



LRC

LEGAL RESOURCES CENTRE



ANNUAL REPORT
2012 - 2013

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THE LEGAL RESOURCES CENTRE'S VISION AND MISSION

Vision

Inspired by our history, the Constitution and international human rights standards, the LRC is committed to a fully democratic society based on the principle of substantive equality. The LRC strives 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 the 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 towards 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, contribute to the development of a human rights jurisprudence and to the social and economic transformation of our 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



Thandi Orleyn:
Chairperson of the Legal
Resources Trust

During the period of this report, the South African social and political landscape has been marred by tragedies like Marikana. People protest daily, corruption is a common feature in our news and our education system continues to present a threat to the right to basic education as enshrined in our Constitution. It is up to civil society organisations like the Legal Resources Centre to hold government and corporations to account. The challenges are never-ending, and yet the commitment by the LRC's lawyers, donors and staff has been tremendous. The LRC has proven itself to be strong and dedicated in its pursuit of justice for all South Africans.

This year, the LRC has widened its focus to the regional and international human rights arena and we have been pleased to find that our principles, our work and our experiences in the national sector is valued by an international audience. The LRC has entrenched its stature and standing within the legal community due to its unfaltering commitment to the rule of law. The extensive nature of our work has further expanded through a focus on the rights of indigenous communities and our work promoting customary law as a living body of law. Nationally, through the Bill of Rights, we are able to

pursue cases which reflect the needs of our society, and will continue to focus on women's and children's rights, access to social security, land reform, secure housing, environmental justice and good governance.

Like any organisation, we require support from different sectors. The commitment and professionalism shown by the staff of the LRC is a source of pride. I want to thank them for their exceptional efforts. Our relationship with the legal community is one of mutual respect and we continue to benefit from the close relationships we have with various legal bodies, non-governmental organisations and parastatals. The support shown by the general public keeps us motivated and committed to our work. I would also like to thank the Board of Trustees for the unstinting enthusiasm and invaluable advice, and for their support of my leadership.

I am greatly honoured to be the Chairman of such a highly regarded organisation. It is heart-warming to know that the LRC has maintained a sustainable path and, while we foresee the challenges the organisation faces growing in magnitude, the LRC is committed to being at the forefront of public interest litigation in South Africa. Together with our partners and friends, we will continue to focus on providing legal services to the vulnerable and indigent members of our society.

We want to thank our donors and partners for their continued co-operation and support and we look forward to the expansion of these valuable partnerships into the future. They have always recognised the value of our contribution to the legal community, to social justice and to human rights. This acknowledgement is immensely important to us. Our close working relationships with our partner organisations, the South African Legal Services Foundation in the United States and the Canon Collins

NATIONAL DIRECTOR'S REPORT

South Africa is still a relatively young democracy. Nineteen years after the adoption of the Constitution, the spatial, structural and discriminatory legacy of apartheid lingers. While the overall standard of living shows an increase, the gap between rich and poor has grown and this manifests strongly along racial lines. Although South Africa is the wealthiest country in Africa, its wealth has yet to reverse inequality.

For the economically disadvantaged, the Constitution is a potentially important tool. It provides that everyone has the right to access adequate housing, education, health care, food, water and social security. Due to overwhelming poverty, many people are heavily reliant on government assistance, but corruption and wastefulness have led to a lack of essential services, such as safe water and adequately-equipped schools for many communities.



The Constitutional Court has delivered several important judgments in furtherance of the realisation of socio-economic rights. Yet implementation remains a hurdle. Most poor South Africans do not expect or anticipate instant and immediate change. However, in the face of a lack of accountability and corruption, patience wears thin. Access to justice remains out of reach for many and the accountability of the powerful is not as robust as it should be. Despite the adoption of democratic principles and values, as enshrined in the country's Constitution, there are still many challenges to achieving effective governance and the realisation of constitutional rights.

Approximately 22 million South Africans live on rural communal land, which is governed by traditional leadership structures. The Constitution provides that customary law, subject to the Bill of Rights, should be considered in tandem with common law and statutory law. This provision allows for communities to operate under traditional structures and observe customs that have existed for centuries without prejudice. However, the current situation sees customary law used to exclude people from communal benefits and democratic processes.

For some years now, the Legal Resources Centre has been in the process of increasing its involvement within the regional and international human rights sector. The grant from the Ford Foundation, from its fund 'Investing in a New Era of Global Rights Leadership', has enabled us to participate in a number of exciting opportunities and enhance our work in South Africa through robust engagement in various global fora. We look forward to the opportunities to share knowledge and experience and to strengthen relationships with other human rights organisations and individuals. This grant will further enable us to benefit from visiting practitioners, who have assisted us to focus our organisational strengths and priorities.

➔ continued on page 4

Janet Love: National
Director of the Legal
Resources Centre

→ **National Director's Report, continued from page 3**

Key themes we are engaging with in the international sphere include customary law, self-determination and extractive industries; education; and the combatting of discrimination and violence against lesbian, gay, bisexual and transsexual individuals. The themes have been drawn from the existing issues which are being pursued by the LRC within South Africa. Our core mission endures and we will continue to strive to be the leading public interest legal organisation in South Africa.

Engagement around our core values - teamwork, employee recognition and fulfilment, accountability, communication and human rights - has taken centre stage and, in this, we have benefitted from a strong team of support staff, lawyers and counsel. These values are fully supported by the Board of Trustees. Their commitment has been unflagging and the long-term strategic role they have played as the Legal Resources Trust has been exceptionally important and has contributed to our good governance and sustainability as an organisation.

Our networks have grown. The commitment of our donors to the LRC's work continues to be highly appreciated. These are partnerships that make our joint contribution to the realisation of rights for all South Africans possible. We are very excited by the new networks and partnerships which have been created over the past year; through our local contacts and also through our strategic engagements at the international level. We hope to enable networking

between clients, and the communities we work with, in a way that further informs the global human rights agenda, as well as global and regional norms and policies.

Our work with the Canon Collins Education and Legal Assistance Trust (formerly the Legal Assistance Trust) in the United Kingdom and the South African Legal Services in the United States has grown and borne further fruit. These relationships have contributed significantly to the overall development of the LRC, to the advancement of young legal professionals in South Africa and to building a better working environment for those working within the organisation. We greatly value these relationships.

I would also like to thank the many interns and volunteers who have given the LRC their time and commitment. Your energy and enthusiasm reverberates through our offices. We similarly acknowledge the many friends of the LRC who contribute financially and in-kind, attend our events and promote our achievements. Thank you to all who have aligned themselves with our work and who assist us in achieving our vision.

