

ANNUAL REPORT 2010 | 2011

LRC

LEGAL RESOURCES CENTRE





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Our Vision and Mission

Vision

Inspired by our history, the Constitution and international human right standards, the LRC is committed to a fully democratic society based on the principle of substantive equality and to ensure that the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected and fulfilled.



Mission

To strive, both for itself and in its work, for a fully democratic society based on the principle of substantive equality and to ensure that the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected and fulfilled.

To function as an independent, client-based, non-profit public interest law clinic which uses law as an instrument of justice and provides legal services for the vulnerable and marginalised, including the poor, homeless, and landless people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic, and historical circumstances.

To work for a fully democratic society and to build respect for the rule of law and constitutional democracy; enable the vulnerable and marginalised to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; and contribute to the development of a human rights jurisprudence and to the social and economic transformation of society.

The LRC seeks creative and effective solutions by using a range of strategies, including impact litigation, law reform, participation in partnerships and development processes, education, and networking within South Africa, the African continent and at the international level.



Chairperson's Report

It is difficult to believe how much has happened in this past year. It was truly a testing time for our organisation and the fact that we have emerged strong and resolute is a tribute to all and a clear indication of how we are valued and how much more we have to contribute. We take cognisance of all the work which the LRC has undertaken as we entered our seventeenth year of South Africa's democracy. Despite the dissipation of the good-will that accompanied the World Cup 2010, and our continued fight for justice, dignity and freedom for all, there is much to celebrate.

Our organisation continues to be challenged by the global financial situation, yet our staff members remain dedicated to the principles underlying the good work which we do. We have made considerable strides in a number of focus areas; contributing in a meaningful way to law reform and litigation. On a national and international level, we add meaning to the lives of millions; not only for the citizens of our country, but also for those who seek sanctuary within our constitutionally-driven environment, where rights are upheld and services progressively realised. It makes us proud to be working within a country such as ours.

In 2010, I took over the role of Chairperson from my colleague, Jody Kollapen, and have been honoured to fill this role. Civil society holds an immensely important position in South Africa and can be a powerful catalyst for change. The LRC is

an example of an organisation which is changing the landscape of society; particularly in the areas of children's and women's rights, the rights of refugees, land reform and environment. The organisation continues to expand and improve on its reputation as being one of the foremost defenders of human rights; work which has considerable value for the people on the ground.

We continue to enjoy the loyal commitment of numerous donors and funders. Every time that we are able to bring about justice, social movement and law reform, we acknowledge that it cannot be done without their support and we thank them. Importantly, we work with a number of partner organisations such as South Africa Legal Services Foundation in the United States, and the Legal Assistance Trust in the United Kingdom, whose work we admire and respect.

Most importantly, however, the LRC is privileged to have, at its helm, the team of passionate and compassionate lawyers who continue



Thandi Orleyn, LRC Chairperson

to do excellent work defending the most vulnerable. We have been fortunate to attract such wonderful and dedicated characters, many of whom are exceptional lawyers in their own right. We welcome those who have recently joined us. The people who work with and support these lawyers must also be duly acknowledged. Thank you to the LRC Director, Janet Love, and the rest of the team for their continued commitment and professionalism.

Thandi Orleyn

Chairperson

Legal Resources Trust

Despite the dissipation of the good-will that accompanied the World Cup 2010, and our continued fight for justice, dignity and freedom for all, there is much to celebrate.



Message from the National Director

It is difficult to cover every success and every significant endeavour that we have been engaged in over the year under review. There are things that have fallen below the radar screen and we often fail to give ourselves sufficient credit. For example, without the dogged participation particularly of one of our lawyers, we would not have been able to ensure that the unmanaged dangers of the PMBR nuclear reactors would no longer overshadow us.

Our mud schools case pursued by our Grahamstown office, and which is dealt with in this report, brought about positive results for thousands of children. Similarly the *Gundwana* judgment affords protection to hundreds of people from unprocedural action which had caused people to have their homes literally stolen from under them. There has also been work done to preserve Durban's early morning market as an institution that enables entrepreneurship, promotes the dignity of work and ensures financial resources for thousands of stall owners and their dependents.

In May 2011, the LRC hosted the INCLO meeting. INCLO involves human rights organisations from nine other countries. Our experience in making socio-economic rights able to be adjudicated in courts of law was held by all to be important to share with colleagues in different parts of the world.

Accolades come in many shapes and forms. Although our lawyers do not very easily put themselves forward, they can take some credit for the successful nurturing of non-profit organisations in their formative phase that then go on to make a

lasting impact. An example is Infinite Family which was given the CNN international hero award.

In the case of Juma Masjid School, so much was done by the Durban office, so much dedication, so much effort and yet, at the end of the day, although all the pupils have been accommodated in alternative places of education, the school did have to close. But that wasn't the end of the story. I don't know if this story does have an end. The appreciation of the Juma Masjid School after the court provided its ruling was expressed to our Durban office and to the LRC as a whole, for the commitment, concern and respect shown to our clients in a letter that was written by the school governing body.

Yet recognising the limits of what we do is also necessary. This sometimes occurs from the impasses that stem from non-delivery of the state even when court decisions should prevail and should make that delivery occur. In response to such impasses we have also engaged in policy and law reform processes as we recognise in practise that litigation is not all.

Janet Love, National Director of the LRC



When we look at the way in which we have been able to pursue the strategic direction that we outlined four years ago in the document *Advancing Human Rights in South Africa and Africa; LRC's Strategic Direction for 2008-2012*, we laid out key components for the implementation of our work. We endorsed the importance and priority of litigation but equally placed emphasis on non-litigious advice and support and on law reform and policy development. We sought to extend our networking, collaboration and continental outreach and recognised the importance of on-going training and learning. We continue to ensure that we foster and reinforce the engine for our work, which includes all elements of civil society: community organisations, NGO alliances and social movements.

As we look back on how far we've come along this road, it will be important for us to create the space during the course of the coming year to look forward. We need to build clearer messages around the work that we are doing for the purposes of our broader advocacy.

We see the need to promote and protect and build civil society, because we believe that this is critical to safeguarding our democracy. A fundamental threat, if not the greatest threat, to our democracy stems from the prospect of corruption taking root. With corruption goes a lack of accountability and an acting of various officials with a sense of impunity.

So we will need to look at the extent to which our focus on socio-economic rights does not overshadow our capacity to fully engage in these fundamental issues. We have our work cut out for us!

Janet Love
National Director

Judge Lee Bozalek reminisces about the early days of the LRC and its role in the modern day South Africa

LRC after 31 years

As most of you will know, the LRC is a non-profit public interest law firm. It presently employs some 75 staff and has offices in Johannesburg, Durban, Grahamstown and Cape Town as well as a Constitutional Litigation Unit based in Johannesburg. Through these offices, lawyers, paralegals, candidate attorneys and fellows see thousands of people annually who cannot afford legal services and who have some legal problem. Not all can be helped, but a significant number of them become clients and virtually all who seek its help are assisted, even if it is only by referring them on to a more appropriate agency or simply by furnishing advice.

Over its nearly 33 years of existence the LRC has touched the lives of hundreds of thousands, if not millions, of South Africans through cases and interventions. I very much doubt this could ever have been anticipated by Sidney and Felicia Kentridge, Arthur Chaskalson and Geoff Budlender when they formed the LRC in Johannesburg in 1979. The office in Johannesburg was soon followed by one in Durban headed up by Chris Nicholson, the Cape Town office which opened in late 1983, then Port Elizabeth and Pretoria. These last two have since closed, the former being replaced by the Grahamstown office.

The LRC has made its mark in numerous cases, both large and small. On the larger scale one thinks of:

- The trilogy of pass law cases of late 70's and early 80's, *Khomani*, *Rikhoto* and *Mthiya*

which helped to rid our society of the hated pass-law system;

- A myriad of cases which helped to set the standards for a new labour dispensation in the old Industrial Court, in particular the right not to be unfairly dismissed and to strike;
- The defence of communities (to mention but two, *KTC* here in Cape Town, and *Driefontein* in the Transvaal) against the onslaught of the security forces which began in the 1980's and continued through the successive states

Judge Lee Bozalek



of emergency; as well as the representation and defence of rural communities fighting against dispossession; and urban communities struggling to obtain security of tenure and the most basic services.

As the democratic era dawned, the LRC found itself involved in key constitutional issues either directly or as *amicus curiae*. These issues included: the right of prisoners to vote, the outlawing of corporal punishment (*S v Williams*), and on socio-economic rights (*Grootboom*). I pause here to observe that having a much-admired Constitution is of little worth if its values and rights cannot be asserted and vindicated by a country's citizens. And this process requires good lawyering for those who generally cannot afford such services in the marketplace. That is where the LRC has played a vital role.

The LRC was centrally involved on behalf of Treatment Action Campaign in the critical litigation which culminated in the Constitutional Court decision of 2002 and which, after a long and bitterly fought grass roots campaign, initiated fundamental change in this country's hitherto disastrous HIV and AIDS policy. The LRC's role in this area continued with obtaining an interdict against quacks and charlatans who, apparently unhindered by the State, peddled disinformation about, and dubious cures for HIV and AIDS, for example in the *Matthias Rath* case.

The earlier HIV/AIDS litigation was conducted in a climate of great hostility at a time when the State was heavily invested in its tragic and short-sighted policies. It also came at a cost to many of those involved, not least Geoff Budlender who was the instructing attorney. To my mind the experience powerfully demonstrated the value of an independent public interest law firm. The LRC was able

to represent clients' causes both against a minority, racially-based government and then a few years later against a democratic State when its health policies were found to be in fundamental breach of the Constitution and the health care rights of its citizens.

The work of the LRC has continued apace and it now directs its efforts in the following primary fields: land and rural development, social security, housing and planning, environmental issues, children's rights, women's rights, refugees, strengthening civil society, the constitution and the rule of law, access to justice and continental outreach.

In all this time the Cape Town office has played its full part. Opened in late 1983 early stalwarts were Richard Rosenthal as its part-time director and Geoff Budlender in a migrant-worker capacity - commuting for the first three months of its existence to and from Johannesburg - and Shehnaz Meer. They were soon joined by William Kerfoot, Matthew Walton, Steve Kahanovitz, Henk Smith, Wallace Mgoqi, Angela Andrews, and Kobus Pienaar who tragically passed away earlier this year. In more recent years, they were joined by Vincent Saldanha and Chantel Fortuin.

If over the passage of years I have forgotten or omitted some names, I ask forgiveness. The LRC had just heard that Kobus Pienaar has been nominated by the Cape Law Society as its Human Rights Lawyer for year 2011 which is a great tribute to him and the role he played within the LRC.

Some highlights of the work of the Cape Town office have been the defence of the KTC Community through the 80's; the land award obtained for the Richtersveld community, arguably the largest and most ground-breaking land

claim seen in South Africa; the representation of many other threatened rural communities such as the Mfengu, Leliefontein, Ebenhaeser and Riemvasmaak; invaluable work in environmental areas such as now discontinued Pebble-Bed Nuclear Reactor; representing urban communities under threat such as the Joe Slovo community all the way to the Constitutional Court; as well as countless interventions and cases on behalf of refugees. In *Watchenuka*, an order was obtained compelling Home Affairs to permit Zimbabwean asylum seekers to seek work pending the outcome of their application for asylum.

Even apparent failures often represent no more than a case or cause brought before its time. As a prime example I recall Arthur Chaskalson leading a team of LRC lawyers in the *Rudman* case before the then Appellate Division arguing in 1992 for the right to free legal representation in criminal cases where the accused cannot afford such services. The court did not then accept an unqualified right to free legal representation but later cases built on that foundation, and now it is an incontrovertible right in all criminal cases involving serious offences.

Throughout all these years there is another area in which the LRC has made an extraordinary contribution and that is in the training and development of lawyers who in turn, both through the LRC and other institutions, assist in the development and strengthening of a human rights culture in South Africa. This is done both through the contract employment of lawyers and the LRC's Candidate Attorney programme which, for several decades, has offered employment to bright and idealistic law graduates who wish to acquire and use their skills in the field of public interest law. That programme has

furthermore gone out of its way to redress the imbalance in the opportunities available to black graduates.

