allow for participants to think critically and enhance their ability to analyse and confront structures of oppression and power

relations. This training model allows facilitators an invaluable experiential learning opportunity to gain a deeper, more nuanced perspective on the Constitution in context.

We can learn quite a bit from our own history. In the 1980's "people's education was seen as a vehicle for conscientisation, promoting critical thinking and analysis and alternative governance structures in education." But "liberal views on education gained cachet from the beginning of negotiations between the ANC and the apartheid regime in the early 1990s. The role of civil society organisations and even the language of People's Education became increasingly marginal to the overall project of education change. The discourse and content shifted substantially from radical demands which focused on social engagement and democratising power relations, to one which emphasised performance, outcomes, cost effectiveness and economic competitiveness."[3] In order for people to have a dynamic relationship with what they are learning, the manner in which it is presented, as well as the content, must resonate with their realities.

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 law students and lawyers successfully developing critical teaching pedagogies. How you learn will influence how you teach. At present, much of legal education is delivered in a content-heavy format, with the emphasis being on teaching law as an objective set of rules and norms. As former Justice Chaskalson noted in 1983, "I do not believe that there is any profession other than the law in which students leave university as ill-equipped as this to pursue their chosen career."[4]

What we propose is that a Freirian approach to legal education can shift that emphasis from content to context, in which the teaching pedagogy itself, the identities of the teacher and student, as well as the purpose for which the education is occurring become the focal points for legal education reform. 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."[5] 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 teach 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.[6] The role and responsibility of law teachers, in

[3] Salim Vally, "From people's education to neoliberalism in South Africa," *Review of African Political Economy,* No. 11 (2007): 39-56 at 42, 44.
[4] See A Chaskalson, "Responsibility for practical legal training" 1985 (March) *De Rebus* 116.
[5] Geo Quinot, Inagural Lecture, Stellenbosch University, September 2011 at 5.
[6] KE Klare "Legal Culture and Transformative Constitutionalism" (1998) 14:1 South African Journal on Human Rights 146–157.

this regard, is critical because their approach to teaching law has great influence on driving students to think about becoming "innovators under the Constitution."[7]

2. A Developmental Approach to Constitutional Literacy

Not only is it important to question the training pedagogies of those facilitators of constitutional literacy, but also to critique the content of constitutional literacy programmes itself. It is important here to note the critiques of human rights discourse globally, and in South Africa, and the importance of highlighting the Constitution as the product of a negotiated settlement that has been subject to widespread critique in respect of its effectiveness as a tool for real social change. Many authors have discussed the failure of human rights in an asymmetrical social, political and economic order such as South Africa. This isolation of individual rights from social realities casts human rights discourse in South Africa as particularly hollow: constitutional jurisprudence projects the image that the country has a 'vigorous human rights culture' but this obscures, to use a Marxist phrase, fundamental social contradictions. As Vally has succinctly noted:

> The discourse of rights, championed as the mainstay of our public institutions and the constitution has often served to promote a fiction. Acting as if certain rights exist for all in an equal way inhibits people's ability to recognise when they are in fact, illusory, and why society does not act to protect these rights. A single mother in Soweto compared to a suburban corporate executive cannot be said to have the same power of political persuasion or opportunity. These are real distinctions that give some people advantages and privileges over others. The fiction that promotes the view that real social differences between human beings shall not affect their standing as citizens, allows relations of domination and conflict to remain intact.[8]

Makau Mutua, a leading critical theorist, has provided a useful framework for assessing the human rights paradigm, setting forth what he has called the human rights movement's "damning metaphor," in which the "Savages-Victims-Saviors" triad drives the human rights paradigm.[9] As Mutua explains, the human rights rhetoric has historically approached governments in a stark black and white framework, in which the "evil" State, "expresses itself through an illiberal, anti-democratic, or other authoritarian culture," and works as the "operational instrument of savagery" when it deviates from cultural practices of the West. The Victim within the human rights metaphor is characterized as "a powerless, helpless innocent whose naturalist attributes have been negated by the primitive and offensive actions of the state or the cultural foundation of the state." And the Savior is the "victim's bulwark against tyranny." Mutua's metaphor provides an illustrative framework for grounding critiques of the human rights movement as an inherently Eurocentric movement that seeks to shame "other" cultures as the

[7] Geo Quinot at 7.
[8] Salim Vally, "From people's education to neoliberalism in South Africa," *Review of African Political Economy,* No. 11 (2007): 39-56 at 40.
[9] Makua Matua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 203-05 (2001).

inferior savage for operating outside of Western cultural norms promoted under the guise of human rights.