Lastly, I again note the passing of Arthur Chaskalson in the course of the 2012-2013 year. His life and achievements are celebrated once again in this report. His presence, his advice and his unfaltering commitment to our work are sorely missed.

Janet Love

→ **Chairperson's Report, continued from page 2**

Education and Legal Assistance Trust in the United Kingdom, are of considerable value to the work of the LRC. Our continuing development as an organisation would not be possible without their invaluable support. Most importantly, we recognise the role of Janet Love, the National Director, who has taken on this difficult task with a deep passion and determination, and who continues to remain focussed on the principles by which we stand.

Final mention must be made of our friend and colleague,

Arthur Chaskalson, who passed away late last year. His presence is missed by all members of the LRC's staff, trustees, and especially by the Trust Committee. Arthur fully supported my leadership in the Trust and was someone I relied upon for principled and detailed advice. He always showed deep commitment, passion and concern for the organisation. To this day, the LRT stand by the values he believed in.

Thandi Orleyn

LAND AND RURAL DEVELOPMENT



The LRC's Thabiso Mbhense and Bethuel Mtshali in discussion with our client.

Promoting Living Customary Law

When the Traditional Leadership and Governance Framework Act (the Framework Act) was promulgated in 2003, few communities, activists and lawyers realised its devastating implications. In the decade since, the effect of the transitional provisions of the Act, which entrenches the boundaries and leadership structures which facilitated separate development in apartheid South Africa, has come to haunt the rural communities of the former homelands in a variety of ways. It has rendered powerless the many communities still trying to undo the damage of the racist apartheid myth of discreet tribes abutting each other.

Some of the worst affected communities amongst the 20 million South Africans living in the former homelands are subjected to the authority of a chief whom they do not recognise, as he (or his ancestors) was installed as chief by the apartheid government in reward for his cooperation in the time of forced removals. Oftentimes,

The LRC has represented 5 000 people in rural communities throughout South Africa

their community shares land with one or more other communities relocated there through the creation of the homelands. The community has no way of holding the chief accountable or demanding proper governance, as the chief's power is sourced from legislation and not from custom or from community support. The chief is seen by the government and his peers as the custodian of custom and is often allowed to dictate the contents of this law as he pleases. He may, for example, extract taxes. Through the Traditional Courts Bill, which the legislature wanted to enact, the chief would also have been in a position to apply and enforce any law that he himself created. As the head of governance of the community, he would have the position of being creator, administrator and dispenser of the law.

Currently, these distortions are allowing the chief to utilise valuable resources found on the community's land as his own, alienating it in undisclosed agreements and without any (enforceable) obligation to account to his community. The Communal Land Rights Act (CLRA), which was declared unconstitutional in 2010 in the *Tongoane* matter, was an attempt to ensure that this absolute power could also be wielded over land. While the CLRA was invalidated, the struggle for control over land within the boundaries of traditional authorities continues, especially for Communal Property Associations and other private land owners, who are often the beneficiaries of restitution.

Given the difficulty of challenging transitional provisions, the LRC's strategy in empowering rural communities to lessen the ever-growing centralisation of power in the hands of traditional leaders has been to fight the battle on many fronts. In the *Royal Bafokeng Nation* (RBN) matter, we are representing communities who deny the legitimacy of the Bafokeng tribe and its leadership. They are opposing the application of the RBN to have all land held in trust transferred to the leaders.

In *Pilane*,¹ the chief, Nyalala Pilane, successfully applied for an interdict from the North West High Court to stop one of the villages holding a meeting to discuss his inadequate leadership and to discuss potential remedies. The matter went all the way to the Constitutional Court, where the LRC successfully argued on behalf of the popular leadership of the village that the interdict violated their rights to freedom of association, expression and

assembly. The Court agreed and found that dissent was a crucial ingredient of a constitutional democracy.

Given the difficulty of challenging transitional provisions, the LRC's strategy for empowering rural communities has been to fight the battle on many fronts

The *Sigcau*² matter was the first of the series of challenges to the findings of the Nhlapo Commission that reached the Constitutional Court. The Commission was tasked with settling the thousands of disputes that have emanated from the Framework Act and its entrenchment of apartheid boundaries. The Commission managed to deal with only a handful of kingship disputes. The LRC's client, the Centre for Law and Society, joined the Sigcau matter as *amicus curiae* and asked the Court to reject the entire scheme of the Framework Act which envisions a Commission determining the content of custom and applying this blindly. What the Commission should rather have done is give effect to the inherently democratic principles of customary law insofar as the chief is accountable to his or her people only.

With these attacks on the Framework Act's scheme, we hope to chip away at the top-down imposition of statutory leaders who are customary in name only. The 'codification' and regulation of custom out of existence is contrary both to the right to culture and to the protection of living customary law in terms of chapter 12 of the Constitution. Living customary law is the law of the people, by the people and for the people. ■

1 *Pilane and Another v Pilane and Another* (CCT 46/12) [2013] ZACC 3; 2013 (4) BCLR 431 (CC)

2 *Sigcau v President of the Republic of South Africa and Others* (CCT 93/12) [2013] ZACC 18

CHILDREN'S RIGHTS

Hashtag (#) Mudschools

As reported previously, the seven schools represented in the “mud schools matter” were informal mud structures that had few or no facilities, were derelict or breaking down and were generally overcrowded. In a settlement agreement signed on 4 February 2011, the Department of Basic Education (DBE) undertook to provide both temporary and permanent infrastructure to the seven schools and allocate funding for the replacement of mud schools country-wide. This was seen as an important victory for the education movement and led to the government establishing the Accelerated Schools Infrastructure Development Initiative (ASIDI).

Despite the obvious successes of the mud schools litigation, the ASIDI programme is behind schedule and National Treasury has had to roll over unspent funds to subsequent years. The programme is now scheduled to run until 2016 instead of 2014 and the budget has been

increased from R8,2 billion to R11,6 billion. Throughout the process, the LRC has maintained a monitoring role and has continued to exert pressure on the DBE and one of the main implementing agents, the Development Bank of South Africa, to improve the rate of construction.

During the course of the monitoring, it has become evident that the DBE does not have adequate or accurate information about learner numbers at schools and the conditions of school buildings. This has resulted in some schools not being on the ASIDI list at all, while other small schools are receiving new school buildings that will be underutilised. Furthermore, serious overcrowding remains in schools with formal buildings that are not scheduled to receive assistance in terms of the ASIDI programme.