On the one hand it may be invidious to list names but on the other hand perhaps the LRC has hidden its light beneath a bushel for too long. What other legal organisation has yielded as *alumni* two Chief Justices: Arthur Chaskalson and Sandile Ngcobo, the current president of the Supreme Court of Appeal (SCA) Lex Mpati, Senior SCA judges such as Mohamed Navsa, the Presidents of the Labour Appeal Court, Labour Court and the Land Claims Court, Dunstan Mlambo and Fikile Bam as well as a host of persons who occupy senior positions in government, the bar, the side bar and the bench in virtually every division and every court in the country. Just to make the point, here in Cape Town alone, apart from Shehnaz Meer there are two former Regional Directors of the LRC on the bench (Vincent Saldanha and Chantel Fortuin).

But all this has not been, and cannot be, accomplished without significant financial resources and without support from fellow South Africans. A public interest law firm such as the LRC, by definition, does not charge its clients fees and thus earns little income beyond the occasional costs order. Shouldn't our own countrymen and women who can afford to do so support the LRC's work? If the work of the LRC is to continue then we as privileged citizens of the country and firm believers in our legal system and our Constitution must put our money where our mouths are.

Lee Bozalek is an LRC Trustee and a Judge in the Western Cape High Court in Cape Town. This is an edited version of a speech made at the Cape Town launch of the 'Lefa la LRC' Campaign.

Overview: Land and Rural Development

Land reform and resettlement still a challenge

The state of land reform and resettlement remains one of South Africa's biggest challenges and is a huge concern. During 2010-2011, the LRC was very active in assisting communities address some of these challenges.

One such community is the village of Algeria, situated about 250 kilometres north of Cape Town comprising of forest labourer households living in 443 ha of mountainous land with limited eco-tourism potential. The community established a Community Property Association (CPA) in 2004 and finally took transfer of their land in 2006. A formal town was established. While the surrounding land is owned and managed by the CPA, the residential sites were transferred in ownership to the CPA members subject to restrictive title deed conditions.

During the period under review, the LRC assisted the community to settle a process and criteria for the allocation of an additional twelve serviced residential sites. The LRC also assisted with drafting of resolutions for the community meeting which would authorise the transaction.

The LRC believes that the manner in which the community of Algeria keeps control over land and administers the allocation of new residential sites is critical to maintaining the historical character and traditions of this small group. This ability is one of the key issues ensuring that this group does not become a victim of land reform.

Also in the Western Cape, the LRC is involved in the Stellenbosch Municipal Commonage. Significant time was dedicated to the drafting of the Commonage Infrastructure Grant application on behalf of the municipality to the Department of Rural Development and Land Reform (DRDLR).

Our work on land and rural development also involves making the government and mining companies understand the right of communities and all the relevant stakeholders to be consulted

before any mining licences can be issued. In the case of Sekuruwe, which is covered in more detail in this publication, the community received a settlement offer from Potgietersrust Platinums Limited (PPL), which it is considering.

During September 2010, the LRC was able to access a new but flawed Draft Green Paper on Rural Development and Land Reform. One of its notable shortcomings is that it does not deal with communal tenure; or with the apartheid legacy laws with regard to traditional authority and customary law. Consequently, in October 2010, we convened a seminar with members of the parliamentary legislature as we sought to address the issues discussed in the document.

We will also continue to work with the DRDLR to develop regulations in terms of the Interim Protection of Informal Land Rights Act 31 of 1996 (IPIIRA) and the Communal Property Associations Act. We believe that the continuing void and the lack of protection of the communal land rights of communities and individuals in the trust land areas as a result of the flawed Communal Land Rights Act 11 of 2004 may in part be addressed by the formulation of regulations in terms of the IPIIRA.

Algeria registered a CPA in 2004 and took ownership of the land in 2006.



The state of land reform and resettlement remains one of South Africa's biggest challenges.

Highlight

Sekuruwe community mulls settlement offer

In late December 2009, the Sekuruwe community launched a review application in the North Gauteng High Court to set aside a lease granted by the Minister of Rural Development and Land Reform to Potgietersrust Platinums Limited (PPL), an Anglo Platinum subsidiary, to locate a new tailings dam on a portion of the Blinkwater farm in Limpopo. Blinkwater is home to the Sekuruwe community, a rural village in which a great many residents derive their livelihood at least partially and often entirely through agricultural activities. It is a village where many of their forebears are buried.

Despite the farm's importance to the community, the decision to grant the lease was made by the Minister in her capacity as trustee of the Blinkwater farm, which she held in trust for the Langa Tribe in an extension of the discriminatory apartheid regime under which communal land was held in trust on behalf of blacks. The lease was granted after a December 2009 "community" land rights resolution meeting at which some members

of the community allegedly agreed to relinquish the land to PPL. The meeting was, however, only attended by a fraction of the approximately 1500 adult residents of Sekuruwe, and the terms of the proposed lease were not made available to the community as a whole prior to the meeting. The lease stipulated that PPL be allowed to lease the relevant portion of the farm, and stated the price of the lease, that the community was willing to accept financial compensation instead of land for agricultural purposes, and that approximately 68 graves on the lease area would be exhumed and relocated.

The Interim Protection of Informal Land Rights Act 31 of 1996 requires that new development on communal land must be sanctioned by the community and relevant rights-holders in terms of their customary law as well as a majority decision at a community meeting. Ordinarily new mining on communal land does not require community consent under mining law, but the Blinkwater tailings dam is situated outside

the authorised mining area. The case, if successful, would therefore set new standards for community participation and negotiation in mining-related development.

Over the years the Langa Tribe, of which the Sekuruwe community is a part, had lost significant grazing and arable land to PPL, and as a result very little grazing land remains, and many of the community's cattle have had to be sold or have perished. Apart from farming being central to their subsistence and livelihood, farming is central to the social and cultural life of the community, as there are rich traditions associated with ploughing, planting, rain-making, the first harvest, and paying tribute to traditional leaders. For the members of the Sekuruwe community, loss of their land would be tantamount to loss of their identity, culture, and unity.

As a result of the institution of proceedings by the LRC and attorney Richard Spoor, and subsequent negotiations, the mining company has made a substantial financial offer of compensation, which would allow the community to purchase alternative land, and enable development support including water reticulation in the village, agricultural extension support, and consecration of the heritage land and exhumed graves. The community is in the process of considering the offer.

Blinkwater is home to the Sekuruwe community who lost their farming land to a mine in 2009.



Over the years the Langa Tribe, of which the Sekuruwe community is a part, had lost significant grazing and arable land to PPL.



Voices of our clients

Kleinbooï Mahlangu

My name is Kleinbooï Mahlangu, and I am a representative of the Wonderfontein Community Association in Mpumalanga. The association represents the interests of about 500 residents of the Wonderfontein area. We work closely with Koos Pretorius of the Federation for Sustainable Environment and the LRC.

We are surrounded by coal mines; and are faced with many challenges here, particularly from the pollution which I believe is a direct result of the mining. The pollution from heavy salts and metals is threatening to destroy the farms in the area and this will worsen the levels of unemployment here. Many of our people work on the farms because they do not have the skills required to work on the mines. The mines bring their own people and have

never offered to train our youth.

We don't get any benefits from the mining and as a result, our community remains underdeveloped. Most of our gravel roads are in a bad shape because of the many mining trucks; this makes it difficult for our children to go to school after heavy rains. Buses get stuck too.

I can tell you our local Morileg Combined School registered some of its lowest matric results between 2007 and 2009 when Onverdacht Colliery was operating. This was because our children were not able to attend school regularly because the roads were often damaged by the mining trucks. We are now hoping for better results in the coming years.

We wrote to the President and to the Departments of Roads and Transport, Human Settlement, Rural Development and Land Reform on 16 November 2009 to highlight our challenges. The Department of Human Settlement wrote back to say that our letter had been received. Nothing has happened since.

The pollution from heavy salts and metals is threatening to destroy the farms in the area and this will worsen the levels of unemployment here.

Onverdacht Colliery stopped operating in December 2009 and this was partly due to the LRC's assistance. There is talk that they may be planning to reopen but we are very confident that with the LRC's assistance, they will not resume operations until they have the required water mining licences. However, there is another nearby mine still in operation at Klippan. It has also brought its fair set of challenges, especially water pollution.

We are not totally against mining; we just wish that mines would follow the proper channels. According to my understanding, before a mining company prospects for minerals, it should do public consultations at least three times, bring its plans and discuss with the community. The community should also be involved in the decision-making process.

My hope for my community is that the government speeds up land claims so that people can have land. That would go a long way in empowering people, especially those without jobs.

Kleinbooï Mahlangu



Highlight

Mud Schools: Settlement brings hope

In early February 2011, the LRC secured a milestone settlement for seven Eastern Cape schools taking classes in mud structures. As part of the settlement, the government committed to spending R8,2bn from 1 April 2011 to 1 March 2014 building schools and providing basic services to schools throughout South Africa.

The LRC's Regional Director in Grahamstown, Sarah Sephton, described the case as a significant victory for children's rights. "The LRC is delighted at the outcome and that the national government is stepping in to replace inadequate structures and provide basic services to seven Eastern Cape schools. We are pleased that the settlement will also benefit

more children throughout the country," she said.

The agreement by the Department of Basic Education was made in an out-of-court settlement and a memorandum was signed in the Eastern Cape High Court in Bhisho on 4 February 2011.

According to the memorandum, the department will spend R6,36bn (from the total of R8,2bn) replacing inadequate structures including mud schools throughout the Eastern Cape, and provide basic services to those schools. This amount will be allocated across the three financial years in the period 1 April 2011 to 1 March 2014.

"We would like to thank our clients, donors, advocates, as well as the students from various universities who helped us with research," Sephton added.

Construction of temporary structures at the schools is already underway and the LRC is monitoring the progress.

Cameron McConnachie, an attorney at the LRC Grahamstown office said the temporary classrooms will provide learners with acceptable structures until the permanent classrooms are in place. "It is encouraging that the department has also gone a step further by providing water tanks. We are also pleased that the furniture has been procured and is awaiting distribution once building is complete. This is critical for students and teachers to be able to teach and learn effectively," he said.

The Department of Basic Education has made a commitment to eradicate inadequate school structures by 2014.



The seven schools that will benefit from the settlement are:

- Nomandla Senior Primary School – R13m;
- Tembeni Senior Primary School – R10m;
- Madwaleni Senior Primary School – R13m;
- Sidanda Senior Primary School – R13,5m;
- Nkonkoni Senior Primary School – R11,4m;
- Maphindela Senior Primary School – R13m and;
- Sompa Senior Primary School – R10m.



Highlight

A victory for children with intellectual disabilities



According to the South African Federation for Mental Health, the prevalence of intellectual disabilities in South Africa is unusually high. It estimates that four out of every 100 South Africans are affected by some level of intellectual impairment, compared to the worldwide statistic of one in every 1000 people. Many of the children affected by intellectual disabilities also suffer from secondary disabilities, such as epilepsy, physical handicaps, visual or hearing impairments, cerebral palsy and behavioural disorders.

The South African Government provides funding for schools that work with children who have a moderate-to-mild intellectual disability, and IQ levels of between 35 and 70. Children with IQ levels less than 35 are not admitted to special schools or any other state schools. As such, non-governmental organisations currently offer the only source of education for these children, through special care centres. While government subsidises these centres, it is at significantly lower levels than those institutions that cater for children who are not disabled. This situation has led to a shortage of such centres and as a result, many disabled children go without education.

The Western Cape Forum for Intellectual Disability (WCFID) represents more than 150 such schools, centres, protective workshops, residential facilities and non-governmental organisations in that province. Collectively these bodies care for an estimated 1200 children with severe or profound intellectual disabilities, and currently receive no support or funding from the Department of Education.

The WCFID began intensive negotiations with the Department of Education in 1999 to secure sufficient

funding for these organisations, but made little progress. The forum then approached the LRC for assistance, and a structural interdict was launched on behalf of severely and profoundly intellectually disabled children to have the provincial and national governments comply with their constitutional obligations to provide education for all children.

