

**DRAFT FOR
DISCUSSION ONLY**

**DRAFT LEGAL
SERVICES CHARTER**

AUGUST 2006

PREPARED BY THE DRAFTING TEAM OF THE STEERING COMMITTEE

DRAFT
LEGAL SERVICES CHARTER

**FOREWORD BY THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

To be inserted later.

CHAPTER ONE

1. PREAMBLE

Recognising the injustices of the past, the accumulated disadvantages suffered by historically disadvantaged individuals, communities and social groups on the one hand, and the accumulated advantages by the historically advantaged on the other hand;

Whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation upon which civilised society pursues its quest for freedom, justice and equality;

Whereas the attainment of these rights has for so long been denied, impeded and frustrated for the majority of the people of South Africa by the policies of apartheid and racial segregation by successive Government;

Whereas significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy;

Whereas the Constitution enjoins government to promote the achievement of equality through legislation and other measures designed to protect or advance persons, or categories of persons, historically disadvantaged by unfair discrimination; and

Whereas the Constitution dictates that all constitutional obligations must be performed diligently and without delay;

Whereas the State has a duty and responsibility to promote and achieve equality, and where necessary or appropriate with the assistance of relevant constitutional institutions to develop codes of practice or other measures and implement programmes aimed at promoting equality, and provide advice, assistance and training on issues of equality;

Recognising that an independent and representative judiciary depends upon a strong, independent and representative legal services sector;

Whereas the Charter endeavours to facilitate a democratic society, united in its diversity dedicated to secure to all its citizens—

- Justice, economic, social and political; and
- Equality, of status and opportunity;

NOW THEREFORE the people of the Republic of South Africa, Government and the stakeholders in the legal services sector adopt this Charter to be a binding and guiding principle to eradicate the inequalities of the past perpetuated by the policies of apartheid and racial segregation.

2. DEFINITIONS AND INTERPRETATION

In this Charter, unless the context indicates a contrary intention, the following words shall have the meaning ascribed to them:

“access to justice” includes having the capacity and means to obtain and use affordable and responsive legal services in South Africa in a manner that is fair and equitable;

“access to the legal profession” means opportunity to qualify and practise in any field of law, including but not limited academia and the judiciary;

“access to legal work” means access to opportunity to sell one’s legal services such as legal advice, litigation services, legal drafting and legislative policy, and includes access to state legal briefs and other contracts;

“access to legal services” includes the provision of legal advice or services intended to benefit any individual, community, group or organisation which is disempowered financially, socially or by any other means;

“BEE Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003);

“black people” is a generic term which includes Africans, Coloureds and Indians;

“black person” has a corresponding meaning with black people;

“broad-based black economic empowerment” means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to—

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;

- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people; (definition from BEE Act);

“Cabinet” means the Cabinet of the Republic of South Africa;

“Charter” means the Legal Services Charter;

“company” means an enterprise registered in terms of the Companies Act, 1973 (Act 61 of 1973), close corporations, trusts and any other such enterprise formed for business purposes, a legal entity registered in accordance with the laws of the Republic of South Africa for the purpose of conducting business;

“consumer” means any person who seeks or utilises any form of legal advice or service, and includes an individual, community, group or organisation which is disempowered financially, socially or by any other means;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“control” includes the authority and power to manage assets, the direction of business operations, the right or the ability to direct or otherwise control the majority of the votes attaching to the shareholders’ issued shares, the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors and the right to control the management of the enterprise, and to participate in equitable sharing of the profits;

“direct ownership” means ownership of an equity interest together with control over voting rights attaching to that equity interest;

“discrimination” means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000);

“employment equity” has the meaning ascribed to it in the Employment Equity Act, 1998, (Act 55 of 1998);

“Equality Act” means to the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000;

“enterprise development” means investment in, or development of or joint ventures with black owned or black empowered enterprises and SMMEs, with real economic benefit flowing to the recipient enterprise allowing it to be set up and run on a sustainable basis;

“equity” means the fair and rational distribution of an affordable package of quality legal services to the entire population of South Africa, ability to pay for such services and irrespective of their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth; and ‘equitable’ has a corresponding meaning;

“fronting” means any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments and this Charter;

“Historically Disadvantaged Individual (HDI)” means black people, women and people with disabilities;

“lawyer” means any person with a legal degree and who is engaged in a legal career and is a member of a legal services sector, an attorney, advocate, or legal practitioner;

“Legal Services Charter Council” means a Council that is broadly inclusive of stakeholders in the legal services that is charged with monitoring, evaluating and enforcing the implementation of the charter;

“law firm” means a company, organisation, business enterprise, concern, partnership or corporation in the practice of the law;

“legal services” means any form of legal advice, or drafting of documents, or representation of any person that requires the expertise of a person trained in the practice of law;

“legal practitioner” means a person engaged in the provision of legal services including a paralegal;

“Organised Legal Profession” means all Law Societies and Bar Councils;

“paralegal” means a person who has knowledge and understanding of the law, its procedures and its social context acquired through training, education, work experience and/or a national registered qualification in paralegal practice;

“paralegal services” means provision of primary legal services to the general public, especially the poor, marginalised, indigent individuals, groups or community.

“parties” mean parties to this Charter;

“pro bono” means the provision of legal services to poor, marginalized and indigent individuals, groups or community without a fee or expectation of compensation, in order to enhance access to justice for such people who cannot afford to pay for legal services;

“procurement” means procedures and expenditure, including capital expenditure, for the purpose of acquiring goods or services which, in the case of the public sector, are governed by legislation;

“public sector” means government departments, organs of state and institutions exercising a public power or performing a public function in terms of legislation;

“quality” in relation to legal services, means input of such a nature and applied in such a manner as to ensure optimum results within the available resources and the circumstances of each case, taking into account the constitutional rights of the consumer, including, but not limited to the rights to life, human dignity, freedom and security of the person, bodily and psychological integrity, freedom of religion, belief and opinion and privacy;

“skills development” means the process of enhancing individuals’ specialised capabilities in order to provide them with career advancement opportunities;

“State legal services” means legal services that are rendered within the state services;

“sustainability” means having a reasonable prospect of continued, successful existence in the present and the foreseeable future with regard to those critical success factors that define and affect the viability of a particular enterprise over time.