To address these problems, during the last week of February 2013, staff from the LRC's Grahamstown office

The LRC's Cameron
McConnachie visiting
schools which have
benefitted from the
work of the LRC.
*Photo courtesy of the
Mail & Guardian*



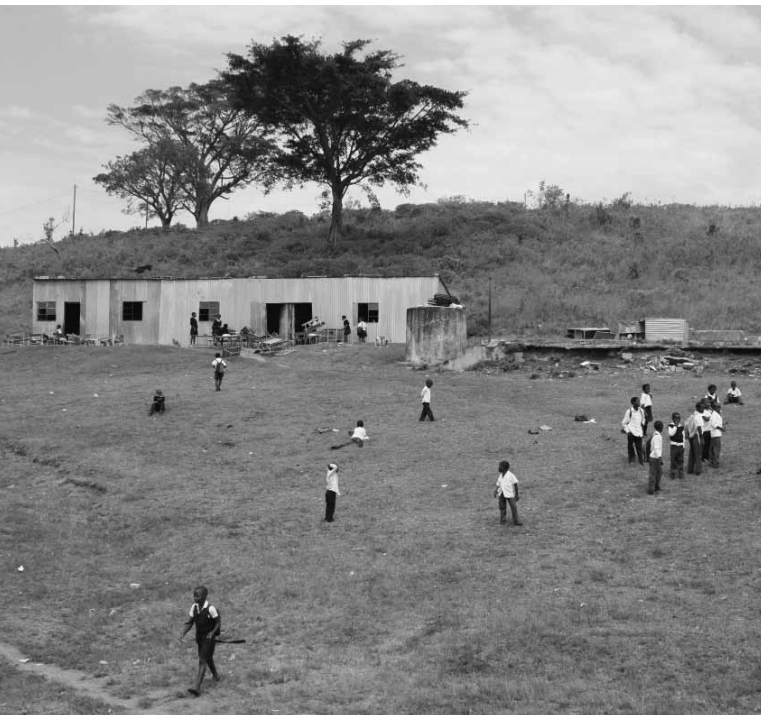
The South African government is now in the process of rebuilding all 400 mud schools throughout South Africa by the end of 2014. The South African government has been ordered to fill 7,000 vacant teaching posts in the Eastern Cape and the government must complete a comprehensive audit of all schools in the Eastern Cape and explain how it will provide each student with a desk and chair.

visited seven schools in the Eastern Cape that suffer from serious overcrowding, unacceptably poor classroom infrastructure, and/or have toilets that are in an abysmal state. These schools are not scheduled to benefit from the settlement agreement reached with the DBE. A reporter from the Mail & Guardian¹ newspaper also accompanied the LRC. Pictures and Twitter updates informed members of the public about what was being seen and heard.

The LRC is now preparing to litigate on behalf of these schools, notwithstanding that letters of demand have already resulted in toilet facilities at two of the schools being replaced. ■

1 <http://mg.co.za/article/2013-03-08-00-forgotten-schools-of-the-eastern-cape-left-to-rot>

Children playing outside Mkanzini Junior Secondary School in the Eastern Cape. The LRC is monitoring the implementation of the mud schools agreement. ■



The Mud Schools Agreement

In a settlement agreement signed on 4 February 2011, the National DBE undertook to provide both temporary and permanent infrastructure to mud schools country wide. The agreement recorded that R8,2 billion had been committed by national government for the replacement of inadequate school structures and that R6,36 billion of that amount was to be used for schools in the Eastern Cape.

As part of the ASIDI programme, construction of the first batch of 50 schools in the Eastern Cape is being overseen by the Development Bank of South Africa (DBSA) and is nearing completion. Approximately 20 have been handed over to date. The implementing agents for the second batch of 50 schools are the Independent Development Trust, Coega Development Corporation and the Department of Public Works, and the schools are scheduled to be completed by April 2014. Another batch of 50 schools are scheduled to be built by April 2015; a process which the DBSA is overseeing.

The DBSA is also in the process of identifying the schools in need. Many schools are being replaced with prefabricated classrooms under projects being rolled out by the Department of Public Works and more than 140 schools have received between three and seven prefabricated classrooms in the past few months.

Overview: Education

The LRC is working for the full realisation of the constitutional right to basic education by challenging unfair practices along with widespread inadequate and disparate infrastructure. In conjunction with the Centre for Child Law (CCL) and Equal Education (EE), the LRC has set legal precedents enabling children to enjoy their rights.

School Governing Body Authority to Deny Learners Admission: Rivonia matter

In 2011, Rivonia Primary refused to grant enrolment to a grade one learner because the school governing body (SGB) had set the capacity level at 120 learners per grade. The incident brought into question whether the ultimate power to determine a public school's enrolment capacity and, in turn, whether a learner is permitted admission lies with the Gauteng Provincial Department of Education or the SGB. The High Court ruled that the Department had the final say on admissions. However, that decision was overturned on appeal to the Supreme Court of Appeal (SCA) on 30 November 2012, with the SCA finding that the power rests with the SGB.

The matter goes far beyond the interests of the specific child whose admission gave rise to this litigation, as she will remain in the school, whatever the outcome of the litigation. Our clients, EE and CCL, submitted that what is critically at stake in this matter is the relationship between the powers of SGBs and provincial departments of education with regard to determining the capacity of a school and the admission of learners.

As *amici curiae*, EE and CCL submitted that the appropriate balance is not achieved by permitting departments little or no power to override the admission decisions of an SGB. This appears to be the implication of the SCA judgment and the argument to be advanced by Rivonia Primary before the Constitutional Court. This appropriate balance is also not achieved by allowing such departments to freely override the admission decisions of an SGB. On behalf of our clients, the LRC made submissions to the court setting out the relevant principles concerning how and in what circumstances a provincial department of education may override the admission decisions of an SGB and the factors to be taken into account in this regard. This will achieve the appropriate balance.

EE and CCL take the argue that the historical, political and economic context cannot be ignored. There are

two very different realities operating in the public schooling system: a majority of schools lack adequate infrastructure, books, furniture and competent teachers; the learners come from impoverished homes and do not pay fees. A significant minority of public schools have inherited excellent infrastructure, have parent bodies with professional qualifications able to assist with governing the school, attract competent teachers because they are well-located and offer an attractive working environment, and are able to supplement their facilities and teaching staff with fees collected. Whilst many public schools have 50 or 60 learners per class, the Rivonia Primary School averages 24 children per class.

Our clients' recognise that this is a sensitive issue and do not support policies that seek to destroy or diminish these more privileged public schools in the name of equality. However, the law must, and does, support ensuring greater and fairer access to well-resourced public schools, while the work continues to bring the majority of public schools up to an acceptable level.