Papers were submitted to the Western Cape High Court on 14 December 2007, with the Government of the Republic of South Africa as the first respondent, and the Government of the Province of the Western Cape as the second respondent. The first respondent was strategically chosen as the issues of the case dealt with more than one province and implicated the Department of Education, the Treasury and the Department of Public Works. On 14 June 2010, after more than 10 years since the start of the WCFID's efforts to get funding from government, the issue was argued in the high court, with Advocates Geoff Budlender SC and Elsa van Huyssteen instructed by LRC attorneys, William Kerfoot and Henk Smith, representing the applicants.

Government argued that the inequity within its school subsidy practice was as a result of various issues, including budgetary constraints and doubts surrounding the effectiveness of schooling children with severe intellectual disabilities. Cleaver J dismissed both claims, arguing that their reasoning was flawed. In the first instance he said expenditure on education was a legitimate government purpose and that the claimants were arguing for available funds to be fairly spread between all children, not for an extra provision of funds. The court rejected government's argument that these children could not be taught,

following a presentation by the applicants that demonstrated that it was internationally accepted that education and training benefited children with severe or profound intellectual disabilities.

Just five months later, on 11 November 2010, the court handed down a victory for children with severe intellectual disabilities. It upheld WCFID's and the LRC's application by declaring that the respondents had failed to take reasonable measures to provide for the educational needs of severely and profoundly disabled children. Consequently, the respondents had breached the children's rights to basic education, protection from neglect or degradation, equality and human dignity.

Government was ordered to take reasonable measures to ensure that these children's right to a basic education, as guaranteed by Section 29 (1) of the Constitution, was upheld. It was also ordered to take measures to provide sufficient funds to organisations that deliver such schooling, facilities and transport, and to ensure that staff at these centres receive proper training, accreditation and remuneration.

The court ordered that government report back in 12 months' time on the actions it has taken and plans to take in complying with this ruling. While the provincial government accepted the judgment, the national government had indicated its intent to apply for leave to appeal. However, it has abandoned this effort and the LRC has since been approached by the state attorney for information and consultation on implementation of the order.

This ruling will have a significant impact on the lives of the 1200 children with severe and profound intellectual disabilities in the Western Cape that until now have received no government support or funding. It is hoped that it will also benefit thousands of other children across the country who too have no access to special care or education.



Overview: Environmental Justice

Mining versus the right to a clean environment

Although mining is a significant driving force in South Africa's economy, it is never too far from controversy; especially where it poses a threat to environmental sustainability, and people's health and livelihoods.

In one such case, the LRC represented the Amadiba Crisis Committee against an Australian owned firm, Transworld Energy and Mineral Resources (TEM). (For more on this case, see 'Minister withdraws mining rights from Xolobeni' in this publication.) TEM had been granted a mining right in July 2008 to mine heavy minerals in the sands of the Xolobeni region on the Wild Coast in the Eastern Cape. The land in question belongs to the Amadiba community who use it for, amongst other things, farming.

In September 2009, the LRC filed an appeal with the Minister of Minerals and Energy asking for the setting aside of the mining right, citing the negative impacts on the environment, its failure to benefit the local community and the State's failure to consult with the affected community.

After a few delays in arriving at a decision the Minister of Mines and Energy, Susan Shabangu, finally announced in June 2011 that she had withdrawn TEM's mining licence.

Once again, the LRC's involvement was instrumental in this important ruling which upholds the Constitution and protects the environment and the rights of communities. Under the National Environmental Management: Protected Areas Act 57 of 2003, commercial mining cannot take place on any Marine Protected Area.

In another matter, the LRC is still assisting the Atlantis Residents Association who are opposed to the construction of a waste landfill for the City of Cape Town in the vicinity of their residence, Atlantis.

Atlantis is a disadvantaged community which was forcibly moved 50 kilometres from Cape Town during apartheid. The residents are concerned about the potential health hazards to the community as some of them live within 2 kilometres of the proposed mine dump site. The mine dump would

also impact on the development of housing in the area between Atlantis and Cape Town.

Work on this matter commenced in October 2009 and the LRC has since supported the residents through an appeal process and community mediation regarding the location of the landfill. The LRC also made legal submissions to the City of Cape Town which had invited comment from affected parties.

The LRC believes that all people have a right to live in a clean environment, despite their circumstances. Residents of Atlantis were forcibly moved there by the apartheid government and construction of a mine dump would further strip them of their human dignity.

During the period under review the LRC's efforts on behalf of Earth Life Africa also led to the successful review and setting aside of the R31bn Pebble Bed Modular Reactor plant at Koeberg. The plant was mooted as a solution to the country's growing electricity demands. The project's full details of feasibility were never made public and there were major concerns about its safety and financial risks.

In terms of submissions, the LRC assisted the Institute for Democracy in South Africa (IDASA) regarding its input to the Integrated Energy Resource Plan for South Africa (IRP2), on the basis of its objection to the procedural irregularity of this process. The IRP2 is a long-term plan for electricity generation and involves changes in South Africa's energy configuration in order to achieve lower carbon emissions.

IDASA was concerned that the IRP2 was based on inaccurate information, inflated projections of electricity demand, lack of information, and a failure to justify key assumptions and to internalise significant externalised costs, such as acid mine drainage, and the full lifestyle costs of nuclear power.

According to South African law, mining cannot take place on any marine protected area, such as Xolobeni.



Highlight

Minister withdraws mining rights from Xolobeni

In early June 2011, the Minister of Minerals and Energy, Susan Shabangu, withdrew the right to mine on the Kwanyana Block at Xolobeni, Wild Coast, Eastern Cape from two mining companies. As a result, the AmaDiba Crisis Committee (ACC) withdrew its complaint with the Public Protector against the Minister for the delay in announcing her decision.

The mining rights had been awarded in July 2008 to Australian-owned Transworld Energy and Minerals (TEM) and the Xolobeni Empowerment Company (Xolco) despite the failure to properly consult with the AmaDiba community living in the environmentally sensitive and protected area.

In a letter to Sarah Sephton of the LRC, Shabangu wrote:

"I am satisfied that Transworld Energy and Mineral Resources SA (Pty) Ltd took all reasonable steps to consult with interested and affected parties as contemplated in section 22(4) (b) of the Act. I hereby however withdraw the decision of the Director-General to grant the mining right to Transworld Energy and Mineral Resources SA (Pty) Ltd to mine heavy minerals on the Kwanyana Block of the Xolobeni Tenement area, Wild Coast, Eastern Cape."

Shabangu said the decision to grant the mining right was taken at a stage

when several environmental issues were still outstanding, as stated in the directive from the Regional Manager Eastern Cape Region to TEM, dated 4 June 2008.

On 2 September 2008, on behalf of the ACC, the LRC's Grahamstown office filed an appeal with the Minister of Minerals and Energy requesting that she suspend and then appeal the decision signed by the Regional Manager of the Eastern Cape to award a mining right to TEM.

The ACC argued that the grant of a mining right, without sufficient and reasonable notice to, consultation with or invitation for comments from the community as an interested and affected party is unlawful. A large number of community members directly affected by the mining were not properly consulted.

The ACC's appeal was also based on the grounds that the Xolobeni area is part of the Pondoland Marine Protected Area. Under the National Environmental Management: Protected Areas Act 57 of 2003, commercial mining cannot take place at any marine protected area.

The Xolobeni area is the traditional homeland of the AmaDiba people, a traditional community under the leadership of King Sigcau and Queen MaSobhuza of Pondoland. The AmaDiba people have occupied the area for centuries. The area is also part of the Pondoland region acknowledged to be one of the most important centres of plant diversity in South Africa. Since the land is registered in the name of the State, the AmaDiba community is deemed to be the co-owner of the land.

The Minister, however, left the door open to allow the TEM 90 days in which to re-apply, and the Regional Manager was directed to submit a recommendation to the Minister for final determination after re-evaluation of the information submitted by TEM.

Up in arms: Xolobeni residents show their displeasure about the proposed mining on their land.



Highlight

The Pebble Bed Modular Reactor

One of the LRC's overarching commitments is to the promotion of just administrative action, and the prevention of corruption and maladministration. This encompasses ensuring that organs of state carry out their duties under sections 195 and 217 of the Constitution to promote efficient and cost effective procurement.

One of our most celebrated cases in this regard has been the successful review and setting aside of the authorisation of the proposed R31bn Pebble Bed Modular Reactor (PBMR). The PBMR was adopted by the State in June 2004 as a presidential project. It was marketed as a small and safe nuclear reactor with the potential to make a significant contribution to local and international energy supply and, in addition, to contribute to the transformation of South Africa's current resource-based economy. In short, it was suggested that it could solve our energy challenges.

Our client, Earthlife Africa, were sceptical of these claims and sought

further information regarding its feasibility as claimed in a detailed study commissioned by Eskom. From the beginning of the project, this information was a matter shrouded in secrecy, and the full details of the feasibility were never made public.

We intervened on behalf of Earthlife Africa in the environmental authorisation process, making extensive information available to the state, warning of the safety and financial risks of the project. We also asked for further information, though it was not forthcoming. The consultant's report containing the environmental impact assessment, which is a prerequisite for authorisation under South Africa's environmental laws, was submitted to the decision-makers with information that had never been made available to the public for comment despite repeated requests.

On the basis of this failure to afford the public the right to a proper hearing, LRC successfully reviewed and set aside the authorisation and stopped the plant from

being built. Not deterred by all the concerns we raised in the litigation, Eskom continued with its application for authorisation in substantially the same form, which again failed to properly evaluate the economic and safety risks of the project. However, after ten years of design uncertainties and massive cost escalations, the project was becoming an embarrassment, and in 2010 it was finally shelved. By the time it was scrapped, the projected date for implementation was 35 years behind schedule.

The costs had escalated from an estimated R1.1bn in 1998 to R31bn. No customers were forthcoming, despite assurances that it was highly commercially viable. In the end over R7.4bn was spent by government (more than R9.2bn in total), and Eskom had nothing to show for it. The demise of the project, characterised by fruitless and wasteful expenditure on a grand scale, was accelerated by the LRC, but the public still needs to know why so much public money was wasted.

It is concerning that the absence of checks and balances resulted in the government having faith in a project which from early on should have received more careful study.

The parliamentary committees that monitor the Departments of Minerals and Energy, Public Enterprises and Finance exercised little scrutiny over the project. A Portfolio Committee for Environmental Affairs also cancelled a major summit to examine the PBMR the day before it was due to take place, and after several foreign speakers had been flown in to make presentations. Without the LRC's intervention, the scale of wasteful expenditure might have been even greater.

Secrecy, wasteful and fruitless expenditure on a grand scale - the Pebble Bed Modular Reactor was touted as a solution to South Africa's energy problems.



Overview: Housing and Local Government

Municipalities are responsible for providing shelter for the homeless

During the 2010–2011 financial year, the LRC continued to make strides in protecting people's right to housing, notably in the Elsie Gundwana case. On Monday 11 April 2011, the Constitutional Court found Rule 31(5) of the Uniform Rules of Court unconstitutional, to the extent that it permits the sale in execution of the home of a person. It also granted leave to appeal in the eviction application.

The LRC was acting as *amicus curiae* (friend of the court) on instruction from the National Consumer Forum. The matter is discussed in more detail elsewhere in this publication.

Issues of rights of property owners, versus those with no property continue to be a thorny issue in South Africa. The LRC was involved in a case where an eviction order was sought by a private land owner, the Blue Moonlight Properties, of 62 people unlawfully occupying the property for more than six months and unable to find alternative property.

The occupiers joined the City of Johannesburg, which denied any constitutional or statutory obligation to provide any form of accommodation to destitute people who had been evicted from private property. Blue Moonlight Properties then sought monetary compensation from the City, in the event that no eviction order would be granted.

The South Gauteng High Court then ruled that municipalities are responsible for implementing the constitutional and statutory obligations to provide adequate

housing on a progressive basis and taking steps to provide accommodation to those most in need. Municipalities do have such obligations towards illegal occupiers on private land.

The City of Johannesburg decided to challenge this ruling in the Supreme Court of Appeal (SCA). The LRC deals with many such cases and intervened as *amicus curiae*. The outcome of the SCA matter would impact on all similar cases at hand.

Another significant case during this period was the LRC's involvement in the Florence case. The Florence family lived in Rondebosch, Cape Town, from 1952 to 1970. In 1966, the Group Areas Board announced the area as part of land that will be occupied and owned by whites only. The LRC sought to assist the family in getting reasonable compensation for the forced dispossession of their property in terms of racially discriminatory legislation.