3. OBJECTIVES

To adopt a Charter which gives effect to the Constitution, the Equality Act and the BEE Act by facilitating empowerment of HDI’s through the transformation of the legal services sector, effecting access to justice to all the people of the Republic of South Africa and promoting economic, social and political justice. This includes the following:

- 3.1 Enabling the legal services sector and the provision of legal services broadly to transform in line with the constitutional vision of the achievement of equality.
- 3.2 Achieving fundamental change in the racial and gender composition of the judiciary.
- 3.3 Transforming the legal services sector to be representative of the demography of the South African society and more accessible to all members of society..
- 3.4 Implementing measures to enhance access to justice which include promoting equitable access to legal services to all the people of South Africa, including the marginalized, poor and rural communities.
- 3.5 Improving access to the legal services sector which includes academic qualifications, apprenticeship opportunities, and professional qualifications by monitoring and evaluating the input, throughput and output of academic qualifications and apprenticeship of professional qualifications.

- 3.6 Providing a framework for building a common understanding, set benchmarks, design implementation mechanisms and develops support programmes for achieving equality in legal services.
- 3.7 Effectively and meaningfully promoting the equitable distribution of legal work with regard to race, gender and disability.
- 3.8 Transforming and standardising legal training and education, including continued legal training to develop and improve the skills base to ensure transparency and to eliminate barriers to equal opportunities.
- 3.9 Promoting and implementing skills development measures intended to empower legal professionals,, in particular HDIs, in fields of expertise where they previously did not have access.
- 3.10 Enhancing and promoting representivity in respect of ownership, management and control of legal practises or enterprises by black legal practitioners, including women, persons with disabilities and amongst rural communities.
- 3.11 Creating conditions conducive to ensuring that HDI legal service providers are able to start, manage and build sustainable practices or enterprises.
- 3.12 Ensuring that governance structures are transformed, inclusive and have balanced representation with regard to race, gender, and disability.
- 3.13 Supporting the attainment of the objectives of, *inter alia*, the Employment Equity Act, BEE Act and other equality and equity laws.

4. SCOPE AND APPLICATION OF CHARTER

- 4.1 This Charter shall apply to all persons engaged in the practice of law; the organised legal profession, all public and private institutions/bodies rendering legal services; and all private or public institutions/bodies and persons who consume legal services, including the State.

4.2 In the event of one or more charters being applicable to persons or companies envisaged in 4.1, the provisions of the Legal Services Charter shall take precedent.

CHAPTER TWO

5. TRANSFORMATION OF LEGAL SERVICES SECTOR

5.1 OVERVIEW

The legal services sector occupies an important place in South Africa's democracy and the economy. However, the sector's ability to perform optimally is hampered by inherited, race, gender and disability distortions relating to access, participation and involvement in decision making. The charter seeks to address these distortions which are mainly characterised by systemic inequalities experienced primarily by black people, women and persons with disabilities, in all aspects of legal services, including access to quality services and participation in service provision and the regulatory framework

5.2 DISPARITIES IN LEGAL SERVICE PROVISION AND RELATED PROFESSIONAL AND ECONOMIC OPPORTUNITIES

5.2.1 Access to and participation in virtually all aspects of legal services provision is skewed along race and gender lines and against persons with disabilities.

This applies to:

- Enterprise and equity ownership;
- Composition of the management echelon;
- All employment opportunities;
- Levels of and access to skills development opportunities;
- Access to work, including legal briefs and other procurement opportunities;
- Access to finance and other enterprise development resources;
- Access to justice, including equitable access to quality legal services.

5.2.2 The issue of disparities in access to justice is discussed extensively in a devoted chapter. Disparities in professional and economic opportunities permeate virtually all aspects of the sector, including the following:

- Traditional Legal Practice(Work of attorneys and advocates);
- Academia(Teaching of Law and Legal Research);
- Legal Drafting;
- Legal Consulting;
- State and Corporate Lawyers;

- Legal publishing; and
- Paralegal work.

5.2.3 Except for para-legal work, the participation of black people, women and persons in the above and other areas of the provision of legal and related services is constrained by many barriers which are mostly traceable to the legacy of past injustices in the sector and other areas of life. The Charter needs to provide a framework for eliminating such barriers and fostering equal participation in all professional and economic opportunities in the sector. The diversification of participation would not only benefit the historically marginalised service providers but would contribute meaningfully to access to justice and global competitiveness.

5.2.4 Inequality in professional and economic opportunities is particularly acute with regard to access to and participation in the traditional legal profession (attorneys and advocates), where the participation of black people, women and persons with disabilities is very limited compared to their representation in the national demography and university outputs. The key barriers to equal participation and related distortions in the profession are discussed in the following.

5.3 Access to legal profession

5.3.1 Access to the legal profession from the perspective of admission requirements in respect of the two professions. This refers to entry requirements to the Advocates and Attorneys professions.

5.3.2 Both professions are regulated by two separate pieces of legislation namely, the Admission of Advocates Act, 1964 (Act 74 of 1964), and the Attorneys Act, 1979 (Act 53 of 1979). In view of the fact that two separate regulatory regimes regulate the profession, their admission requirements differ.

5.4 Access to attorney's profession

5.4.1 Attorneys are admitted to practice law in terms of the Attorneys Act, 1979. No attorney is permitted to practise law without having been admitted as an attorney in the High Court of South Africa.

5.4.2 The attorney's profession has its own regulatory body, i.e. the Council of the Law Society of South Africa with its provincial divisions throughout the country. Some of the issues that pose challenges, include access to resources in the form of training opportunities and legal information.

5.4.3 **Entry requirements:** A four year degree (LLB) and passing the Board's examination are required. Admission as an attorney on the basis of one of the following:

- (a) Two years articles of clerkship at any legal training institution or law firm and passing of the board examination;
- (b) one year articles of clerkship plus at least four months practical training course that has been approved by the Law Society concerned and the board examination;
- (c) one year community service at any institution as approved by the Law Society plus board examination; and
- (d) One year practical legal training at any public institution, including a state department plus board examination.
- e) Two year Candidate Attorney Learnership through SASSETA

5.4.4 The implementation of these entry requirements must take into account the socio-economic challenges of previously disadvantaged individuals. Currently, this is not the case. In fact many HDIs are unable to gain entry due to inability to secure the requisite apprenticeships. The entry of HDIs is also severely hampered by the entry examinations.