Minimum Norms and Standards for School Infrastructure

The LRC filed an application on 2 March 2012 on behalf of EE and two Eastern Cape public schools, seeking an order directing the Minister of Basic Education to promulgate national minimum norms and standards to ensure adequate school conditions throughout the country. The extensive application included affidavits from 26 public schools illustrating the pervasiveness of dire infrastructure problems.

On 19 November 2012, the parties entered into a settlement agreement. According to the agreement, the Minister of Basic Education must, by 15 May 2013, promulgate regulations that establish minimum norms and standards in terms of Section 5A of the South Africa Schools Act (SASA). The norms and standards must provide for the availability of classrooms, electricity, water, sanitation, a library, laboratories for science, technology, mathematics and life sciences, sport and recreational facilities, electronic connectivity and perimeter security. The agreement mandates that the Minister must publish a draft for public comment by 15 January 2013 and consider comments by 31 March 2013. In addition, the Minister agreed to address the infrastructural problems of the applicant schools and pay the costs of the application. In the event of the Minister's noncompliance

with its terms, the agreement makes specific provision for applicants to approach the High Court.

During the reporting period, the Department of Basic Education (DBE) provided sufficient classrooms, security fencing, toilets, water and furniture to one of the applicant schools. The Minister has also released draft minimum norms and standards. However, the draft falls short of the requirements contained in the settlement agreement in that it fails to address all the aspects of school infrastructure set forth in Section 5A of SASA. The draft norms and standards are so vague as to be unenforceable and do not provide sufficient guidance concerning the minimum school infrastructure required for proper school functioning.

The LRC hopes that these deficiencies will be addressed when the minimum norms and standards are finally promulgated as regulations.

School Furniture

In October 2012, the LRC represented the CCL and three public schools in bringing an urgent application to address the shortage of furniture in public schools throughout the Eastern Cape. On 29 November 2012, in a settlement, the DBE agreed:

- to ensure that every learner at the applicant schools has his/her own reading and writing space before the start of the 2013 school year;

- to conduct a comprehensive audit of all public schools in the Eastern Cape before 28 February 2013 and to issue a plan detailing when each learner at the schools will have a desk and chair;
- to inform schools that they require furniture in accordance with the audit before 30 April 2013 and identify what furniture they will receive and when; and
- to meet the furniture needs of all schools listed in the audit by 30 June 2013.

During the reporting period, the DBE has conducted an audit and has provided furniture to the three schools and a selection of other schools. The audit has found that approximately R630 million is needed to supply the required furniture, though numerous irregularities appear in the audit and need to be independently verified. Furthermore, the DBE did not inform all the schools in the province of the audit and therefore many schools were not aware that they should submit their furniture requirements.

The LRC has been approached by four schools in desperate need of furniture which do not appear in the audit. The LRC is now representing these schools in revised court proceedings which will seek a court order obliging the Department to provide furniture to all the schools in the province that are in need of furniture and to put in place a mechanism for schools left off of the audit to be included.

→ continued on page 11



Many Eastern Cape schools face a severe shortage of desks and chairs. The implementation of the LRC court order will overcome these challenges and benefit thousands of learners.

Safeguarding the Best Interests of Street Children

The LRC assisted Umthombo Street Children, the National Alliance for Street Children and Youth for Christ in a matter in which we successfully safeguarded the best interests of street children. In this matter, an attempt was made by the eThekweni Municipality to fund reception centres designed ostensibly to temporarily shelter street children picked up by the police during raids they conducted on the city streets. These raids took place shortly before Durban was to host an international gathering and were intended to 'clean' the streets.

Umthombo Street Children have advocated for three years for officials to discontinue the raids. When, in September 2011, the municipality put out a call for proposals to 'manage' street children in the city, our clients sought to challenge it on a number of grounds. On their behalf, the LRC applied for an interdict to halt the call for proposals and sought an order to declare the eThekweni Council's resolution, the "Grant In-Aid for the Management of Street Children", procedurally unfair, irregular and unlawful.

The most glaring issue was that, should an organisation want to receive the grant, they would need to propose how to remove children off the streets. This is a contentious issue and our client organisations wanted to challenge

this. Around the world and in Durban, loitering laws and bylaws have been used to unlawfully arrest and detain children, as well as members of other marginalised groups in society, including refugees, asylum seekers, migrants, the homeless, informal traders and sex workers.

Sections 151 and 152 of the Children's Act provide strict procedures for the removal of children and their placement in temporary safe care without a court order, as well as procedures to protect their rights. The call for proposals and terms of reference did not seem to take the Children's Act and its requirements into account, and certainly did not address the best interests of the child standard.

On behalf of our clients, we sought to ensure that the removal of street children is done within the confines of the Children's Act by qualified persons, with the necessary safeguards to protect the children's rights and to act in their best interests. The provincial Department of Social Development provided their full support in questioning the procedural and substantive issues in the eThekweni Municipality's call for proposals. After various meetings with the municipality's representatives, and under the threat of litigation, the call for proposals was withdrawn. Our clients were able to provide constructive feedback and were consulted in drafting the final call for proposals before it was re-issued. ■

Note: Willene Holness, an attorney at the LRC, delivered a paper at the Public Interest Law Gathering in Johannesburg on 13 July 2012 on how loitering and related laws are used to target street children, and legal strategies used by the LRC to challenge attempts by city councils to harass marginal groups.

➔ Overview: Education, continued from page 10

Post Provisioning

The LRC filed an application on behalf of the CCL and five school governing bodies challenging the unequal and unfair distribution of teachers to schools in the Eastern Cape and the failure of the DBE to implement their own 'post provisioning' (employee) plan for 2012. On 3 August 2012, the Eastern Cape High Court in Grahamstown ruled that the DBE is obliged to declare post establishments for both teaching and non-teaching staff for public schools in the Eastern Cape for 2013. The DBE failed to implement the 3 August order, so the LRC filed an application on 27 February 2013 seeking proper implementation and

requesting relief for nine additional schools.