The trial commenced in March 2010 and recommended for two

further hearings of two weeks in March 2011. A number of experts gave evidence on the history of dispossession, the change in value of money over time and, especially, the current value of fair compensation at the time of dispossession. The merits of the case were conceded and the only issue to be determined was the valuation of the land at the time of disposition, in October 1970.

To respond to the state's case adequately, the LRC sought the assistance of a historian, two economists and a valuator. It is hoped that at its conclusion the case will set a precedent for all families who were similarly affected by our country's history.

In the City of Durban we are pleased to report that, in May 2011, the Municipality bowed down to pressure and shelved its plans to close down and demolish the Early Morning Market in Warwick Triangle. The City had planned to build a new shopping mall in its stead. The closure of this historic market would have affected the livelihoods of an estimated 70 000 households.

The LRC will continue to fight for the rights of the most indigent in their quest to access accommodation and to challenge unjust legislation which does not promote the needs of the most vulnerable.

Providing decent accommodation for all remains a key challenge.



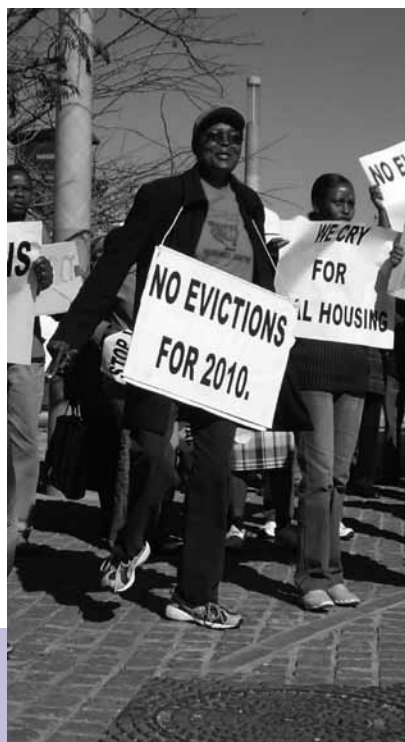
Overview: Housing and Local Government

Inner-City Jo'burg Evictions

At the dawning of South Africa's democratic era, the majority of white residents left the Johannesburg city centre in the so-called "white flight". As a result, many abandoned buildings were occupied by people flocking to Johannesburg for employment opportunities.

The common trend was for the new occupants of these abandoned buildings to pay rental to a person purporting to be the owner of the property. In most instances, no written lease agreements were concluded. After some time the purported owners would disappear and the occupants remained on the property without paying any rentals. The result was that occupants lived in squalid conditions, without adequate water, sanitation and electricity. Eventually the registered owner (often new purchasers) served notices seeking the eviction of the occupants.

A closer look – residents fighting for their rights to shelter.



It is at this stage that the LRC has been involved in eviction matters in the inner city buildings in Johannesburg. Many people would not have a place to go to if they were to be evicted. A key question which has arisen is the role that government is required to play in these circumstances.

Section 26(3) of the Constitution stipulates that no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions. Section 4(7) of the Prevention of Illegal Evictions from and Unlawful Occupation Act 19 of 1998 (PIE) states that a court may only grant an eviction if it is just and equitable to do so and after taking into consideration whether there is land which can be made available by the municipality, another organ of State or any other land owner for the relocation of the occupiers. The court must also consider the specific needs

Section 26(3) of the Constitution stipulates that no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances.

of the elderly, children, disabled and households headed by women.

One strategy utilised by the LRC in seeking to enforce these principles has been to have the City of Johannesburg joined to the proceedings. In certain limited circumstances, the City can be required to provide alternative accommodation to the evictees. However this has usually not been the case, and the result has been negotiations between desperate occupiers and owners who do not have the use and enjoyment of their property.

This was the scenario in the matter of *OPH (Pty) Ltd v Occupiers of 115 Main Street and the City of Johannesburg*, in which the owner had convinced occupiers over the 2010 festive season to accept R3 000.00 and vacate the building on 15 December 2010. Relying on the ground-breaking *Blue Moonlight* judgment of the Constitutional Court (litigated by the Centre for Applied Legal Studies), the LRC is now assisting the occupiers in seeking an order requiring the City to provide alternative accommodation.



Highlight

Home sale in execution: High Court Rule declared unconstitutional

On 10 February 2011, the LRC acted as *amicus curiae* on behalf of the National Consumer Forum (NCF) in a Constitutional Court case that sought to have the power of a high court registrar – when ordering a default judgement under one of the High Court Rules – deemed unconstitutional. Advocates Geoff Budlender SC, Steven Budlender and Anshal Bodasing, instructed by the LRC, represented the NCF.

The case was between applicant Elsie Gundwana and respondents, Steko Development, Nedcor Bank Limited, and the Minister for Justice and Constitutional Development.

Ms Gundwana bought a house in George, Western Cape, in 1995 for R52 000. A portion of that price, R25 000, was paid with money lent by the bank (Nedcor) as part of a mortgage bond. In terms of the bond, the property served as security for the loan. But during 2003 Ms Gundwana fell behind in her monthly repayments. On 7 November 2003, a high court registrar granted a default judgment against Ms Gundwana at the bank's instance for payment of R33 543,06, together with a further order declaring the property executable for that sum. On the same day an order to seize or attach the property was issued to give effect.

The bank did not take any further action in relation to the execution for four years. During that time Ms Gundwana continued making payments on the bond, albeit irregularly. In August that year she returned home from holiday

to find a sale in execution of her property was about to take place. Ms Gundwana contacted the bank which informed her she was in arrears to the amount of R5 268, 66. She promised she would pay the arrears as soon as possible and on 13 August 2007 paid the bank R2 000. Two days later, the property was sold in execution under the original order to Steko Development.

Registration of transfer to Steko followed, but Ms Gundwana refused to vacate the property. On 23 April 2008, Steko launched an application in the George Magistrate's Court for Ms Gundwana's eviction from the property, which eviction order was granted. Ms Gundwana's appeal against the order in the high court was dismissed, and her leave to appeal that decision refused by the Supreme Court of Appeal.

The ultimate constitutional issue in the case was whether a high court registrar, in the course of ordering a default judgment under Rule 31(5)

(b) of the Uniform Rules of Court (High Court Rules), could grant an order declaring a mortgaged property – that was a person's home – specially executable.

Ms Gundwana argued that the power of the registrar was unconstitutional, and sought access to the Constitutional Court for an order to that effect. She also sought a repeal of the default judgment, including the order declaring her property executable, and that the eviction order be set aside.

Just eight weeks later the Constitutional Court found that the willingness of mortgagors to put their homes forward as security for the loans they acquire was not in itself sufficient to permit the registrar to grant an order declaring immovable property executable. The Court also found that an evaluation of the facts of each case would be necessary to determine whether such a declaration may be made. *This determination would have to be made by a judicial officer, and not a registrar.*

The Court accordingly declared Rule 31(5) of the Uniform Rules of Court unconstitutional to the extent that it permits the sale in execution of the home of a person. It also granted leave to appeal in the eviction application.

The Constitutional Court of South Africa



Voices of our clients

Mmuti Pilane

My name is Mmuti Pilane and I am part of a community which lives in and around Mothlabe village, found in the district of Mankwe, near Rustenburg in the North West Province. We are formally part of the Bakgatla-Ba-Kgafela traditional community.

Our case involves two main issues, restitution and independence. During apartheid, we were forcibly removed from our ancestral land and incorporated into the homeland of Bophuthatswana. After the 1994 elections, the Mothlabe community submitted a claim for the land we were removed from. My late father, Mainole Pilane, was a headman in Mothlabe and he led the restitution claim.

Despite being surrounded by platinum mines, the village of Mothlabe remains impoverished. There are no tarred roads, very few families have access to electricity and many of the homes lack water and decent sanitation facilities. Unemployment is also rife among school leavers.

Today we are governed by a

neighbouring community, the Moruleng Traditional Authority (MTA), which is made up of approximately 28 villages and led by a council of Moruleng tribal leaders. We want independence from the MTA because we feel that they do not represent our interests. The MTA is led by Chief Nyalala Pilane.

In 2004 a platinum mine began operations on the same land that we are claiming. The MTA's stake in the mine is valued at millions of Rands. This money remains with the MTA and we do not get any benefits from the mine's operations. People say that Bakgatla are rich but that is not true because not all of us are

benefiting. All the profits remain with those in Moruleng where Chief Nyalala Pilane lives.

We see the fight for restitution and independence as the only way we can be able to develop as a community and change our fortunes. As a community, we know what our challenges are and we will also be in a position to use proceeds from the mining for developing our area. Chief Nyalala Pilane has done nothing for us; absolutely nothing. We want to secede from the MTA and obtain our independence.

The MTA has interdicted us from holding community meetings to discuss how we are to pursue our independence and from using the name Mothlabe Traditional Authority.

In 2010, we sought the assistance of the LRC so that they can help us tackle these challenges. The LRC has challenged the interdict and we believe that they are the right people to help us solve our problems.

Mmuti Pilane is at the forefront of Mothlabe's fight for independence from the Moruleng Tribal Authority.



We see the fight for restitution and independence as the only way we can be able to develop as a community and change our fortunes.

Highlight

Silicosis trial date nears

As highlighted in our annual report of 2009-2010, the LRC acts for a group of ex-gold miners who were employed at the President Steyn Gold Mine in the Free State. Our clients, residing in the Free State, Lesotho and the Eastern Cape, contracted silicosis, a lung disease that cannot be treated once contracted, and which predisposes one to tuberculosis (TB) infection.

Silicosis is caused by exposure to respirable silica dust. It is a disease which does not manifest for many years and therefore has little obvious impact on an affected miner's ability to work during its early stages.

Miners with silicosis, however, have an increased risk of contracting TB, a risk that persists throughout life. A miner with silicosis and who is HIV-positive has an even greater risk of contracting TB, and dying from it. There is a high prevalence of both TB and HIV on mines and in South Africa's labour-sending areas, and accordingly this significantly aggravates the impact of silicosis. Miners who return to rural areas on

retirement frequently contract TB, which goes undetected and thus untreated. The mining industry has made no provision for TB monitoring of ex-miners.

The LRC is currently representing 18 plaintiffs. These plaintiffs' action is part of a larger group of test cases that can establish the legal principles for the liability of the defendant, Anglo American South Africa Ltd (AASA), and other mining companies, towards individuals who contracted silicosis as a result of their employment at gold mines. The litigation procedure is time-consuming and complex in nature. The legal team consists of eleven lawyers together with numerous experts.

The LRC is the attorney of record. Richard Meeran of Leigh Day & Co, London, one of the world's leading class action public interest lawyers, acts as our consultant on the matter.

We have instituted action proceedings in the South Gauteng High Court against AASA, which was responsible, in terms of service

contracts, to give technical advice to the mine on various matters, including health and safety and technical issues. During the plaintiffs' period of employment at the mine, the defendant, in its capacity as technical adviser, negligently and wrongfully advised the mine in relation to silica dust and silicosis, leading to our clients' contraction of silicosis.

The dust level in the mines exceeded levels that posed a foreseeable risk of silicosis. Anglo American should have known that the conditions to which the miners were exposed were below the required standard. Insufficient attention seems to have been given to preventing silicosis. Once miners retired and returned to their communities, the industry appears to have shown little interest in their well-being, even though it was well aware that the miners' health would continue to be permanently compromised because of their excessive dust exposure on the mines.

Legal Aid South Africa has funded this work, which has the potential to positively affect the lives of a large number of indigent miners whose health has been compromised by exposure to mine dust and their families. Although a trial date has not yet been set, we are hoping to get a trial date during 2013.

Silicosis is a disease which does not manifest for many years and therefore has little obvious impact on an affected miner's ability to work during its early stages.

Some of the victims of silicosis speaking to the press during a briefing in 2011.



From the LRC's Front Desks: Blessing Marindo

Mr Blessing Marindo, an asylum-seeker from Zimbabwe who is blind and unemployed, has been a client of the LRC since December 2002. The LRC assisted him initially with a letter to the Department of Home Affairs (DHA) requesting that his status determination interview be in Cape Town, where he lives, after he was notified that he must go to Pretoria for the interview. The LRC also requested the Department to transfer his file to the Cape Town Refugee Centre.