5.5 Access to advocate's profession

5.5.1 The Advocates Act, 1964, requires legal qualifications (i.e. currently the 4 year LLB) for eligibility and to apply to the High Court for admission to the Roll of Advocates.

5.5.2 Once admission as an advocate has been obtained, there are options available to practise in this profession. The first option is to register with an association accredited by the Council to practise as an advocate. The second requirement is to find a master for pupillage for further legal training. A third option is to start an independent practice after admission.

5.5.3 The period for pupillage is a period not exceeding twelve months.

5.6 CHALLENGES OF ENTRY TO LEGAL PROFESSION

Specific barriers to entering the profession in this regard include the following:

- (a) Ability to find articles and pupillage particularly by black people and women;
- (b) promotion of quality of the apprenticeship which will increase the pool of black candidates especially women in relevant law firms;
- (c) competitive and market related salary schemes;
- (d) high failure rate amongst black candidates;
- (e) unaffordable fees for practical legal training; at institutions; and
- (f) lengthy pupillage period for advocates compounded by new advocates' inability to find work.

5.7 Towards a unified legal profession

5.7.1 In view of the current disparate admission requirements affecting access to the legal profession, and governance of the legal profession, steps need to be identified to address these issues with a view to creating a unified legal profession. These steps should include, *inter alia*, addressing the following:

- (a) Standards of education and training;
- (b) qualification criterion for admission to the profession;
- (c) licence to practice;
- (d) discipline in respect of improper conduct; and
- (e) public indemnity in respect of the mismanagement of funds.

5.8 A SINGLE REGULATORY BODY

5.8.1 Overview

The representative bodies are committed to reform of the regulatory regime of the profession. Legal practitioners agree on a single regulatory body for legal practitioners. The nature and structure of the regulatory body and its relationship with the sub-sectors of the profession will be informed by the Legal Practice Bill.

5.8.2 Entry requirements to legal profession

- (a) A four year LLB as minimum degree as a single qualification for admission to practice law.
- (b) All graduates who want to be admitted as legal practitioners should be required to undergo a minimum of one year practical vocational training at any recognized institution, during which time they will be known as legal interns.
- (c) At least six months of the period of internship should be devoted to performing one or more of the types of community service prescribed.
- (d) The remainder of the six months period of internship legal interns may undergo one of the types of vocational training prescribed, or attend an accredited practical training course offered by an academic institution or a professional organisation, or continue to perform community service, or practice law in an organization engaging in the provision of legal services and under the supervision of an admitted attorney with more than 5 years post admission experience.

5.8.3 Structure for regulation of legal practice

5.8.3.1A National Regulatory Body should be established by legislation. The members thereof should be appointed by the Minister for Justice, after consultation with the Chief Justice and the President of the Supreme Court of Appeal, comprising persons nominated by the professional organisations, representative of legal and paralegal practitioners and persons who represent the public interest, which will:

5.8.3.2 The Council shall, among others, have the following powers and functions:

- (a) Prescribe qualifications for admission to legal and paralegal practice, subject to national legislation.
- (b) Maintain a roll of registered legal and paralegal practitioners.
- (c) Prescribe and levy annual fees for licence to practice.
- (d) Deal with complaints of malpractice through regional complaints tribunals and the office of a national ombudsman.
- (e) Collect interest on trust accounts for transmission to the Fidelity Fund and issue Fidelity Fund certificates.

5.8.3.3 A South African Legal Practice Fidelity Fund be establish with the sole purpose to compensate members of the public in respect of monies misappropriated by legal and paralegal practitioners and to promote the achievement of high professional standards of legal and paralegal practice.

CHAPTER THREE

6. CREATING AN AFFIRMING ENVIRONMENT

Overview

Equality within the legal services sector envisages a sector which reflects the diversity of our society and in which all persons can participate fully and freely. Persons seeking legal services should not be prevented from doing so because of historical disadvantage or discriminatory treatment. This entails the removal of all barriers to access and participation, as well as the creation of conditions that enable legal practitioners to develop to their full human potential, and enable those using legal services to receive affordable and quality services.

The eradication of inequality based on race, gender and disability is a particular concern of this Charter. This chapter sets out various mechanisms for achieving this and for affirming the rich diversity of our society.

6.1 AFFIRMING DIVERSITY

- 6.1.1 All people- white, black, female, male, people with disability, gay, heterosexual- view the world through the prism of their own experience. Legal practitioners are susceptible to every prejudice imaginable: racism, sexism, homophobia, hostility based on class and age.
- 6.1.2 The legal system needs to give people a vital role as stakeholders. The ultimate objective is to maintain public trust and confidence in the profession as well as in the legal system.
- 6.1.3 Government, together with the legal services sector, should embark on a training programme and culture and diversity awareness programme for the role players in the legal services sector. Efforts should be made to ensure that every legal services provider, including the judiciary, is exposed to ongoing social context awareness education.

6.2 NON-DISCRIMINATION

6.2.1 One of the legacies of apartheid that shadows the justice system is that the judiciary and the legal profession remain essentially white and male. The legacy of disrespect for black practitioners, black accused persons and consumers of legal services continues to bedevil the courts. For black women the situation is often exacerbated by the intersection of race and gender bias.

6.2.2 Government, the legal profession as well as the public must advocate and insist upon members of the judiciary and legal practitioners to embrace the values of non-discrimination in the Constitution and treat everyone with respect, fairness, dignity, humanity and courtesy.

6.3 REASONABLE ACCOMMODATION

6.3.1 In the legal profession there are legal practitioners with disabilities. The failure to provide reasonable accommodation makes it difficult for affected persons to function to their full potential, e.g. visually impaired lawyers. The legal profession and Government need to cater for the needs of all people with disability.

6.3.2 On this score, Government should engage with the legal profession and the organisations representing people with disabilities on what measures should be put in place to facilitate the entry and effective functioning in the legal profession for those living with disabilities.

CHAPTER 4

7. EMPOWERMENT OF HISTORICALLY DISADVANTAGED INDIVIDUALS

ECONOMIC EMPOWERMENT

Indicators of empowerment:

The targets specified in this section are in respect of broad-based initiatives targeting HDI's. Save in respect of contributions specifically listed hereinafter in respect of each element, compliance is to be measured using the methodology and element of scorecards for each of the elements as specified in the Codes of Good Practice issued under section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003.