Others critique the human rights discourse as facilitating a neoliberal market individualism with its emphasis on individual rights and technical and quantitative measurements of democracy. Neocosmos argues that "[d]emocracy, and politics as a whole, is thus reduced to technical process that is taken away from popular control."[10] He describes human rights as depoliticising popular struggles and grievances "by putting them through the judicial mill," after which it is expected that "everyone should return to their allocated place in the social structure and vacate the field of politics." The state thereafter dictates the playing fields, the terms of reference in which discussion around society takes place.

So, is there then a value to constitutional literacy if the very legitimacy itself of the Constitution is so heavily questioned? The authors believe there is, but it must be embedded in a philosophy of true community development. Facilitators of constitutional literacy programmes must find innovative ways to empower community members to be able to lead their own community's development. Legal community education, particularly constitutional and human rights education, facilitated by lawyers and law students is such an example. In addition to setting out rights (the Bill of Rights in Chapter Two of the Constitution), the South African Constitution contains the foundation of all government arrangements and obligations. Being empowered on (a) their rights, (b) how such rights can be enforced; and (c) how government is arranged and works — community members can attain important tools on how to use compel support from government in developing their community. In the case of a non-responsive government, they can use the same tools to hold such government accountable. They can utilise the constitutional provisions as a language to strengthen their own struggles, always recognising the intertwined terrain on which law and politics meet. Facilitators of these programmes too must be trained in such a manner to recognise law as effectively only within a larger domain of politics.

In this regard, the authors regard the establishment of COHURI and Young Leaders 99 to be good examples of the impact constitutional literacy programmes can have in inspiring community residents to take up their own development needs, using fun and engaging techniques to engage their fellow residents, learners, family members, etc. The participants to these workshops must be given a historical understanding of how these provisions developed, as well as the tools to themselves critique the limits of the law. In this way, participants then can utilise the tools they gain with a nuanced understanding of the role and limits of the Constitution, as well as the strategic possibilities presented in their contexts.

[10] Neocosmos, Michael. "Transition, human rights and violence: rethinking a liberal political relationship in the African neo-colony." Interface: a journal for and about social movements 3, no. 2 (November 2011): 359-399. P 362

3. Compulsory Community Service

On 22 September 2014, the Legal Practice Act was enacted into law. For more than a decade preceding, various iterations of the Bill had been considered and debated within the legal profession quite vigorously. In the current iteration of the Act, section 3 lays out the purpose of the Act to:

> *(a)* provide a legislative framework for the transformation and restructuring of the
> legal profession that embraces the values underpinning the Constitution and ensures that the rule of law is upheld;
> *(b)* broaden access to justice by putting in place—
> (i) a mechanism to determine fees chargeable by legal practitioners for legal
> services rendered that are within the reach of the citizenry;
> (ii) measures to provide for the rendering of community service by candidate
> legal practitioners and practising legal practitioners.

Section 6(5) of the Act, gives the council established in terms of this act a discretion to advise the Council on Higher Education on the desirability of including a form of community service within the LLB curriculum for all law students. This provision is quite broadly phrased, so it has the potential to be quite an influential tool for the council to use that could have an enormous impact on the LLB curriculum and broadening access to justice for all South Africans.