An asylum-seeker is entitled to have his application processed where he is living. This was confirmed in *Ahmed Abdi Aden v Minister of Home Affairs*, heard in August 2001 in the High Court where the LRC represented the applicants. The Standing Committee eventually confirmed that Mr Marindo may process the application in Cape

Town, and he was granted refugee status on 22 May 2003.

The LRC also referred Mr Marindo to the Scalabrini Centre for further assistance with his application for a disability grant. The LRC assisted him with his first identity document application. However, he continues having difficulties with the renewal of his identity document and access to his disability grant. The Department of Social Security withholds disability grant payments when refugee identity documents have expired.

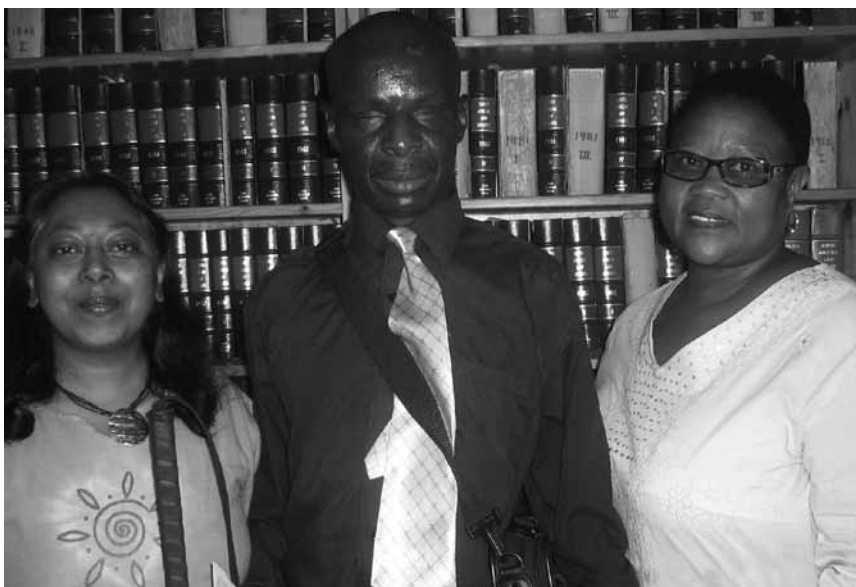
Mr Marindo's matter was attended to once again in October 2011 with a request to the DHA to provide an update on his identity document renewal application which he submitted in July 2011. However there has been no response from the Department.

The United Nations Committee on Economic Social and Cultural Rights (CESCR), General Comment 19 clearly states that national policies, plans and systems must take effective measures to fully realise the right of all people to social security. These include the provision of adequate income support to those with disabilities and ensuring that qualifying conditions for benefits are reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and be provided for in national law.

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their rights. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion, and promoting social inclusion.¹

Refugees are confronted with difficulties when their refugee identity document expires and they cannot access social disability grants. The grant either may be withheld or warnings are given threatening its termination. The impact this has on the lives of refugees is enormous. Disabled persons cannot easily pay for their shelter, food, water, electricity, transport, etc. It is unfair that refugee rights are being eroded when the DHA cannot meet the refugee identity document application backlog.

Blessing Marindo (middle) with the LRC's Anthea Billy (left) and Ncunyiswa Hans (right).



¹ UN CESCR, General Comment 19, paras 1, 3 and 9.

Highlight

Distorted *ukuthwala*: harming girls, harming communities

Constitutional recognition of the right to culture has confirmed the place of communities' traditional beliefs, moral convictions and faiths in our democracy. However, no person may exercise their right to culture in a manner inconsistent with any provision of the Bill of Rights. This means that girl-children and women are constitutionally protected against harmful traditional practices.

One such practice is the distorted practice of *ukuthwala* ("being carried") predominantly practised in parts of the Eastern Cape and KwaZulu-Natal. Today it is being practised differently to the original tradition which involved the consent of both adult parties to the intended marriage. It is marked by violence and rape because it involves the abduction of a girl (mostly between the ages of 12 and 16) by a man and his peers, where the girl is then forced into marriage and raped to signify their union. Usually the man is much older than the girl. When the girl resists being abducted she is often brutally beaten into submission. She will also be given *muthi* to dull her senses and help her "adapt" to her new status.

This distorted version of the practice impacts on the child's dignity and her right to education, health and gender equality. The child is forced to be a housewife, bear children and drop out of school, depriving her of education and employment opportunities. As a result of being raped during the process of *ukuthwala*, the girl-child

is potentially exposed to various sexually transmitted infections as well as HIV and AIDS. Often, due to abject poverty, parents will give their consent to the process, in order to secure *lobola* to assist the family to survive. Furthermore, the girl is at risk of falling pregnant and it has been proven that early pregnancy increases the risk of foetal and maternal mortality and is damaging to the girl's body and well-being as her body has not fully developed.

Often the man will be a respected older member of the community and as a result of the gender inequality and violence implicit in such context, the girl child is unable to request her "husband" to undergo an HIV test. Further, given her household duties, as well as the stigma and discrimination around HIV and AIDS,

she is unlikely to test for the virus herself.

The LRC, together with other NGOs, has advocated against this harmful practice. Together with the National Association of Child and Youth Care Workers (NACCW) *Isibindi* project, we have initiated an on-going educational awareness campaign in a rural KwaZulu-Natal community in the Sisonke District. The campaign alerts community members, including traditional leaders, to the psycho-social and economic consequences for the girl-child. This includes HIV vulnerability, as well as the illegality of the practice and what that means for perpetrators and accessories. Some traditional leaders are utilising the campaign to empower community members, targeting parents, children likely to be affected, and potential perpetrators against the practice.

Local police stations have also been vigilant in trying to stamp out this practice. Dialogue with the school girls most likely to be victims of *ukuthwala* has identified the

Continued on page 22

The National Association of Child and Youth Care Workers has been very instrumental in spreading awareness against the distorted version of ukuthwala.



Voices of our clients

Sally-Jean Shackleton (SWEAT)

My name is Sally-Jean Shackleton and I am the Director of Sex Workers Education and Advocacy Taskforce (SWEAT). We are based in Cape Town, though our work reaches sex workers nationally. SWEAT has been in existence for 15 years. The motivation behind establishing the organisation came from a researcher and a sex worker who experienced the discrimination and human rights abuses of sex workers.

We take a rights-based approach to our work and we have three main programmes: advocacy

and networking, outreach and development, and research and knowledge. We aim to provide holistic services to sex workers with the goal of improving their lives, image and health care.

SWEAT has continued to grow and we operate in 11 areas in six provinces across the country.

One of the challenges that SWEAT currently faces is the continued unlawful arrest of sex workers. In 2009, working with the LRC, we obtained a High Court interdict against the Minister of Safety and

Security, National and Provincial Commissioners of Police and Police Station Commanders in Cape Town prohibiting any unlawful and wrongful arrests of sex workers. This was a milestone in the protection of the rights of sex workers and in advancing our work.

Sadly, despite the court interdict, a number of sex workers continue to be arrested on unlawful grounds. We are therefore in the process of documenting these violations of the interdict because we are considering a contempt of court application.

As SWEAT we feel that our biggest challenge is to achieve the decriminalisation of sex work in South Africa. We have not been successful in advocating for law reform in this regard but we remain hopeful that in future we will make progress. We call upon anyone who would like to join the campaign for decriminalisation to contact us; our contact details are on our website www.sweat.org.za.

SWEAT works with many NGOs which include, amongst others, Thohoyandou Victim Empowerment Project in Limpopo, Wits Reproductive Health Institute and High Transmission Area Project in East London. One of the current partners in one of our projects is the LRC through their work on the Comic Relief grant on combatting violence against women and girls. We have enjoyed a fruitful relationship with the LRC over the years and their legal assistance to our projects has been instrumental in advancing the human rights of sex workers.

We hope to continue working with LRC in future in advocating for decriminalisation of sex work, and in generally promoting and advocating for the rights of sex workers.

Sally-Jean Shackleton, Director of Sex Workers Education and Advocacy Taskforce (SWEAT)



Continued from page 20

notion of *ukuthwala* as a source of economic stability or poverty alleviation for many families as being the main reason why parents sometimes consent to the practice. The LRC and NACCW presented a paper on the legal consequences of the distorted practice of *ukuthwala* at the NACCW 18th Biennial Conference in Port Elizabeth in July 2011 with the theme of "Promoting Cultural Diversity in Circles of Care". The LRC and NACCW also presented a women's training workshop with the Centre for the Study of Violence and Reconciliation on this harmful practice following its study: "An Inconvenient Truth: Is there a Link between Harmful Traditional Practices and Sexual Violence in South Africa?" in the Uthukela District in December 2011.

Even though the distorted version of this practice (where there is no consent from the bride) constitutes a matrix of criminal offences such as rape, statutory rape, assault, kidnapping, and abduction, and is contrary to the relevant provisions of the Children's Act 38 of 2005, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and the Recognition of Marriages Act 120 of 1998; prosecution and enforcement is hampered by the fact that many families will resolve the matter between themselves, often with damages being awarded by the traditional leader concerned.

Furthermore, the practice occurs in areas with limited policing capacity due to the vast areas to be covered by under-resourced police officers. The notion that once the '*thwala*' has occurred, the girl's fate is sealed as that of a married woman also decreases the probability of families and the affected girl wanting to prosecute the offender.

Mineral reform: life or death for the MPRDA in SCA 'test case'

The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) introduced an entirely new regulatory regime replacing the old system of mineral rights coupled with state permission or authorisation to mine, with a system of state custodianship of mineral resources. The State now grants prospecting or mining rights to people who qualify.

Two of the key purposes of the changed system are to protect the environment and to promote more equitable access to the nation's mineral resources. In the past, these resources were held almost exclusively by whites as mineral rights were tied to land ownership.

An appeal in a test case will soon be heard in the Supreme Court of Appeal (SCA). Agri SA, an organisation representing commercial miners, complains that MPRDA expropriated mineral rights because holders of these rights did not automatically acquire new mining rights, especially if the old mineral rights were "unused". The Minister of Minerals and Energy resisted the claim in the High Court, but the court held in favour of Agri SA.

The LRC represents the Centre for Applied Legal Studies (CALS) as *amicus curiae* in the matter. We contend that the Act did not result in expropriation and that it needs to be understood in the light of the constitutional imperative of restitutionary equality and the international legal trend permitting such changes in the regulatory regime. The risk of a widely applicable finding of expropriation in this test case is that the entire scheme of the MPRDA will be rendered unworkable. The matter is likely to be heard in the SCA during 2012.

The Supreme Court of Appeal (photo from The Weekly)



Highlight

LRC Regional Project: Building African jurisprudence

The LRC has for decades engaged with legal professionals throughout Africa, and in particular Southern Africa. However, it is only since 2008 that regional engagement has become a dedicated project. In that year, the LRC obtained Observer Status before the African Commission on Human and Peoples' Rights (ACHPR) and since 2009 has attended every public session of the Commission.

Our engagement has been around various issues, in particular women's rights, access to justice and international tribunals and housing. The focus of the LRC's regional engagement over the last twelve months has been the recognition of customary forms of tenure and rights pertaining to resources – land, minerals, forestry or marine

resources.

The decision to focus our attention on this area of work was necessitated by the urgency of the crisis of land- and resource-grabbing on the continent. What facilitates this iniquitous conduct on a massive scale in Africa is from a legal standpoint, amongst other factors, the fact that land and resources that belong to rural communities in terms of custom are regarded as either State-owned land and resources (as an extension of the colonial regime of "native land" held in trust) or as "*terra nullius*", belonging to no-one. This enables states to sell off huge tracts of land and resources. Communities are not only forcibly displaced, but worse still, they have no say and gain scarcely any benefit from the agreements.

If customary forms of tenure were legally equal to common law property rights, that might mean that any sale of land or resources belonging to customary communities could be subjected to the principle of the free, prior and informed consent of the community concerned.