Legal practitioners will ensure that in seeking to comply with HDI's targets set out herein, they will seek to comply with specific targets stated in the Codes for BEE initiatives targeting black people. This implies that there are two targets:

- (a) A lower target as per the Codes specifically targeting black people; and
- (b) A higher target as per the Charter which is inclusive of both black people and other HDI's.

Overview

The ownership (public or private), enterprise development and preferential procurement are the main competitive fields which will be altered by the empowerment of HDI's in the legal service sector. The legal services is but one of the major components of the South African society fabric that has lagged behind in terms of transformation and embracing the values underlying the Constitution in as far as the legal profession and access to justice is concerned. The successful implementation of the empowerment of HDI's in this area depends on a government driven empowerment process and a coherent regulatory environment, strategic intent of the profession and that of the broader community as well as the competitive dynamics of the industry and an enabling business culture.

Indicators of empowerment:

7.1 Ownership and Control

Guiding principle:

We commit ourselves to the increase in the number of black people, women and people with disability that manage, own and control productive assets, across the entire spectrum of legal services. We also commit to the design of appropriate funding mechanisms to facilitate the process. This principle is linked to the long-term strategy of developing a body of highly developed, experienced and competent black legal practitioners in all areas of legal practice to ensure compliance with the principles and spirit of the Constitution and Equality Act. With appropriate adjustments, legal academia and other sites of legal expertise that lie outside the organised legal profession also commit to speedier increase of black people, women and people with disability to strategic leadership roles.

Legal Profession's undertaking:

The Organised Legal Profession undertakes to broaden beneficial participation and the ownership base of their companies/partnerships/associations to ensure that at least 35% of their services and ownership/partnership/association is black, of which at least 50% must be women, and at least 4% of people living with disability, within the next five years.

7.2. Management**Guiding principle:**

The guiding principle is to redress inequalities with regard to race, gender, disability and culture in the legal service sector and to ensure that the people who manage and lead in this field, broadly reflect the diverse profile of the South African population and that they are appropriately empowered and skilled to manage. The objective of this element is to increase the participation of black people and black women at board and senior management levels in the legal service industry that encompasses both government and private sector institutions and similar governing structures. Government and the private sector will need to commit to meet stringent targets and time lines in order to achieve this mandate. The legal services will be transparent, eliminate unscrupulous business practices including fronting and fraud, and adopt best-practice corporate governance policies.

Government's undertaking:

The Government undertakes to accelerate the appointment of—

- to accelerate the appointment of black people in boards of government institutions; and
- to accelerate the appointment of black women in boards and executive management positions.
- to accelerate the appointment of people with disabilities in boards and executive management positions

Legal Profession's undertaking:

The legal profession undertakes to—

- promote the participation by black people in board positions of organisations providing legal services;
- promote the participation by black people, in particular black women, at all levels of management;
- promote the participation of black women in board and executive management positions;
- Promote the participation of black people and women, especially black women, in management and leadership structures in Faculties and Schools of Law; and
- promote black ownership accompanied by an equal level of management control. However, the legal profession will recruit onto their executive boards and similar governing structures black directors (who do not necessarily own equity) to reach a target of at least 40% within 5 years. Fifty percent (50%) of this target for black representation on executive boards and similar governing

structures should be earmarked for women and 4% for all people living with disability.

7.3 Employment Equity

Guiding principle:

Employment equity and skills development targets should be achieved within the ambit of the Equality Act, Employment Equity and Skills Development Acts.

The principle is to increase the participation of black people in top management, senior management and professional positions to create a workforce that truly represents the racial, ethnic and gender diversity of our country. This will require that all stakeholders create a supportive culture within their organisations to be an 'Employer of Choice', attract new talent, facilitate the development of existing employees, and accelerate their progress into key positions within the industry.

Government's commitment:

Government undertakes to abide by the targets set by Cabinet and as encapsulated in the Employment Equity Plans.

Legal Profession's commitment:

The legal profession commits to abide by the targets as encapsulated in the Employment Equity Plans where such plans are required in terms of the Employment Equity Act.

Legal academia's commitment:

The legal academia commits to abide by the targets as encapsulated in the Employment Equity Plans where such plans are required in terms of the Employment Equity Act.

7.4 Skills development

Guiding principle:

The vision is to substantially increase the economic value adding (or productivity) of every employee in the legal services through best practice human resource and skills development policies and to increase the scale of initiatives aimed at developing black professionals and experts. In particular, the development of expertise in the areas of corporate and commercial law and transactions; legal drafting; legal research and teaching; and trial advocacy will receive prominence in the development of skills. The transformation demands of the legal services and rapid changes in the global environment require that more resources should be mobilised for expanding the existing human capital pool through investing in people, employment equity, skills development and institutional transformation.

Government's undertaking

The Government undertakes to—

- invest at least **5%** of payroll on skills development initiatives;
- design and fund a coordinated framework and programme for career awareness and training that leverages off and adds value to existing initiatives;
- publicise and coordinate information regarding scholarships, training resources and careers in the public services (other stakeholders will be encouraged to contribute towards the cost and design of this initiative);
- to develop existing structures such as the State Attorney's Offices, in conjunction with the Justice College under the DOJ&CD and further to develop intra-industry exchange and internship programmes;

- to utilise all legislative and other measures available to it to influence the attainment of constitutional objectives.

Legal Profession’s undertaking:

The legal profession undertakes to—

- invest at least **5%** of payroll on skills development initiatives which target is inclusive of all associated costs and the current 1% skills development levy;
- identify within and outside their companies a talent pool of black professional assistants and candidate attorneys for accelerated development through--
 - (i) international assignments that provide high-quality legal and managerial exposure, where appropriate;
 - (ii) mentorship programmes;
 - (iii) learnerships;
 - (iv) intra-industry exchange and internship programmes; and
 - (v) higher education and training.