Section 29 of the Act contains community service provisions. This section places an obligation on the Minister to prescribe requirements for community service after consultation with the Council. This may include community service as a part of practical vocational training for candidate legal practitioners or a minimum period of community service for practising legal practitioners. This section continues to set out where community service could take place, but does not give a closed list, so it leaves room for community service by legal practitioners to take place in other ways as well. Finally, Section 94 makes provision for regulations to be made by the Minister, amongst other things, related to legal education and training in section 6(5) (f) and community service in section 29(1).

What this means, of course, is that the Act has left open the possibility of whether community service will become a mandatory feature of the LLB. Of the submissions presented to the DOJ on the draft Bill, only AULAI (the Association of University Legal Aid Institutions), CLASI and the Wits Law Clinic made submissions specifically encouraging inclusion of law students in these provisions. At present, it is only compulsory at the University of Cape Town, where admittedly there have been challenges to its implementation. Nevertheless, the authors believe the Act's vision of 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.

In order to make the vision of access to justice a reality, the state should work together with the legal profession to supply resources to a national programme of community service, and by doing so, to open the doors to the legal profession for aspirants. Existing pro bono initiatives should not be swept away in the face of a legislated mandate for the legal profession to serve the community.

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, 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, 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. In this regard, we draw the attention of the Committee to the Student Practice Rules, applicable to law students working in Clinics.[11] 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. Community service initiatives at university level should not replace, but rather, complement and build upon the foundation that has already been established at a number of institutions, and would, of course, also not negate their life-long pro bono requirements.

As a national programme of community service is progressively realised, 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 becomes 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.

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 fulfil their community service obligations, whilst effectively increasing access to justice and assisting aspirant legal practitioners to build their skills and work experience.

[11] *See* (2008) 41 De Jure 580-595.

By engaging with members of disadvantaged communities in this way, legal practitioners and aspirant legal practitioners are given an invaluable experiential learning opportunity in relating 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.

The authors understand that a specialised working group will be established under the auspices of the Council to deal particularly with all matters relating to community service. We submit this is a rich opportunity for the CLE community within South Africa to provide input into the design of community service in the country. 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.

Community legal education, in the form of community service, should not just be limited to law students or new law graduates. At present, law societies, have have inserted into their rules the requirement that "practising members who have practised for less than 40 years and who are less than 60 years of age, shall, subject to being asked to do so, perform pro bono services of not less than 24 hours per calendar year."[12] What is not spelt out, however, is that attorneys will receive pro bono credits for facilitating community legal education. We think that law societies should play an active role in persuading their members to fulfil their pro bono obligations by conducting community legal education programmes in communities proximately located to them. The law societies should provide training to and supervision of their members in this regard. Whatever community service scheme is implemented by the new body contemplated under the Act, community legal education should be a key element of such a scheme.

Conclusion

Twenty years into our democracy, the time is long overdue to regard the Constitution not just as a tool for the privileged few to eloquently argue in the Constitutional Court, but as a seed that properly nurtured can lead to the reclaiming of human dignity and reduction in inequality for all people living in South Africa. As Freire mused:

[12] Section 74(1) of the Attorneys Act 53 of 1979 empowers law societies to may make rules, which rules are binding on attorneys within the province of that society. There are four law societies in South Africa, namely (a) Law Society of the Northern Provinces; (b) KwaZulu-Natal Law Society; (c) Law Society of the Free State and (d) Cape Law Society. Each practising attorney in SA is required to be a member of at least one law society. See Rule 79A.3 of the Rules of the Law Society of the Northern Provinces; Rule 21.2 of the Rules of the Cape Law Society; Rule 24.2 of the Rules of the Law Society of the Free State and Rule 27.2 of the Rules of the KwaZulu-Natal Law Society. It should be noted that that the Rules of the Law Society of the Free State does not contain the phrase "and who are less than 60 years of age".

> “Education either functions as an instrument which is used to facilitate integration of the younger generation into the logic of the present system and bring about conformity or it becomes the practice of freedom, the means by which men and women deal critically and creatively with reality and discover how to participate in the transformation of their world.”

By coming together to strategise around the realisation of a right to constitutional literacy, we can make great strides towards the unfinished project of transformation in South Africa.