Our engagement rests upon Article 21 of the African Charter:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

We have made public submissions to the ACHPR on a number of occasions on the subject. Our attention is focussed on utilising the Special Mechanisms of the Commission created in terms of the Charter in order to promote our concerns. Thus, together with the Open Society Justice Initiative and Waterlex, the LRC launched an NGO support group around the Working Group of Experts to the ACHPR on the extractive industries, human rights and the environment in Banjul in September 2011. The initiative has been welcomed by the Working Group of Experts and will be formalised early in 2012.

The LRC's regional project has two related objectives: supporting lawyers in the region to litigate on customary forms of tenure and extractive industry imposition on behalf of local communities, and setting precedents in other domestic and regional courts in this regard. In 2011, three workshops were held for lawyers from the continent on the topics of customary law and the extractive industries. The LRC is also currently working in collaboration with lawyers from Namibia, Lesotho and Mauritius on cases on behalf of local communities who are asserting their rights to property, resources and consultation.

Wilmien Wicomb (left) during the ACHPR summit in Banjul, the Gambia.



Financial Report on AFS 2010-2011

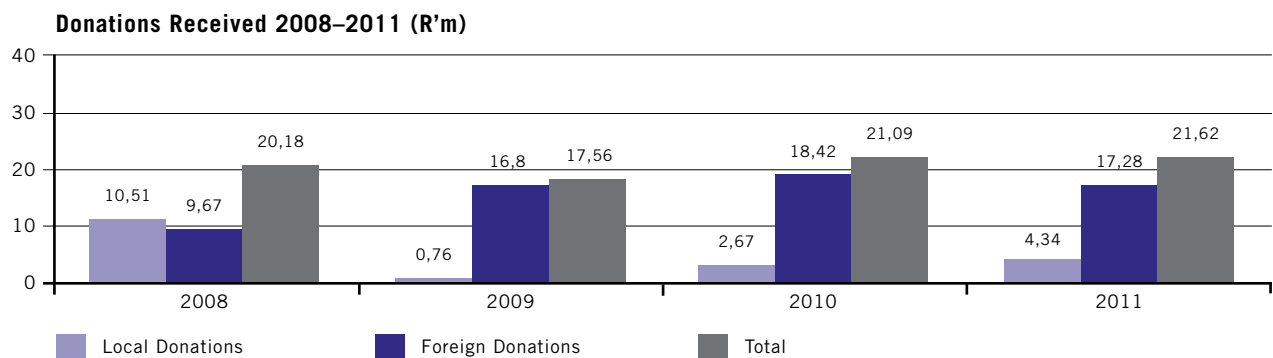
Legal Resources Trust (LRT)

During the period under review, the LRT continued to experience the recovery of the slow, uneven domestic and global economy. However, despite these difficult conditions the LRT managed to strengthen its Balance Sheet as well as maintaining funding levels.

Net Asset Value increased from R17,026,239 to R21,625,484 (R15,268,101 to R17,026,239 in the previous period).

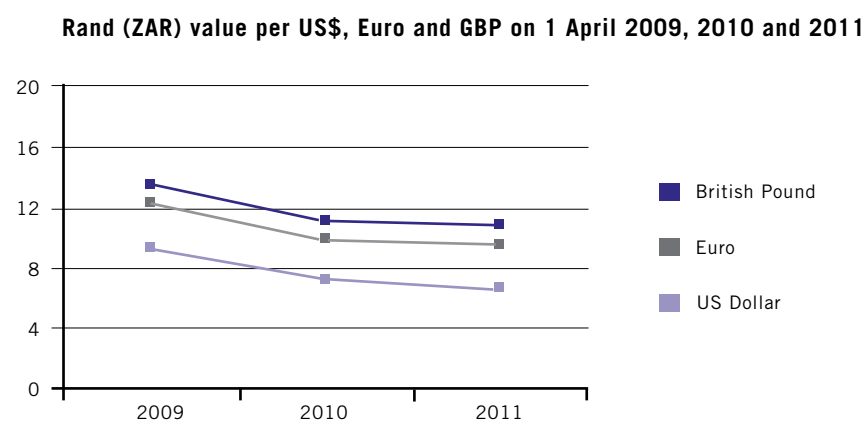
Grants and Donations (see graph below) has increased marginally by 2.5% as compared to the previous period.

An increase in Local Source Donations from R2,668,860 to R4,346,997 contributed to an improved Local: Foreign Funding Mix of 20.1: 79.9 (12.7: 87.3 in the previous period).



The strengthening of the Rand against the major currencies over the past three years has negatively affected the value of foreign grants received. Foreign grants are fixed in the currency of the donor country and its Rand value determined by the exchange rate at the date of transfer.

The graph below highlights the strengthening of the Rand against the US Dollar, British Pound and the Euro.



Legal Resources Centre (LRC)

Resource Allocation

The allocation of resources continued to be in line with the Medium Term Strategic plan of the LRC, which was to augment the administrative, operational and marketing capabilities of the organisation as well as to explore strategies towards a more self-sustaining funding model.

In keeping with the nature of the work of the LRC, and with maintaining prudent cost management, resources were utilised as follows compared to the previous period:

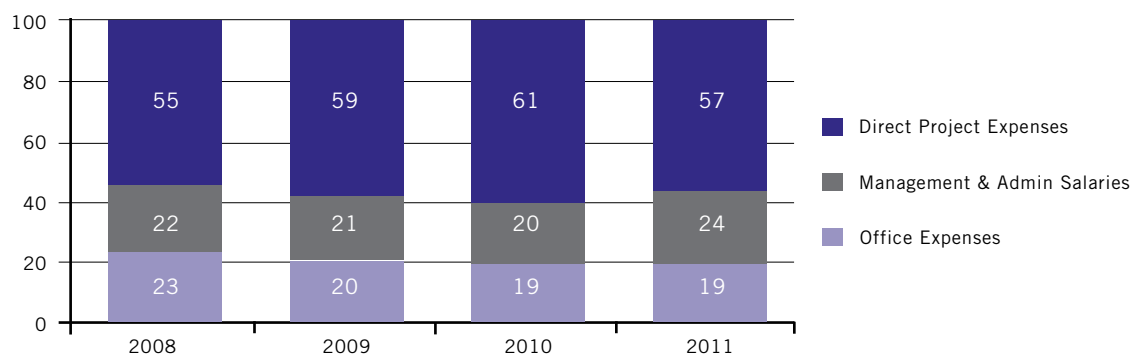
- Direct Project Expenses 57% (61%)
- Management and Admin Salaries 24% (20%)
- Office Expenses 19% (19%)

* The increase in Human Resource costs reflects the additional resources employed in the Advancement Unit. This is in line with the objective to strengthen the advancement capabilities of the LRC.

Leasing Cost of Premises remains the biggest expenditure item under Office Expenses for the LRC (47%).

Office Expenses increased by 3.5%. (R 5,542,124 to R 5,735,141)

% Resource Allocation



Systems and Policies

All contractual obligations and stipulations emanating from funders agreements have been adhered to.

Continuous pre-emptive maintenance of the IT infrastructure continued to produce a stable and efficient operating environment. All users were upgraded to the latest Office 2010. Significantly more laptops are now being used, facilitating more mobility and flexibility in working patterns.

The integration of the different aspects of the Case Cost Management System will be the final phase of this project. It has been earmarked for completion during the coming financial period.

The Grants Management System is now operational and the Individual Giving programme has been implemented as part of the overall strategy to broaden the revenue base of the LRC.

Conclusion

For the financial period under review, the LRT needed to generate R22.37mil in donor income, and only realised R21.62mil. The shortfall of R0.75mil (R3.6mil 2009–2010) was funded from reserves of the LRT.

The challenge remains to build a more diverse income base that can be less reliant on donor funding. Within these resource constraints, the LRC must ensure that it does not compromise the quality of services provided.

We remain committed to ensuring cost effective financial systems and policies and thereby advancing the objectives of the LRC.

K De V Reinecke

Financial Director: LRC

Approval of the Financial Statements

The National Director, after consultation with the Executive Committee, is responsible for monitoring the preparation and integrity of the financial statements and related information in the annual report.

The financial statements are prepared in accordance with the stated accounting policies and incorporate responsible disclosure in line with the accounting philosophy of the LRC. The financial statements are based on appropriate stated accounting policies consistently applied, except where otherwise stated, and supported by reasonable and prudent judgements and estimates.

The National Director and Executive Committee are satisfied that the LRC will continue as a going concern in the year ahead. For this reason, the financial statements have been prepared on a going concern basis.

The LRC is registered as a non-profit organisation in terms of the Non-Profit Organisations Act No. 71 of 1997 (NPO No. 0023-004 NPO); and the LRC has also been approved by the Commissioner of the South African Revenue Services (SARS) as a tax-exempt Public Benefit Organisation for purposes of Section 10(1)(cN) as read with Section 30; and has been further approved by the Commissioner for the purposes of Section 18A of the Income Tax Act (PBO reference number 930003292).

The financial statements for the year ended 31 March 2011 were approved by the Executive Committee on 30 September 2011 and signed by the National Director.

Report of the Independent Auditors

To the Executive Committee LEGAL RESOURCES CENTRE

Report on the financial statements

We have audited the accompanying financial statements of the Legal Resources Centre, which comprise the statement of financial position as at 31 March 2011, the statement of comprehensive income, statement of changes in reserves and the statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory notes.

Executive committee's responsibility for the financial statements

The executive committee is responsible for the preparation and the fair presentation of these financial statements in accordance with their accounting policies. This responsibility includes : designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. These standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risk of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

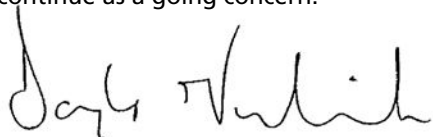
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Unqualified Opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of the Legal Resources Centre as at 31 March 2011, and of its financial performance for the year then ended in accordance with its accounting policies.

Emphasis of matter

The Centre needs ongoing donor support if it is to continue operations. These financial statements have been prepared on the basis of accounting practices applicable to a going concern, which assumes that the Centre will generate sufficient funds by way of grants through the Legal Resources Trust to continue funding its activities in the ensuing year. Accordingly they do not include any adjustments, relating to the recoverability and classification of assets or to the amounts and classification of liabilities, that would be necessary if the Centre were unable to continue as a going concern.



Douglas & Velcich

Chartered Accountants (S.A.) Registered Accountants and Auditors
Johannesburg 30 September 2011

Balance Sheet as at 31 March 2011

	2011 R	2010 R	2009 R
ASSETS			
Non-current assets	607,704	761,358	616,902
Tangible assets	607,704	761,358	616,902
Current assets	1,644,241	1,186,866	2,445,069
Trade and other receivables	760,002	514,666	763,074
Accrued income - cost recovery	38,279	-	-
Amount due from LRT	-	-	631,319
Cash and cash equivalents	126,859	40,473	377,040
Client trust bank accounts	719,101	631,727	673,636
Total assets	2,251,945	1,948,224	3,061,971
LIABILITIES			
Non-current liabilities	(1,874,986)	(1,079,488)	-
Accumulated funds	(1,874,986)	(1,079,488)	-
Current liabilities	4,126,931	3,027,712	3,061,971
Trade and other payables	2,386,752	1,698,118	1,937,387
Cash and cash equivalents	18,212	-	-
Provisions for leave pay	852,866	697,868	443,701
Sabbatical provision	150,000	-	-
Client trust funds	719,101	631,726	673,636
Amount due to LRT	-	-	7,247
Total reserves and liabilities	2,251,945	1,948,224	3,061,971

Income Statement for the year ended 31 March 2011

	2011 R	2010 R	2009 R
INCOME	29,712,555	27,721,341	27,162,588
Cost recovery	7,181,768	2,445,786	3,620,857
Distribution from LRT	22,370,543	24,744,861	23,214,732
Sundry income	153,725	528,477	326,999
Interest received	6,519	2,217	-
OPERATING EXPENDITURE	30,508,053	28,800,829	27,162,588
Salaries and contributions	7,247,766	5,829,598	5,604,563
Office expenses	5,735,141	5,542,124	5,462,798
Administrative costs	910,749	904,051	1,295,572
Books and periodicals	307,256	328,945	352,669
Computer expenses	355,947	456,935	420,740
Depreciation	355,902	252,055	275,292
Lease rentals on operating lease	2,694,961	2,457,969	1,925,972
Printing and stationery	229,380	203,871	176,496
Temporary staff	-	-	-
Telephone and fax	522,416	610,203	592,462
Travel - local	358,530	328,095	423,595
Project expenses	17,525,146	17,429,107	16,095,227
DEFICIT FOR THE YEAR	(795,498)	(1,079,488)	-

Notes to the Financial Statements for the year ended 31 March 2011

Significant Accounting Policies

1. Presentation of Annual Financial Statements

The annual financial statements have been prepared on the historical cost basis, except in the case of land and buildings and financial instruments, and incorporate the principal accounting policies set out below.