The Legal Academia undertakes to -

To promote the development of skills of black people and women, especially black women through –

- (i) enhancement of research, teaching and writing skills;
- (ii) mentorship programmes;
- (iii) academic leadership and management skills

7.5. Preferential procurement

Guiding principle:

The guiding principle is to accelerate procurement from black practitioners and black-owned and empowered enterprises operating within the legal services sector. Public and private institutions will implement a targeted

procurement strategy to enhance equality. This will create opportunities for the establishment of new enterprises and the development of existing ones that will grow the industry, create jobs and sustain the growing body of highly experienced and developed black practitioners. The State has a great deal of leverage in its farming of contracts and the licence to operate, especially in PPP's. Public Enterprise Minister boasted to Parliament in 2003 that almost a quarter of the discretionary spending of Denel, Transnet and Eskom went to broad-based black economic empowerment.

Government's undertaking:

- Identify, prioritise and target black lawyers, legal practitioners and companies in awarding tenders, briefs and contracts within the public sector;
- Procure the services of black lawyers and legal practitioners in the process of briefing advocates, and procuring the services of attorneys;
- Undertakes to allocate 50% of its briefs and other legal work requiring private practitioners to black lawyers and legal practitioners by 2007; and
- This target shall apply to all organs of State including State owned enterprises, and relevant provincial and local government structures.

Legal Profession's undertaking:

- To proactively identify and implement targeted procurement strategies and policies to realise the objectives of the Legal Services Charter;
- Report periodically on all procurement spent; and
- Undertakes to brief at least 40% black practitioners by 2007 and 60% by 2008.

7.6 Enterprise Development

Guiding principle:

Enterprise development refers to the establishment, support and integration of black empowered and women empowered firms in mainstream business processes. The principal objective is to help set up, nurture and grow viable practices, partnerships, associations and businesses that are majority-owned by black persons while developing existing companies. All stakeholders undertake to seek viable opportunities to partner with firms in rural areas.

Government's undertaking:

The Government undertakes to—

- utilise resources generated by State Owned Enterprises(SOEs) to create a fund to finance the legal services infrastructure and services in rural and township communities; and
- explore the options for the setting up of such fund, and to place the matter for discussion at the first meeting of the Council.

Legal services sector's commitment:

- Commits to partner with or promote collaborative relationships with rural and township practices, including paralegals, to develop the capacity of rural and township practices thereby prioritising black and women owned practices; and
- Strengthen and accelerate the development of operational and financial capacity of black entrepreneurs.

7.7. Services Specific Targets**Guiding principle:**

In view of the inaccessibility to legal services experienced by township and rural communities, our principal objective is to bridge the gap to access to

legal services by giving of our time freely, and without reward in the pursuit of community service. The form of community service will not be limited to legal advice or representation, but may take any form where legal skills are required.

Government's undertaking:

Government undertakes to make available its legal aid services to areas where there is a need for delivery of legal services. Government also undertakes to conduct regular campaigns for the popularisation of the Constitution and promote legal literacy amongst the rural and township population.

Legal Profession's undertaking:

The legal profession undertakes to make available its human resources to townships and rural areas to, among others, conduct legal education programs, conduct programs to popularise the Constitution; and lend its management expertise to develop township and rural practices. This will enhance the image of the legal profession as being accessible to all people. The legal profession undertakes to devote in at least 5% of its total billing hours per month on *pro bono* work.

The Legal Academia undertakes to -

The Faculties and Schools of Law undertake to –

- (i) Provide legal education in communities through Street Law and other outreach programmes;
- (ii) Provide paralegal training, where appropriate;
- (iii) Provide legal advice through law clinics; and
- (iv) Work with government in realising community legal services that also provide context-learning as was decided at the all-inclusive National Forum in 1998.

8. ACCESS TO LEGAL WORK INCLUDING STATE CONTRACTS

The Role of State Attorney's Office

8.1 CHALLENGES

- 8.1.1 Access to legal work is a problem throughout the legal services. Black practitioners are forced to close down their firms because they are unable to get access to legal work. The Office of the State Attorney, government departments, SOEs and other big corporations are partly to blame by not providing adequate support consistently to black practitioners.
- 8.1.2 Black firms are crying foul in that the State distributes the bulk of its work to the traditional white firms. This contributes to their demise. The Office of the State Attorney is also seen as a contributor in this regard. Its briefing patterns must be seriously reviewed and strong interventions made. Cabinet has made a policy decision to address disparities in legal briefings
- 8.1.3. Government is one of the biggest consumers of legal services. A high volume of work is outsourced to private practitioners rather than the State Attorney conducting the work themselves. The Office of the State Attorney and all levels of government, including municipalities, have been accused of outsourcing work to mostly white legal practitioners. Further, there is a perception that black practitioners are unable to perform specialised legal work, which is also outsourced to white legal practitioners. Black legal practitioners are seriously disadvantaged.
- 8.1.4 In some instances, this creates unnecessary tensions amongst practitioners. Although it is argued that the Office of the State Attorney does not have the necessary capacity and competence to deal with highly specialised work, it bolsters the perceptions that black legal practitioners lack skills and experience and that only white firms have the competencies to deal with specialised work.

CHAPTER FIVE

9. THE ROLE OF LEGAL SERVICES SECTOR IN PROMOTION OF EQUALITY IN JUDICIARY

9.1 Overview

9.1.1 Recognising the pivotal role that the legal services sector plays in judicial appointments, its influence on the culture and values of the judiciary, and in the development of the skills pool from which the judiciary is drawn, the legal services sector is well-placed to contribute meaningfully and ensuring the promotion and achievement of equality in the judiciary. The legal services sector also plays a central role in ensuring the independence of the judiciary.

9.1.2 In order to discharge the above responsibility, the legal services sector needs to be strong, independent and representative.

9.2 UNDERTAKINGS BY LEGAL SERVICES SECTOR

9.2.1 Judicial appointments and broadening the pool

9.2.1.1 The legal services sector commits itself to engage in dialogue relating to the criteria and processes for appointing judges, acting judges and lower court judicial officers, with the view to reviewing and eliminating any barriers which undermine the attainment of equality particularly on the grounds of race and gender.

9.2.1.2 The legal services sector commits itself to the development of innovative measures to broaden the pool of candidates who are eligible for judicial appointments, particularly with a view to addressing race and gender imbalances. Internal processes that promote exposure to the global environment in terms of exchange programmes to draw on international experiences will be pursued vigorously.