Independent Schools' Subsidies

The LRC represented the CCL as *amicus curiae* in a case before the Constitutional Court challenging arbitrary reductions, by the Kwazulu-Natal DBE, to subsidies for independent schools. Some of these reductions were up to 30% below the subsidy identified in schools' letters of allocation. All of these reductions violated the norms and standards for funding independent schools and constitute a failure of the DBE to meet its obligations to each independent school and its learners. ■

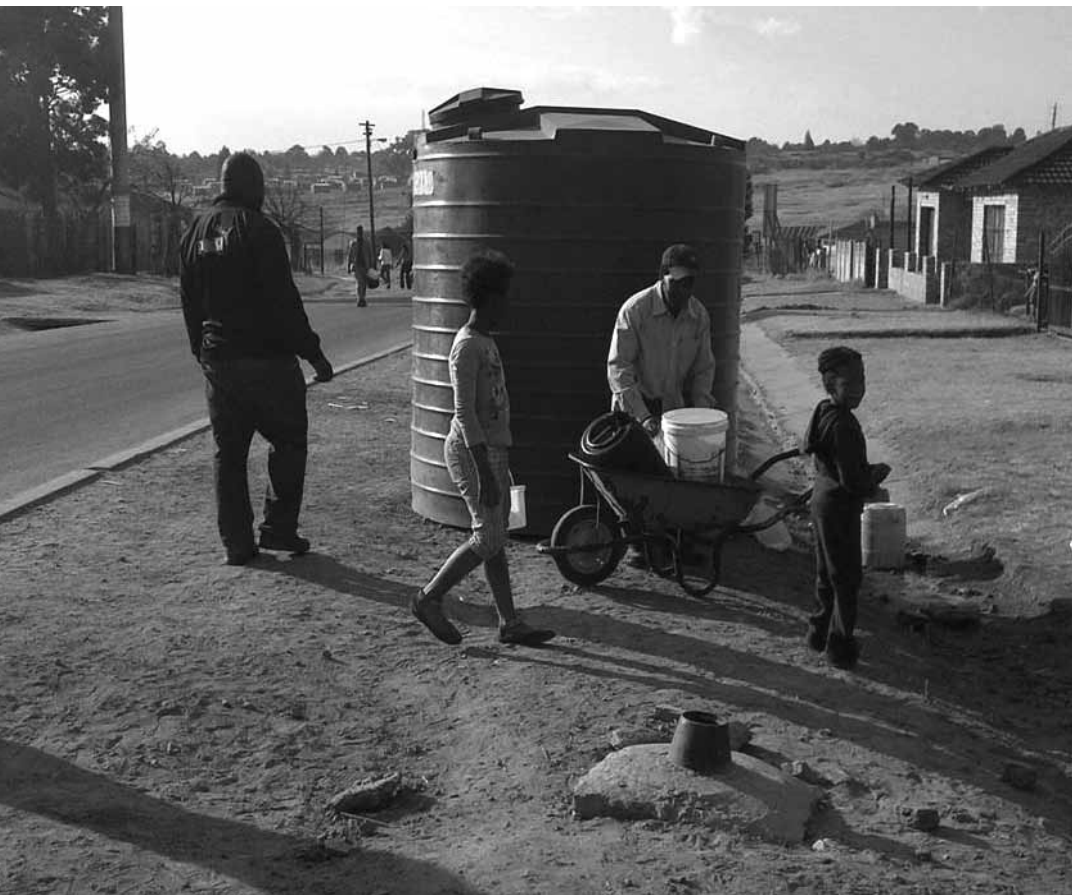
ENVIRONMENTAL JUSTICE

The Implications of Acid Mine Drainage for Communities: the Carolina Water Case

From January 2012 onwards, 17 000 residents of Carolina Town, Caropark and Silobela, Mpumalanga, a small farming town and its surrounds, found it increasingly difficult to access

a steady supply of potable water due to contamination of the municipal water supply by mining activities in and around the area. Residents complained that the water tasted metallic, that it was discoloured and that it contained a peculiar smell. In the absence of potable water from the municipal water supply, residents relied upon “jojo” tanks filled with potable water collected from an uncontaminated stream and on the water tanks at the local prison and mosque. The “jojo” tanks were provided by the Albert Luthuli Local Municipality, with assistance from the Gert Sibande District Municipality, as the municipal water treatment plant was unable to produce a basic, potable water supply.

In June 2012, and due to little progress being made by the local and district municipalities in the restoration of



Both government and business in South Africa occasionally disregard their human rights obligations to provide potable water. In Carolina, this resulted in residents without access to water until the LRC intervened to ensure that an interim solution could be found until the water supply was restored by the municipality..

their water treatment plant, the LRC, acting on behalf of the Federation for a Sustainable Environment (FSE) and the Silobela Concerned Community (SCC), represented by Lawyers for Human Rights (LHR), brought an urgent application before the North Gauteng High Court. The application requested the Court to declare that the Minister of Water Affairs, and the Mayors and Municipal Managers of the district and local municipalities having jurisdiction over Carolina and its surrounds, realise their obligation to provide the residents of the area with potable water in accordance with section 27(1)(b) of the Constitution and regulation 3(b) of the regulations relating to compulsory national standards and measures to conserve water.¹ In terms of regulation 3(b):

“the minimum standard for basic water supply services is a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month at a minimum flow rate of not less than 10 litres per minute; within 200 metres of a household; and with an effectiveness such that no consumer is without a supply for more than seven full days in any year.”

The FSE and SCC took the view that it was within the state’s Constitutional mandate to provide access to water and, in this instance, they had failed to provide the minimum standard for basic water supply services by failing to meet all of the requirements of regulation above. In certain instances, the tanker trucks transporting the potable water were not on schedule and often residents were not able to access 25 litres of potable water per day. The supply had further been interrupted for well over the “seven full days in any year” requirement.

On 10 July 2012, the Court ordered the local municipality to provide the residents of Carolina Town, Caropark and Silobela with a basic water supply within 72 hours of the order and to take measures to ensure that such water supply was supplied through the water service system. The Court further ordered that the Mayor and Municipal Manager of the local municipality consult with the FSE and SCC when restoring the water supply and draw up a plan as to where, when and what volume of water would

The LRC assisted 17 000 people to access the minimum basic water supply after their water was contaminated by acid mine drainage.

be provided. Both municipalities were further ordered to report to court, within a month, on the progress being made. The involvement of the district municipality arose as a result of the financial support that they provide to the local municipality.

An application for leave to appeal was subsequently launched by both the local and district municipalities in relation to the costs order awarded to the FSE and SCC but, due to the urgency and nature of the rights being infringed, the Court granted an application in terms of Rule 49(11) of the Uniform Rules of Court whereby the lodging of an appeal did not suspend the effect of the portions of the court order obliging the local municipality to provide the basic water supply. The LRC was further instructed to launch an application for a cross-appeal against the judgment of the Court, as the FSE took the view that the Court had erred in not granting relief against the Director of Water Affairs and the Municipal Manager of the district municipality. The appeal is set-down for hearing in May 2014. The possibility of litigation against the mines that had polluted the municipal water supply is under discussion.