1.1 Tangible Assets

The cost of an item of tangible assets is recognised as an asset when: it is probable that future economic benefits associated with the item will flow to the organisation; and the cost of the item can be measured reliably.

Tangible assets are carried at cost less accumulated depreciation and any impairment losses.

Depreciation is provided on all tangible assets to write down the cost of the assets, net of residual value, by equal instalments over their estimated useful lives, which are 5 years in the case of vehicles and IT equipment, and 10 years for office furniture and equipment.

1.2 Financial Instruments

Financial instruments, which include receivables and bank and cash balances are initially measured at cost, and adjusted at year end to fair value by means of an impairment charged through profit and loss.

1.3 Revenue

The distribution from the Legal Resources Trust is voted by its trustees each year, and adjusted for accounting purposes by the amount by which total income of the Legal Resources Centre exceeds its expenditure. Such a surplus is accounted for as an advance.

Cost recovery, interest and fund raising income are accounted for on the accrual basis while donations and other income are accounted for as and when received.

2. Related Parties

Related party relationships

Legal Resources Trust

2011

R

2010

R

2009

R

The trust has an oversight and fiduciary responsibility and is responsible for the appointment of the National Director and certain senior staff members.

Related party transactions

Distribution from related party

Legal Resources Trust

22,370,543

24,744,861

23,214,732

Legal Resources Trust (Trust Number IT8263)

Trustees' Report for the year ended 31 March 2011

The trustees have pleasure in presenting their report on the activities of the Trust for the year ended 31 March 2011.

Nature of Activities

The Legal Resources Trust has an oversight and fiduciary responsibility for the Legal Resources Centre so as to enable the Legal Resources Centre to provide free legal services in the public interest to poor and vulnerable South Africans.

Financial Results

The results for the year under review are set out in the attached annual financial statements.

Equipment

During the year under review, the trust acquired no equipment.

Post Financial Position Events

No material fact or circumstance has occurred in the conduct of the company's activities between the financial position date and the date of this report.

Trustees

Ms Thandi Orleyn (Chairperson)

Janet Love (National Director: Ex-officio trustee)

Judge Lee Bozalek

Former Chief Justice Arthur Chaskalson

Professor Harvey Dale

Judge Thabani Brian Jali

Professor Michael Katz

Mr Taswell Papier

Judge Jody Kollapen

Judge Dunstan Mlambo

Judge Lex Mpati

Judge Mohamed Navsa

Mr Richard Rosenthal

Resignations during the year:

Ms Sonja Sebotsa

Auditors

Douglas & Velcich were retained as auditors for the year under review.

Report of the Independent Auditors to the Trustees - Legal Resources Trust

Report on the financial statements

We have audited the accompanying financial statements of the Legal Resource Trust, which comprise the statement of financial position as at 31 March 2011, statement of comprehensive income, statement of cash flows and the statement of changes in reserves for the year then ended, and a summary of significant accounting policies and other explanatory notes.

Trustees' responsibility for the financial statements

The trustees are responsible for the preparation and the fair presentation of these financial statements in accordance with their accounting policies. This responsibility includes : designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. These standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risk of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Unqualified Opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of the Legal Resources Trust as at 31 March 2011, and of its financial performance and cash flows for the year then ended in accordance with its accounting policies.

Supplementary information

The supplementary schedules set out on pages 17 to 19 do not form part of the annual financial statements and are presented as additional information. We have not audited these schedules and accordingly we do not express an opinion on them.



Douglas & Velcich

Chartered Accountants (S.A.) Registered Accountants and Auditors
Johannesburg 30 September 2011

Balance Sheet as at 31 March 2011

	2011 R	2010 R	2009 R
ASSETS	27,868,715	19,803,592	17,160,403
Non-Current assets	24,772,373	18,792,837	15,656,207
Tangible assets	1,088,420	1,148,315	1,208,210
Investments	23,683,953	17,644,522	14,447,997
Current assets	3,096,342	1,010,755	1,504,196
Accrued grant income	-	-	130,000
Cash and cash equivalents	3,096,342	1,010,755	1,374,196
Total Assets	27,868,715	19,803,592	17,160,403
RESERVES AND LIABILITIES	27,868,715	19,803,592	17,160,403
Equity and reserves	21,625,484	17,026,239	15,268,101
Initial trust capital	250	250	250
Revaluation reserve	1,068,878	1,026,777	1,083,744
FNK Scholarship reserve	589,717	589,717	589,717
General reserve	19,966,639	15,409,495	13,594,390
Current liabilities	6,243,231	2,777,353	1,892,302
Deferred grant income	6,243,231	2,777,353	1,260,983
Amount due to LRC	-	-	631,319
Total reserves and liabilities	27,868,715	19,803,592	17,160,403

Detailed Income Statement for the year ended 31 March 2011

	2011 R	2010 R	2009 R
INCOME	27,478,199	27,009,827	19,221,751
Grants and donations	21,622,786	21,090,958	17,560,608
Dividend revenue	234,737	251,388	674,860
Gain on fair value adjustment on investments	4,147,605	5,231,794	345,018
Interest received	525,252	435,687	641,265
Gains on disposal of investments	947,819	-	-
OPERATING EXPENDITURE	508,411	506,828	5,249,518
Investment managing fees (Investec)	153,956	107,514	118,547
Audit fees	60,158	61,954	88,383
- current year	60,158	61,954	88,383
Bank charges	6,309	3,815	3,676
Bram Fischer Memorial Lecture	-	101,415	-
BEE rating	52,440	-	-
Loss on disposal of investments	-	-	-
Loss on fair value adjustment on investments	-	-	4,780,568
Depreciation	59,895	59,895	59,895
Exchange loss	-	-	-
Printing and stationery	2,037	-	-
Project expenditure	-	-	31,437
Travelling and accommodation - trustees	173,616	172,235	167,012
SURPLUS FOR THE YEAR	26,969,788	26,502,999	13,972,233
Distribution to Legal Resources Centre	(22,370,543)	(24,744,861)	(23,214,732)
Surplus/(deficit) for the year	4,599,245	1,758,138	(9,242,499)
Net transfer from reserves	(42,101)	56,967	56,967
Balance at beginning of the year	15,409,495	13,594,390	22,779,922
	19,966,639	15,409,495	13,594,390

Organisational Donors

Detailed Schedule of Grant and Donation Income
for the year ended 31 March 2011

	2011 R	2010 R	2009 R
International donors			
The Atlantic Philanthropies	900,000	6,316,280	5,000,000
The Allan and Nesta Ferguson Charitable Trust	-	104,000	-
Comic Relief	4,082,215	2,530,486	1,715,546
Charles Stewart Mott Foundation	256,330	291,476	858,400
Centre on Housing Rights and Evictions	-	-	58,804
Evangelische Entwicklungsdienst	2,190,007	3,033,377	5,604,036
Embassy of Belgium	1,312,296	722,177	-
Embassy of Finland	320,960	1,060,000	1,200,000
The ELMA Foundation	5,523,000	1,000,000	1,000,000
Farm Africa	-	-	16,883
The Ford Foundation	1,333,228	160,057	-
The Hilden Charitable Fund	-	56,000	-
International Labour Organisation	43,000	-	-
Julia Taft Fund for Refugees	80,069	-	-
Norwegian Centre for Human Rights	125,000	1,161,000	655,200
Open Society Foundation for Southern Africa	829,324	500,000	-
Rockefeller Brothers Fund	-	829,920	500,673
Save the Children - Sweden	-	-	131,250
Sigrid Rausing Trust	1,049,668	657,325	55,382
Tides Foundation	60,016	-	-
Local donors			
Foundation for Human Rights	90,469	(130,000)	-
Justice A Chaskalson	10,000	18,104	-
National Lottery Distribution Trust Fund	974,896	1,500,000	-
Claude Leon Foundation	-	225,000	-
Mones Michaels Trust	60,000	120,000	-
Open Democracy Advice Centre	10,000	-	-
Thandi Orleyn	30,000	30,000	-
Charities AF	10,933	-	-
South African Institute of Race Relations	19,216	-	-
General Council of the Bar of South Africa	-	15,000	-
Adv G Hulley	10,000	-	-
V Vedalankar	10,000	-	-
Adv F Snyckers SC	10,000	-	-
Adv K Tip SC	10,000	-	-
Inyathelo Award	90,000	-	-
Barker Estate (donation of share portfolio)	-	41,191	198,802
Edward Nathan Sonnenbergs	-	-	200,000
Legal Aid South Africa	1,275,083	695,500	-
The Frank Robb Charitable Trust	110,000	110,000	110,000
The RAITH Foundation Trust	740,002	-	146,761
Other donors	57,074	44,065	108,871
TOTAL	21,622,786	21,090,958	17,560,608

Notes to the Financial Statements for the year ended 31 March 2011

Accounting Policies

1. Presentation of Annual Financial Statements

The annual financial statements have been prepared on the historical cost basis, except for land and buildings carried at revalued amounts and investments carried at fair value. The annual financial statements incorporate the following principal accounting policies, which are consistent with those adopted in the previous financial year.

1.1 Tangible Assets

Land and buildings are stated at valuation, and are revalued by sworn appraisers at least once every three years. The carrying value of buildings is reduced by depreciation based on the revalued amount. Such depreciation, representing the value of use of the buildings, is taken to profit and loss, and adjusted by a transfer from reserves which represents the depreciation on the revalued portion.

Revaluation adjustments are reflected in reserves.

1.2 Financial Instruments

Financial instruments comprise investments, accrued income and expenditure, and bank balances

1.2.1 Initial recognition

Financial instruments are recognised initially at cost, which includes transaction costs. Subsequent to initial recognition these instruments are measured at fair value, which in the case of investments is market value, and other assets at cost less any impairment.

1.2.2 Gains and losses

A gain or loss on a financial asset or financial liability through impairment or adjustment to fair value is recognised in profit or loss.

1.3 Revenue

Income comprises grants and donations both designated and undesignated, investment income and non-operating income.

Designated grants and interest are brought to account on the accrual basis in the period to which they relate, while undesignated donations and other income are brought to account as and when received and banked.

Dividends are recognised, in profit or loss, when the trust's right to receive payment has been established.

Individual Donors

Adv. Morris Basslian SC
Adv. David Borgström
Adv. Schalk F Burger SC
Justice Arthur Chaskalson
Adv. Alec J Freund SC
Henry Gilfillan
Adv. Yolande Guidozi
Moray Hathorn
Adv. G I Hulley
Justice JC Kriegler
Menzi Kunene
Yves Lauren
Adv. Johan J Louw
Janet Love
Jochem Lu
Tiwana Mandeep
Jana Mclean
Adv. AJ Nelson
Mark Nowottny
Thandi Orleyn
Adv. P C Pauw SC
Adv. Paul Pretorius SC
B P Rabinowitz
Johannes Schoombee
Adv. Lindelani Sigogo
Adv. BM Slon
Adv. Frank Snyckers SC
MS Stegmann
Adv. Robbie Stockwell SC
Adv. Karel Tip SC
Adv. David Unterhalter SC
Vidhu Vedalankar
Delysia Weah
Rory Williams
Adv. Greg Wright SC

In-kind Donors

Eversheds Attorneys
Promise Branding
Debbie Budlender
Lorraine Chaskalson
Richard Moultrie
Bernard Viljoen
DS Print Media

From our Candidate Attorneys

I first heard about the LRC when LRC staff came to the University of KwaZulu-Natal where I did my LLB. Of all the law firms that were there for open-day, the LRC was the only human rights firm. That's when I decided to submit my CV as I wanted to work in a firm where human rights were the main focus area.