9.2.1.3 The legal services sector commits itself to engaging with the Government and other stakeholders to consolidate the unification of the judiciary. The legal services sector supports the standardisation of skills at all levels of the judiciary and the acceleration of the appointment of members of the lower judiciary to the higher courts.

9.2.2. Judicial Education

9.2.2.1 The legal services sector commits itself to strengthen its involvement in judicial education and efforts aimed at enhancing the effectiveness of programmes for prospective judicial officers and continuing professional development for members of the judiciary and other legal services sectorals in the judicial system.

9.2.3 Culture and Values

9.2.3.1 The legal services sector commits itself to the process of continuous evaluation of the alignment between the values enshrined in the Constitution and those that prevail in the judicial system and to implement ongoing measures such as education, and to promote and maintain value alignment particularly focusing on matters of non-discrimination.

9.2.3.2 The legal services sector, in recognition of the current patriarchal and Eurocentric values that prevail in the legal system, commits itself to the process of dialogue on African perspectives on justice with a view to ensuring a better alignment between the experiences of ordinary South Africans and the judicial system.

9.2.3.3 The legal services sector commits itself to efforts aimed at mainstreaming gender in all policy processes and educational measures relating to the transformation of the transformation of the judicial system.

9.2.4. Alternative Dispute Resolutions (ADR)

9.2.4.1 The legal services sector commits itself to engage with Government and other relevant stakeholders in a policy process that seeks to establish a uniform framework for regulating ADR processes and integrating appropriate aspects in the judicial system. Such processes should ensure that ADR is guided by the principles, and operates on the basis of equality, which includes non-sexism and non-racism.

9.2.5 Complaints Mechanism

9.2.5.1 The legal services sector commits itself to engage with Government and other relevant stakeholders in a policy process that aims to establish a framework for a complaints mechanism for the judiciary.

9.2.5.2 The legal services sector commits itself to support the implementation of the recommendations arising out of the policy process and will devise an integrated system for monitoring and evaluation to promote effectiveness of the complaints mechanism and to ensure that judicial independence is maintained.

CHAPTER SIX

10. ACCESS TO JUSTICE

- 10.1 Affordable and equitable access to justice is an essential aspect of the rule of law and the enjoyment of human rights. Section 34 of the Constitution guarantees everyone 'the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or ... tribunal'. Section 9 provides that everyone has the right to 'equal protection and benefit of the law' and may not be subject to unfair discrimination. Access to justice is a cornerstone of this Charter both in terms of the equal ability of persons to access and use legal services, including courts, and in terms of their equal treatment within these services and institutions.
- 10.2 The systemic, social and economic inequality that characterises South African society has meant that access to justice is skewed, particularly on the basis of race, gender and disability. Socio-economic status is also a major obstacle to access to justice for the poor. In so far as the poor constitute the majority of people in South Africa their ability to access legal services is critical to meeting the constitutional standards of equality and access to justice.
- 10.3 The State has a constitutional, moral and social responsibility for ensuring the realisation of the right of access to justice and the right of every citizen to be treated equally before the law. The DOJ&CD, in particular, has a constitutional responsibility to ensure that the regulation and delivery of legal services enhances access to justice for all.
- 10.4 The constitutional and other State institutions have a responsibility of ensuring that the delivery of legal services is in the interest of the public, advances human rights and contributes towards social upliftment of indigent communities.
- 10.5 The legal profession and other providers of legal services have a constitutional obligation to provide legal services in a non-discriminatory manner that respects the rights of clients and users. In addition, the legal profession has a moral and ethical duty to assist in providing legal services to the poor and marginalised.
- 10.6 The ability to access legal services and courts is dependent upon affordability, knowledge of the different services and information about them, physical access and location, as well as the nature of the issue (e.g. civil or criminal), the range of

services that are available, the number and distribution of legal practitioners and the responses of the providers of the services to those seeking access.

- 10.7 Persons who access legal services are not always provided a quality service and may be subject to discriminatory treatment by legal practitioners and other service providers. Disabled persons experience particular problems within the legal system. When discriminatory treatment is experienced, there are insufficient avenues for redress.
- 10.8 The Legal Aid Board plays a critical role in ensuring access to justice by providing legal services to those who cannot afford legal services. However, the services are not yet available to everyone who requires such services and the responsiveness of the services needs continuous improvement.
- 10.9 The Charter seeks to address the following factors that undermine and prevent access to legal services, in particular for historically disadvantaged communities.
- (a) The high cost of legal services;
 - (b) the legal profession's lack of representivity;
 - (c) the uneven geographical distribution of lawyers (they are almost non-existent in poor, rural and township communities);
 - (d) the lack of recognition of the role played by paralegal practitioners;
 - (e) lack of information about the availability of legal services;
 - (f) the intimidating image lawyers have;
 - (g) limited small claims court services;
 - (h) the inadequacy of legal insurance schemes;
 - (i) the limited effectiveness of the state legal aid scheme;
 - (j) the failure on the part of many lawyers to provide any community services;
and
 - (k) the availability and responsiveness of services by the Legal Aid Board.
- 10.9 This Charter also addresses the following factors to enhance the quality of legal services and improve the protection of the public from inferior services and unethical conduct
- (a) the provision of professional development for legal service providers to ensure that they deliver quality services to all;

- (b) the eradication of discriminatory treatment; and
- (c) the effective regulation of legal services to ensure, in particular, that public complaints about services of legal practitioners are dealt with effectively.

11. **Now therefore**, in recognition of the above, the legal profession, government and the legal services sector, agrees that access to legal services by the public should be based on the norms and standards that underpin our constitutional democracy and pledges to respect and promote the following rights of persons seeking access to legal services:

- (a) the right to be treated with dignity and respect;
- (b) the right to competent and affordable legal representation;
- (c) the right to non-discriminatory treatment by providers of legal services;
- (d) the right to be informed of all matters related to the adjudication of their legal disputes;
- (e) the right of access to a legal practitioner of their choice;
- (f) the right to confidence and faith in the legal profession, including that legal matters are dealt with in utmost good faith by legal practitioners;
- (h) the right to have any dispute with a legal practitioner dealt with absolute impartiality by appropriate regulatory bodies;
- (i) the right of access to an adequate system of State funded legal services; and
- (j) the right of access to information on the availability of legal services.