Despite the court order of 10 July 2012, towards the end of July 2012, the water in Carolina still presented a health risk as it fluctuated above and below the defined limit of a basic, potable water supply. Further, the local and district municipalities frustrated all attempts at engagement. However, on recent indications, the quality of the water supply is steadily increasing, with the residents in the area appearing to feel more confident about relying upon the municipal water supply. ■

1 GN 509 (GG 22355), 8 June 2011.

Working to Prevent Corruption in Large-scale Energy Procurement

In 2003, the LRC successfully brought an application on behalf of Earthlife Africa to set aside the authorisation by the Department of Environmental Affairs and Tourism of an experimental nuclear reactor, the Pebble Bed Modular Reactor (PBMR). The application asked for a review of the lawfulness of the authorisation on the grounds of procedural irregularity in the environmental authorisation process. Earthlife Africa had argued that the technology was financially and technically risky and that the state had not estimated the costs accurately. Eventually, after R9 billion had been spent, the project was abandoned in 2010, just as information was coming to light that the technology's safety was far less than projected. The project costs for the PBMR had increased tenfold over the ten years of the project. The Department of Energy had originally promoted the PBMR to taxpayers arguing that it would put South Africa in the top division of world nuclear power plant suppliers; but, after a decade of marketing, the investors, whom the public were assured would be providing funding, had either failed to materialise or were no longer prepared to invest in the project.

Undeterred by this fruitless and wasteful expenditure on the PBMR, in 2012 the Department of Energy announced that it was going to spend R1 trillion on conventional nuclear reactors. The nuclear "fleet" was proposed notwithstanding the Department of Energy's 2010 Integrated Resource Plan (IRP 2010) which recommends a phased approach to the building of new reactors over a number of years, and recognises that there are significant uncertainties regarding future energy demand and the cost of nuclear power.

The LRC has provided legal and technical support to civil society organisations endeavouring to ensure that, if such vast expenditures of public funds are to be incurred for energy procurement, this should be done in a fair, equitable and transparent manner and that, in

compliance with section 217 of the Constitution which sets out requirements for procurement, it should be competitive and cost-effective. We have assisted several clients to make representations on the issue in a wide range of forums, including during the IRP 2010 process, to the National Treasury, the Department of Energy and to the Standing and Select Committees on Finance and Appropriations of Parliament, in response to the Medium Term Budget Policy Statement of 2013.

The decision to procure a fleet of reactors would bind the state to technologies which might be superseded by cheaper and more sustainable options in the future.

The representations have pointed out the constitutional pitfalls of procuring large-scale energy in the absence of comprehensive costing. Arguments presented during the 2010 IRP process stated that the policy failed to reflect the true cost of nuclear power. On the cost of capital, reliability of nuclear power and demand forecasts, the figures were overly optimistic according to expert opinion. A second version of the IRP 2010 revised this cost, increasing it by 40%.

The decision to procure the nuclear fleet has been argued to be in conflict with the Constitution, as well as the Public Finance Management Act, because the IRP 2010 is now out-of-date and its costing is incomplete. The decision to procure a fleet of reactors would bind the state to technologies which might be superseded by cheaper and more sustainable options in the future. These submissions have now been vindicated by a study conducted by the National Planning Commission, which confirms that fixing decisions based on an outdated plan will be very costly to the economy. The study recommends a delay in the building of any new nuclear plants and an in-depth investigation into the financial viability of nuclear energy. ■

HOUSING AND LOCAL GOVERNMENT

Update: Electricity Action Group

The LRC represents the Electricity Action Group (EAG), membership of which is drawn from indigent communities located in Pietermaritzburg, within the Msunduzi Municipality in KwaZulu-Natal. The residents live in RDP homes and, according to applicable policies, qualify automatically for indigent status.

Over the years, the Msunduzi Municipality, in keeping with the 2003 national policy, has been providing free basic electricity to indigent residents who access electricity via the grid and pay each month on the basis of the amount of electricity consumed the previous month (credit system). However, the same benefit is not extended to indigent residents who use pre-paid meters. The EAG is challenging this distinction.

On 8 September 2011, the municipality started a registration process whereby households with pre-paid meters could apply for free basic electricity. It subsequently decided not to extend the benefit to the applicants, arguing that the majority were illegally accessing electricity off the grid and not purchasing electricity at all.

Most recently, the LRC wrote to the municipality asking that it provide further information relating to the registration process and, more particularly, the details underlying its decision not to extend the benefit. The LRC held extensive consultation with EAG members and, should the municipality fail to respond or if the information

In the Msunduzi Municipality, free basic electricity is provided to indigent people accessing the grid, but is not provided to people who use pre-paid electricity meters.

is inadequate, they have urged that the matter proceed to court so that an appropriate ruling can be made. The EAG and LRC hopes that the court rules to the effect that the provision for free basic electricity be made available to those on pre-paid meters, as is currently provided to other electricity consumers. The LRC awaits the municipality's response and, in the interim, is in the process of preparing application papers. ■

The LRC is assisting the Electricity Action Group to advocate for free basic electricity to be provided to all indigent people. ■



The Challenges of Temporary Emergency Accommodation

In 2011, the Constitutional Court handed down a seminal judgment in *Blue Moonlight Properties*.¹ Relying on section 26 of the Constitution, the Court held that the City of Johannesburg had a duty to provide temporary emergency accommodation to unlawful occupiers being evicted from their accommodation, where there was no other alternative accommodation to which

Three primary challenges currently exist in relation to the duty placed upon the City to provide temporary emergency accommodation to unlawful occupiers.

they could relocate and where the eviction would render the unlawful occupiers homeless. The Court held further that an onus resided on the City to budget adequately for such temporary emergency accommodation. The judgment has potential to improve the lives of many but we have found implementing it challenging. Three primary challenges currently exist in relation to the duty placed upon the City to provide temporary emergency accommodation to unlawful occupiers.

The foremost challenge is that the City often relies upon the claim that there is no emergency accommodation available to which unlawful occupiers may be relocated. This challenge is characterised by the volume of unlawful occupations in and around Johannesburg and the increasing evictions of these unlawful occupiers by land owners.

A second challenge that is currently faced is the absence of a clear policy defining the criteria that is to be used in determining whether an unlawful occupier is entitled to temporary emergency accommodation. In the absence of such policy, confusion exists which leads to lengthy delays in legal proceedings. However, a general guideline that is currently relied upon by the courts is that the monthly income of a “household” should not exceed R3000.