I started my articles at the LRC in February 2011. The period since then has been phenomenal and a very positive experience. Within the LRC I have been taught how to use the law as an instrument of justice to help people from all walks of life and different backgrounds.

What I have enjoyed most so far has been conducting workshops with

Thabile Dlamini



Community Based Rehabilitation (CBR) on the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 in various rural areas throughout KwaZulu-Natal. It is always fulfilling to empower people with knowledge and information so that they or others know their rights and can use their rights. This, we hope, will prevent government departments from abusing people who may be ignorant of their rights.

A campaign that I enjoyed working on concerns the distorted form of *ukuthwala*. This version of *ukuthwala* is the abduction and forced marriage of under-aged girls. This campaign raised awareness on its consequences for the girl-child. It has also brought to light the various resources and remedies that victims can use and seek against perpetrators. The campaign helped to inform women who are victims of *ukuthwala* that there are opportunities for them to seek help.

In conclusion, the experience and knowledge that I have gained at the LRC is amazing. I have gained a deeper knowledge of human rights and of constitutional and administrative law. These insights will remain with me and echo in my heart till I close my eyes forever. Furthermore, I intend to share what I have learned with other lawyers and colleagues as I grow in my legal career.

Thank you LRC.

Thabile Dlamini,
Candidate Attorney, LRC Durban

What our interns say

On 10 September 2010, I embarked on an incredible journey, having no idea where it would take me. From my first to my last day at the LRC in Johannesburg, I gained so many invaluable gifts. These gifts include inspiration, a broader understanding of the world and life-long friendships.

The LRC is a remarkable human rights organisation in South Africa that employs dynamic people who are committed to changing the lives of the marginalised and the vulnerable. To me, the LRC is a voice for the voiceless, power for the powerless and hope for the hopeless. I am so honoured to have been given the opportunity to contribute to their efforts.

For seven months, I was privileged to work alongside talented individuals committed to fighting for human rights. A great deal of my time was spent working with Advocate George Bizos SC. I even assisted with the writing and research for a lecture that Advocate Bizos delivered at Oxford University about his mentor, colleague and friend Bram Fischer. To my astonishment, I was invited to attend the lecture and the associated

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Interview with Topsy MacKenzie, payroll administrator at LRC

Tell us a little bit about your background.

I was born in Johannesburg. My mother and father were never married. I studied financial accounting management at the RSA Technikon. I am a single mother with two children, one in high school and one in primary school. I never know what to tell people when they ask me what my surname is. My father was born in Piet Retief. His mother came from Swaziland and was working on the farm of a Mr Greyling. She got pregnant with the farmer's child and had a son, my father. My father was always teased about being the bastard son of a Boer and black woman so he decided to run away from home. When he was 16 he went to Boksburg with some other men and there he met a very rich man called Mr MacKenzie. This man adopted my father and gave him work. Six years later he returned home and became close with his half-sister. This is how I got the surname, MacKenzie, although people think it is strange for a black woman to have a Scottish surname.

When did you start working at the LRC and where were the offices situated?

After my father passed away, there was some money that he invested in Standard Bank, which the bank refused to release. I went to the Wits Law Clinic for help with my case and met a man there called "Topsy". I asked him for work because I was enrolled at Vista University at the time and needed

money. He told me to meet Webster from the LRC who was a semi-blind Candidate Attorney. I helped him with research and with clients. I was paid by the Department of Labour at that time, and not by the LRC. This was in 1993, working in the Johannesburg Office and we were still at the building in Pritchard Street. I found the work at the LRC very interesting so when the post of Assistant Librarian came up I applied for the position. So in November 1993 I was working in the library. In December 2007, when Koop* joined the LRC, they did not have a payroll administrator and he asked me if I wanted the job. Because I didn't have the qualifications, Koop offered to teach me and if I enjoyed it, would send me to attend the VIP

Topsy MacKenzie has been with the LRC since 1993.



course. I did and got my national certificate.

How has working at the LRC changed you as a person?

I have changed a lot. I used to be harsh and short-tempered, but I have realised that in life, you cannot be like that. Sometimes clients were rude over the phone and I couldn't understand why, but if you work in the LRC, you have to calm down, because you have to be fair. The customer is always right. It has been interesting working at the LRC. I have learned more about law and how the law is sometimes fair and sometimes unfair.

What are some of your fondest memories of working at the LRC?

I remember the land cases. I remember how the LRC helped farm workers who were treated badly by the farmers. I worked with very professional lawyers in the Johannesburg office. My one funny memory was when I was working with Webster, who was being supervised by Odette Geldenhuys. Judge Mahomed Navsa was the Director at the time and the LRC took on a case which turned out to have no case. When the LRC lawyers received documents from the other lawyers, they realised that they would lose the case. The judge took them into the library where he told them to look for about six cases. He knew the exact dates and page number of where to look. After he had done this he stood looking at them and then said "Geldenhuys, after all this, do you still not have a case?" He was very hard on the lawyers. If they failed their board exams they got into trouble. The CA's worked very hard. I thought that the labour cases were very interesting.

* Koop Reinecke is the Finance Director of the LRC.

A Moment with Mark Heywood, Executive Director, Section 27

Please give us some background to the National Strategic Plan for HIV and Aids 2007-2011

The former National Strategic Plan came to an end in December 2011. One of the key priority areas of the plan was on Human Rights and Access to Justice. This key priority area set out a number of activities and interventions with the overall intention of reducing stigma and unfair discrimination. Unfortunately, the key priority areas of reducing infection and promoting human rights were the most poorly implemented. This was due to insufficient resources from government for implementation.

Despite that, organisations working in human rights, which included the LRC, worked together under the South African National AIDS Council (SANAC) to continue to implement programmes to do with stigma. They also worked on policy questions such as access to legal services and policy questions to do with HIV and AIDS more generally. Their focus was also on policy questions to do with human rights. The LRC achieved this through their being a member of the task team that was set up to address this priority and through Janet Love's participation in the human rights sector of SANAC.

Throughout 2011 there were expensive consultations on the new National Strategic Plan for 2012-2016. One of the agreements is on the need to strengthen the programmes and to budget for their implementation.

What of the future?

The new plan took effect on the 1 April 2012. The LRC will continue

to be intimately connected to the new plan and the implementation of the human rights programmes. The important elements of the new plan are the introduction of TB prevention to the plan and the continuation of the key strategic objective of the protection of human rights. There is still the challenge of implementation but those are two positive aspects of the new plan.

How do Section 27 and the LRC work together?

Section 27 and the LRC have always



Section 27 and the LRC have always been close partners, says Heywood.

been close partners. Janet Love and I are both plenary representatives on SANAC. SANAC is currently being restructured and improved. The intention is to strengthen the technical task team on law and human rights, so to give better advice on programmes and to ensure oversight of the programmes. Section 27 and the LRC have always worked well together and will continue to work together on any issues that arise in the future.

Continued from page 37

events in the United Kingdom. Hearing Advocate Bizos deliver the lecture in person at Rhodes House was incredible.

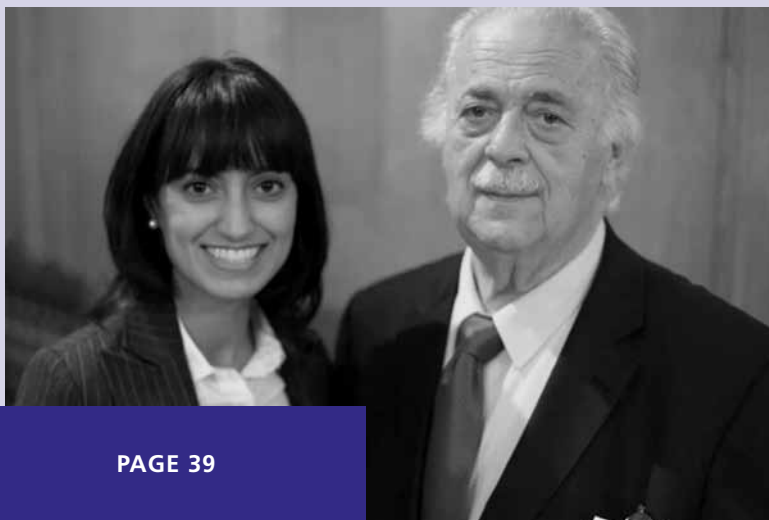
I want to express my deepest gratitude to the LRC for giving me a small but significant glimpse into their world, to the Canadian International Development Agency for supporting programmes like Young Lawyers International and

to the Canadian Bar Association for seeing potential in me by giving me this opportunity.

The Rainbow Nation is a beautiful country, both in terms of its nature and its people. I consider my experiences during my time there to be my most valuable possessions. I am forever grateful. I will miss you eGoli!

By Parvinder Hardwick, Canada

Advocate George Bizos, SC and Parvinder Hardwick at the Bram Fischer Memorial Lecture, Rhodes House, Oxford University on February 24, 2011.



In the Words of Zohra Dawood, Executive Director of Open Society Foundation for South Africa

Briefly tell us about the Open Society Foundation for South Africa (OSF-SA).

The Open Society Foundation for South Africa is committed to promoting the values, institutions and practices of an open, non-racial, non-sexist, democratic society. It works for a vigorous and autonomous civil society in which the rule of law and divergent opinions are respected.

What are the OSF-SA's key focus areas?

Support for independent media; human rights and governance; criminal justice reform; South African foreign policy; and the impact of money on politics.

What factors played a key role in the decision to support the LRC?

South Africa is still struggling to execute the progressive human rights protections guaranteed in the Constitution. Specific areas of concern relate to the rights of migrants, refugees and asylum seekers, sexual violence against women and children, access to primary education in rural areas, and the government's response to one of the world's most serious HIV/AIDS epidemics. The LRC has been and continues to be at the forefront of rights-based jurisprudence that underpins constitutional democracy in South Africa. The LRC has a strong track record of success in using advocacy and law, and in working with communities and civil society organisations to achieve socio-economic improvements in poor

people's lives.

Over the past years, the LRC has demonstrated its dynamism and responsiveness to these challenges.

Why do you think funding of organisations like the LRC in South Africa is important?

The LRC has been doing excellent work in ensuring that it advocates for the rights of the poor by conducting precedent-setting test case litigation on constitutional issues. So it is important that as a Foundation that is pursuing the values of an open society, which are shared in our Constitution, we support organisations like the LRC who enable an environment whereby marginalised citizens can access justice – moreover, that the state can be held to account and be more responsive to the needs of its citizens.

What key characteristics do you look for in non-profit organisations?

We look for organisations that are of course committed to the values

Zohra Dawood



espoused in our Constitution. Organisations that demonstrate the capacity to respond innovatively to the complex challenges that our country faces across a number of fronts. Of course, part of this is that the organisations retain a strong element of strategic reflection of their work and its impact. In this regard, leadership is key and this has been a strong feature of the LRC over the years.

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Allied Organisations

The Legal Assistance Trust

The Legal Assistance Trust (LAT) was established in 1985 in London as a registered CHARITABLE TRUST. By raising funds for free legal services for poor people in countries outside the UK the LAT aims to relieve poverty and suffering. The LAT has supported the work of the LRC for over 24 years.
www.latforsa.org.uk

SALS Foundation

The Southern Africa Legal Services Foundation, Inc. (SALS) – a U.S. 501(c)(3) charitable organisation based in Washington, D.C. – was created in 1979 by concerned American lawyers to support and raise funds for public-interest legal services and for the development of legal education in southern Africa. SALS has long supported the LRC with its critical work in the areas of constitutional law, land and housing rights, environmental justice, constitutional obligations regarding the HIV and AIDS epidemic, and women's and children's rights.
www.sals.org

LRC Staff and Interns

Our staff of 70 in four offices is committed to fulfilling the LRC's mission and vision. In addition, since 1979, the LRC has welcomed and benefited from the work of interns from all over the world. Our list of staff and interns appears at www.lrc.org.za/our-people

Documents and Publications

The LRC periodically releases papers and booklets on various topics related to our work. These are available online at <http://www.lrc.org.za/resources/documents>

Contact Us

We have offices with walk-in services located in Johannesburg, Cape Town, Durban, and Grahamstown. A full listing of our contact details can be found at <http://www.lrc.org.za/contact-the-lrc>

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