12 ACCESS TO UNIVERSAL AND AFFORDABLE LEGAL SERVICES

12.1 CHALLENGES

12.1.1 There is generally a shortage in numbers and distribution of legal practitioners in the country. This particularly affects the provision of legal services in rural and historically black communities. Where these communities are served by small practices, the communities benefit from the reasonable fees that are charged. However this positive aspect is affected when smaller practices close down or are subsumed by bigger firms. This is primarily as a result of small practices not being able to access legal work.

12.1.2 Legal services provided by the state, including state justice centres, remain unevenly spread across the country. The *in forma pauperis* system, envisaged in Rule 40 of

the Uniform Rules of Court to provide legal representation for the indigent, does not appear to be used.

12.1.3 The *pro bono* system enables the legal profession to provide legal services to the poor. There are associations that are in the process of developing such initiatives. However, this is in its infancy in many instances and is often voluntary meaning that the full reach of *pro bono* work has not been achieved.

12.1.4 The provision of legal services to the public by financial institutions or insurance companies is not regulated, and there are no mechanisms in place to address the nature and extent of the legal services offered to the public.

12.1.5 The majority of South Africans cannot afford to pay for legal services, and many cannot afford to pay the level of fees charged.

12.1.6 Legal Services providers tend to prioritise certain kinds of cases, and legal aid services prioritise criminal over civil cases, meaning that it is more difficult to access services in civil cases.

12.1.7 Paralegal practitioners, who play a significant role in expanding access to justice, are insufficiently recognised and regulated. They are also concentrated in metropolitan centres.

12.1.8 Disabled persons experience particular problems of access.

12.2 UNDERTAKINGS BY STAKEHOLDERS

The Government, legal profession and other stakeholders, undertake to

12.2.1 Consider the development of a programme of community service, in-service training or internship before admissions to the legal profession. This will assist in effecting access to legal services for the rural and other marginalised communities while promoting equal access to the profession.

12.2.2 Create legal services centres in rural areas and for the majority of people in South Africa who are poor.

- 12.2.2.1 Expand the reach paralegal services to rural, peri-urban and township areas to provide primary care legal services.
- 12.2.3 Develop and enhance the *pro bono* work system. A further system of incentives for legal practitioners who offer legal services to the rural and township communities will be developed so that legal practitioners are encouraged to do so frequently. This may be capped at certain hours of work per month or year for all legal practitioners.
- 12.2.4 Investigate the *in forma pauperis* system to develop a workable implementation plan, or a workable alternative.
- 12.2.6 Investigate the adequacy of legal insurance, as well as regulate and expand legal insurance in a manner that promotes equality of access to legal services and in particular addresses the need for effective distribution of services to rural areas, townships and other disadvantaged communities.
- 12.2.7 Develop and implement a mechanism similar to the *mzanzi* initiative to ensure comprehensive access to legal services across the country and for all economic classes.
- 12.2.8 Investigate the possibility of a comprehensive referral system for persons seeking legal services.
- 12.2.9 Investigate the affordability of services, including a review of the disparities and affordability of legal fees and implement measures aimed at regulating the fee structure to enhance affordability of legal services.
- 12.2.10 Consider ways on ensuring universal access to services, including civil cases.
- 12.2.11 Recognise paralegal practitioners and regulate their role, qualifications and services in legislation.
- 12.2.12 Address the needs of disabled people in accessing legal services.

12.3 UNDERTAKINGS BY THE LEGAL AID BOARD

The Legal Aid Board and relevant stakeholders undertake to:

- 12.3.1 Review the judicare system as a primary method of delivery of legal aid services;
- 12.3.2 Consolidate the delivery of legal services by salaried employees in legal aid clinics, advice offices and defender offices and strengthen the quality of services;
- 12.3.3 Enhance the capacity of Justice Centres to enable them to deliver quality legal services particularly to the poor, rural and township communities.
- 12.3.4 Develop policies to bolster co-operative agreements with non-governmental organisations capable of delivering legal services.
- 12.3.5 Assist legal aid centres in promoting access to the profession, including specialized work for historically disadvantaged persons.

13. ACCESS TO QUALITY LEGAL SERVICES

13.1 CHALLENGES

- 13.1.1 A critical component of access to justice is ensuring that every person or community has access to quality and non discriminatory legal services. Most poor people only have access to paralegals or poorly resourced small legal firms. This compromises the quality of legal services for these groups.
- 13.1.2 Persons accessing legal services may experience discriminatory treatment within those services. This is a particular problem for disabled people.
- 13.1.3 Existing avenues for redress are limited, difficult to access and lengthy. As a result, the public finds it difficult to achieve resolution for complaints of inferior services, or of discriminatory or unethical conduct.

13.2 UNDERTAKINGS BY LEGAL PROFESSION

The legal profession and other providers of legal services hereby undertake to improve the quality of legal services by:

- 13.2.1 Conducting continuous and sustained training programmes on current legal matters on behalf of legal practitioners including paralegals.
- 13.2.2 Encouraging legal academics and experienced practitioners to provide lessons on particular issues for skill enhancement.
- 13.2.3 The implementation of benchmarked quality assurance programmes that include a quality monitoring system and the measurement of the quality of legal services.
- 13.2.4 Encouraging joint programmes and sharing of resources by well-established law firms.

The legal profession and other providers of legal services hereby undertake to address discriminatory treatment by legal providers by:

- 13.2.5 Ensuring that all levels of training of legal practitioners incorporate social context awareness, gender mainstreaming and human rights.
- 13.2.6 Paying particular attention to the different needs of disabled persons using legal services

The legal profession and other providers of legal services hereby undertake to improve the regulation of legal services by :

- 13.2.7 Developing common ethical standards for all practitioners, including paralegals;
- 13.2.8 Developing ethical standards for the provision of legal insurance services;
- 13.2.9 Developing common disciplinary mechanisms in governance structures;
- 13.2.10 Establishing an affective complaints management system to handle complaints by users of legal services;
- 13.2.11 Use such information to continually improve on the delivery of quality legal services.

CHAPTER SEVEN

15 GOVERNANCE AND IMPLEMENTATION OF CHARTER

15.1 Overview

The governance mechanisms of the legal profession can play an important role in the promotion of equality and improving access to quality legal services. A strong independent and unified legal profession is strategically positioned to lead the legal services sector in overcoming its challenges and further protect the interest of the public in pursuit of the objectives of the Charter.