A further challenge, resulting out of the absence of a clear policy, is the issue of immigration status. In *Chaplegates*,² a LRC matter that is currently being considered by the South Gauteng High Court, the issue of whether or not persons deemed to be “illegal foreigners” or undocumented migrants should be entitled to temporary emergency accommodation has arisen. The LRC takes the view that such exclusion would be contrary to the principle of equality.

Finally, the third challenge is that there is often unwillingness by unlawful occupiers to relocate due to restrictive conditions imposed by the City in relation to the emergency temporary accommodation. This challenge is aptly highlighted in the *Changing Tides*³ matter whereby two inner-city buildings have been prepared for the unlawful occupiers currently being represented by the LRC. However, due to the restrictive entry and exit conditions imposed in those buildings, as well as issues surrounding health and safety, the unlawful occupiers



The LRC's Bongumusa Sibiya informing a client about the temporary emergency accommodation which has been made available to evictees by the City of Johannesburg following the LRC's intervention.

are unwilling to relocate. Conditions further result in the separation of families, as different rooms are provided along gender lines. These issues have been placed before the courts and are currently awaiting determination.

The judgment in *Blue Moonlight Properties* is a welcome precedent for unlawful occupiers facing homelessness but challenges to the practical implementation of the precedent remain. Without undue delay, the City must be compelled to compile a comprehensive policy in relation

to temporary emergency accommodation to diffuse the current confusion. ■

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- 1 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC).
 - 2 *Phumuza Ndlovu and 359 others v Chaplegate Properties 1022 CC* South Gauteng High Court, Case no. 3234/201.
 - 3 *City of Johannesburg Metropolitan Municipality v Changing Tides 74 (Pty) Ltd* 2013 (1) All SA 8 (SCA).

Durban Port Expansion: Residents Demand Engagement

In 2012 the eThekweni Municipality and Transnet announced a multi-billion rand plan to expand the harbour in Durban, KwaZulu-Natal. This expansion will have a considerable impact on the surrounding communities, especially in the South Durban area. The LRC represents various groups who will be affected by the proposed “back of port expansion”.

While our clients recognise that there may be benefits stemming from the expansion, they need to be informed of, and included in, the planning processes and are informed of the steps which will be taken to mitigate possible damage to the environment. Our clients seek to ensure that a cumulative environmental impact assessment is undertaken, rather than the piecemeal approach, to ensure that the various impacts of the expansion are fully investigated in advance. This impact assessment must consider the environmental impact on the remaining mangroves in the harbour and the socio-economic impact on communities such as Clairwood, which are already overwhelmed by the influx of illegal trucking and logistics companies into the residential area.

The planned expansion will take place in three separate



Durban Port - Picture from Business Day

stages over the next 30 years. The LRC has identified specific areas where we will assist. Our current involvement is largely to support our clients with their engagements at various stakeholder meetings that will be held between our clients, Transnet and eThekweni Municipality. In addition, our representation is required for more immediate concerns, such as safe-guarding the security of tenure of subsistence farmers who have farmed for more than 20 years on land previously owned by the Airports Company of South Africa and which is designated to become part of the expansion. ■

WOMEN'S RIGHTS AND GENDER EQUALITY

The Experiences of Migrant Women and Children in South Africa

The LRC has been fortunate to receive funding to undertake a project aimed at assisting migrant women and children who are unlawfully detained in South Africa. This project is being undertaken in partnership with the Coram Children's Legal Centre, a children's rights charity based in the United Kingdom that provides free legal services to children and their families and offers training and capacity-building programmes for legal representatives, policy and decision-makers and welfare professionals.

Currently the detention of migrants in South Africa violates international and domestic legal standards. International law prohibits the use of illegal or arbitrary detention. Children are required to be afforded particular protection and must only be detained for short periods of time, in exceptional circumstances and as a last resort. Additionally, the South African Immigration Act 2002 and the Refugees Act 1998 provide for due process to migrants, particularly those seeking asylum. These requirements have been poorly implemented and this has left many migrants exposed to arbitrary detention and other human rights abuses.

Women and children are particularly vulnerable to these forms of human rights abuse. They are subject to double marginalisation due to their age and gender, along with their lack of legal status. Without quality, free legal advice, assistance and representation, migrants are unable to challenge the legality of their detention or to prevent their deportation back to a country in which they may face the risk of persecution and other forms of harm. We are aware that there is a need for legal and social interventions to assist migrants; in particular women and children. More should be done to ensure that women and children are not at risk of being detained in the first place, nor left in



A woman from the Democratic Republic of Congo queues outside Customs House in Cape Town so that she can renew her asylum documents.

dangerous situations without shelter, protection and care.

In cases of separated children, although the duty of the courts is to ensure that the best interests of the child are met, the LRC believes that, in practice, they are wrongly considered not to be entitled to claim asylum and to be recognised as refugees. Although separated children who are referred to the Magistrates' Courts are usually adequately cared for and protected as required by the Children's Act 2005, at least until they reach the age of 18, no formal mechanism is in place to ensure that their asylum claims are formally made, considered and acted upon. Deferring asylum status determination until the age of 18 renders their access to asylum claim procedures ineffective. Children are made vulnerable to detention and deportation, or even becoming effectively stateless when they turn 18, with no documentation or legal status and no access to the rights and privileges enjoyed by legal residents of South Africa.

The LRC have begun a process of offering legal services and support to vulnerable migrants in Musina, at Lindela Repatriation Centre and in police stations in Gauteng. With the assistance of our partner, Coram Children's Legal Centre, the LRC will be undertaking monitoring work and providing capacity building and training programmes for lawyers, officials and civil society stakeholders for the benefit of migrants throughout South Africa over the next two years. ■

Consent in Customary Marriages: The Case of Two Wives

In May 2013, the Constitutional Court held that where a man who is already married in terms of custom wants to take another customary wife, he must obtain the consent of his first wife before doing so. This was decided in the *Mayelane*¹ matter, in which the LRC represented the Rural Women's Movement and the Commission for Gender Equality, who were admitted as second and third *amici curiae*.

In 1984, Mr Moyana married Ms Mayelane in terms of Tsonga custom. In 2008, without his wife's knowledge or consent, he entered into a second marriage with Ms Ngwenyama. Mr Moyana died the following month. Before the Constitutional Court, the first wife argued that the marriage of her late husband to Ms. Ngwenyama was invalid as she had not given consent to the marriage, while the second wife argued that there was no requirement of consent in order to conclude subsequent marriages in Tsonga custom. Therefore, the Court had to determine whether such consent was indeed required in terms of custom; but also in terms of the Constitution of South Africa.