15.2. Establishment and Composition of Council

15.2.1 A Legal Services Charter Council should be established as a body that is broadly inclusive of stakeholders in the legal services and is charged with monitoring, evaluating and enforcing the implementation of the Charter.

15.2.2 The Council shall consist, among others, of the following members appointed by the Minister in consultation with the subsections undermentioned in the sector:

- (a) One member each from the sub-sector, which include the Government, legal components of State Owned Enterprises, the Organised Legal Profession and legal practitioners practicing outside the Organised Legal Profession (Prosecutors, State Law Advisors, the Judiciary, Legal Academics, Paralegals, Arbitrators and Insolvency Practitioners).
- (b) Three (3) members, each appointed from the Departments of Finance and Trade and Industry and any other relevant Department as the Minister may deem fit.
- (c) Three (3) members representing civil society.
- (d) Other relevant interest groups participating in the Legal Services regard being had to gender, disability and rural communities as decided by the Council.
- (e) The Minister, on the advice of the Council, may appoint any such person as he or she may deem necessary, for the effective execution of its responsibilities.

15.2.3 Participants listed in paragraph 15.2.2, must be appointed to Council by their respective constituencies and must satisfy the principle of representivity and

inclusiveness. More specifically, care must be taken to ensure gender balanced representation.

15.2.4 The Council shall be supported by a secretariat appointed in terms of the Public Services Act, 1994.

15.3 GOVERNING PRINCIPLES

The Council shall be guided by the following basic principles:

- (a) Equality.
- (b) Independence.
- (c) Transparency.
- (d) Fairness.
- (e) Good Corporate Governance.
- (f) Consultation and Inclusivity.
- (g) Equitable Socio-economic Transformation.
- (h) Dignity
- (i) Non-racism
- (j) Non-sexism
- (k) Transformative and Inclusive Mindsets

15.4 POWERS AND FUNCTIONS OF COUNCIL

The powers and functions of the Council include—

- (a) provision of guidance on matters affecting broad-based black economic empowerment, equality and the constitution in the legal services;
- (b) compilation of reports on the status of broad-based black economic empowerment , equality and the constitution in the legal services;
- (c) sharing of information with approved accreditation agencies relevant to broad-based black economic empowerment , equality and the constitution in the legal services;
- (d) as and when, in its opinion, the circumstances so require, appoint a committee of experts, with a view to assisting the Council in the exercise and performance of its powers, functions and duties;
- (e) engaging and advising relevant regulatory entities in the broader legal services sector on the Charter;

- (f) developing mechanisms and strategies to monitor compliance with the Charter and related matters;
- (g) developing a strategy for consultation with provincial and local stakeholders;
- (h) developing guidelines for assisting practitioners to provide pro bono legal services in rural and other areas;
- (i) developing a practical manual, with examples, as well as implementing an interactive portal to communicate the basic methods of applying the broad-based black economic empowerment scorecard;
- (j) conducting or commissioning research for the purposes of ensuring the effective implementation of the Charter;
- (k) reporting to Government and the Broad-based Black Economic Empowerment Advisory Council on the implementation of the Charter;
- (l) receiving progress reports from relevant institutions within the sector on the implementation of the Charter; and
- (m) creating a fund financed by the profession to facilitate an affirming environment for persons with extraordinary needs.
- (n) access to all relevant and necessary information must be furnished
- (o) After consultation with subsectors as mentioned in paragraph 15.2.2, development of verification mechanisms and or tools for compliance.

16. ANNUAL REPORTS

16.1 The Council must prepare and submit annual reports to the Minister for Justice and Constitutional Development, the Department of Trade and Industry and the Broad-Based Black Economic Empowerment Advisory Council on--

- (a) baseline indicators for all the different elements of broad-based black economic empowerment;
- (b) aggregate scores of all indicators of the broad-based black economic empowerment scorecard for all enterprises under its jurisdiction;
- (c) initiatives undertaken by components within the legal services; and
- (d) other relevant information which would be useful in assessing the state of broad-based black economic empowerment and equality in the legal services.

17. PERSONS QUALIFIED TO SERVE ON COUNCIL

Any person appointed to the Council must--

- (a) in the execution of his or her responsibilities, take into account the interests of the broader stakeholders within the legal services;
- (b) be committed to transparency and fairness in the execution of their responsibilities in the Council;
- (c) act in good faith and in the best interest of the legal services as a whole;
- (d) be committed to the objectives of broad-based black economic empowerment and socio economic transformation as provided for in the Act and the Code of Good Practice; and
- (e) possess suitable qualifications, expertise and knowledge in the legal services.

18. ENFORCEMENT MECHANISM

In formulating the Legal Services Charter the parties will seek to ensure that appropriate enforcement mechanisms are implemented in respect of this charter.

19. CONFLICT OF INTERESTS

19.1 If a member of the Council has a personal or financial interest in any matter being discussed by the Council, the member must disclose that interest and withdraw from the Council when that matter is discussed.

18.2 In dealing with matters of conflict of interest, the Council must take into account the provisions of the relevant legislation.

18.3 If any member of the Council fails to declare his or her interest and is present at a venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the relevant proceedings of the Council shall be null and void.

19. DATE OF APPLICATION OF CHARTER

19.1 On the effective date of the application of the Charter, the Legal Services Charter Steering Committee must be dissolved and the implementation phase and all matters incidental thereto must be handed over to the Council.

19.2 The Councillors shall be deemed to have commenced operation on the effective date of commencement of the Charter.

20. FUNDING OF COUNCIL

- 20.1 The funding of the activities of the Council must be in accordance with the relevant provisions of the published Code of Good Practice.
- 20.2 The Council must keep proper accounting records of the monies received and the extent of their expenditure.
- 20.3 The Council must prepare and submit an annual report of its activities, including audited financial statements to Government.

21. DISPUTE RESOLUTION

- 21.1 The parties must use their best efforts to resolve matters in the furtherance of the objectives of the Charter. In the event of a dispute, the parties must resort to conciliation, mediation and arbitration;
- 21.2 Where matters remain unresolved, the parties undertake to present the dispute in writing to the Council for resolution.
- 21.3 The Council must appoint an arbitrator to adjudicate the dispute and the decision of the arbitrator shall be final and binding on the parties.