Polygamy is recognised in South Africa through living customary law and through the enactment of the Recognition of Customary Marriages Act, 120 of 1998. The right to custom and to live in terms of one's custom is recognised in the Constitution. Like all other rights in the Bill of Rights, this is subject to limitation. On behalf of our clients, the LRC argued that custom is capable of change and of adopting the principles of equality and dignity, as enshrined in our Constitution. We further argued that the role of patriarchy within custom cannot be ignored due to its effects on already vulnerable women. This, together with the equality of spouses as enshrined in both the Constitution and the Recognition of Customary Marriages Act, supported a finding, in our view, that consent must be made a normative requirement in concluding subsequent customary marriages.

In reaching its decision, the Court found that the Recognition of Customary Marriages Act did not prescribe the first wife to give consent to her husband if he wishes to conclude a subsequent customary marriage. Section 3(1)(b) of the Act merely requires the proposed marriage to be negotiated and concluded in terms of the custom of the parties involved. Consequently, the question

The Constitutional Court's ground-breaking judgment in *Mayelane* has not only changed the discourse of power struggles within customary marriages but has also given insight into the courts' willingness to decide on issues of equality of spouses under customary law.

became whether Tsonga custom requires consent. To establish this, further evidence was called for and the LRC, on behalf of its clients, filed affidavits from an expert and from a woman married under Tsonga custom, who outlined the requirement of consent.

The Court stated that the custom in Tsonga "displays a generous spirit that is rooted in accommodating the concerns of the first wife and her family when the husband seeks to enter into another marriage. But it remains his choice to marry again. She does not have that choice. It requires little imagination or analysis to recognise that polygynous marriages differentiate between men and women. Men may marry more than one wife; women may not marry more than one husband." The Court further held that there is an obligation to develop the custom in order for it to comply with constitutional requirements.

Hence, should a husband proceed to conclude a subsequent marriage without his wife's consent, the subsequent marriage is null and void. This, however, only applies to Tsonga customary marriages concluded after 30 May 2013. Any Tsonga customary marriages concluded before this date are not affected by the judgment. ■

1 *Mayelane v Ngwenyama and Another* (CCT 57/12)

REFUGEES AND ASYLUM SEEKERS

Justice for Refugees

The LRC has played an extensive role in monitoring the violation of the rights of refugees and foreign nationals in South Africa for many years. In addition, the LRC has worked extensively with civil society partners to monitor the plight of refugees, identify trends in various abuses and provide legal advice and support.

In 2011, the Central Methodist Mission (CMM) convened a meeting with several human rights legal organisations to explore the opportunities to initiate a 'Site of Memory' process. A Site of Memory process seeks to use methods of restorative justice to find ways to address the injustices and harm caused to refugees and migrants living in South Africa. Restorative justice methods are non-punitive, in that they do not seek to punish the offender. Rather, the process of resolution and justice is undertaken through the use of therapeutic methods such as victim/offender mediation, conferencing, circles, victim assistance, ex-offender assistance, restitution and community service.

CMM's intent was to enable members of different refugee communities to initiate a restorative justice process. The LRC agreed to provide advice during the process. The initiative anticipated:

- Organisations with expertise in therapeutic interventions supporting healing circles affected by violence;

- Legal organisations supporting individuals to prepare affidavits to pursue legal redress, or to advise on avenues for further legal intervention; and
- Other institutions being involved in advocacy and education campaigns to raise awareness of the abuse and to give advice on ways to decrease their recurrence.

One of the key principles of restorative justice is that those who are directly affected by crime and other violations should have the opportunity to participate fully in the response. Through a community-based healing process, and through the telling and sharing of the stories, people can obtain personal assistance, but also collectively consider ways to proactively address issues which continue to have an impact on their lives and their community. It also opens up opportunities for people who have been unable to access legal services to redress on-going violations.

Activities are currently being implemented in four communities that have been affected by xenophobic violence and other forms of harassment and abuse. These communities are:

- The Cradock community in the Eastern Cape, which experiences severe poverty and distress due to the lack of service delivery;
- Refugees staying at the Central Methodist Mission;

Refugees and asylum seekers wait in line at the Refugee Reception Office in Cape Town.





Mandy Mudarikwa



William Kerfoot



Naseema Fakir

The LRC's key lawyers
who work with refugees
and asylum seekers

- Survivors of the Gukuharundi massacres who are residing in South Africa (although the potential of engaging people in Zimbabwe is being explored); and
- Unaccompanied minors who have sought refuge at the Tsietshi Mashinini Community Centre in Jabavu.

A Site of Memory process enables civil society to take the initiative when government is unable or unwilling to do so. Some of the responsibilities for individuals and groups participating in a Site of Memory can include documenting and publicising human rights abuses, offering services, lobbying, advocacy and establishing self-help forums.

Initially, the process commenced in response to the large number of violations being reported by Zimbabweans living in South Africa. The issues being reported fell into several categories; abuse, victimisation and harassment due to increasingly xenophobic attitudes by government officials; torture, abuse and violation experienced by Zimbabweans in their own country; the experience of people affected by the Gukuharundi Genocide in the 1980s when thousands of people in Matabeleland were murdered by the Zanu PF regime; and the extreme distress experienced by people who suffer on-going poverty and marginalisation in South Africa.

The process commences with members of the affected communities attending "healing circles". The group sets the rules for the engagement but allows individuals to share experiences of violation, trauma and past abuse. The process is facilitated by professionals with extensive experience in counselling. Issues of confidentiality must be negotiated before the process begins.

As the process develops, communities are encouraged to begin identifying activities they can undertake to address some of their key concerns. In Cradock, for example, the process began not with healing circles, but by engaging a number of people from different organisations in defining the challenges of the community, and identifying activities they could collectively pursue to bring about change.

One of the key principles of restorative justice is that those who are directly affected by crime and other violations should have the opportunity to participate fully in the response. Through a community-based healing process and through the telling and sharing of the stories, people can obtain personal assistance, but also collectively consider ways to proactively address issues which continue to have an impact on their lives and their community.

Future activities which are currently being considered include the establishment of Advice Centres. Advice Centres seek to inform and shape the way in which advice services are delivered. They also can allow for the complex and interrelated issues which cause and perpetuate poverty to be heard, and for appropriate responses to be developed in collaboration with those most affected. ■

SOCIAL SECURITY AND ACCESS TO JUSTICE

Class Actions: The Consumer Application

In November 2012, the Supreme Court of Appeal (SCA) handed down a landmark decision concerning class actions in *Children's Resource Centre Trust v Pioneer Food*¹ (referred to as “the Consumer Application” to distinguish it from the litigation instituted by various bread distributors). Although the Constitution explicitly authorises litigation on behalf of a class for an infringement of a right in the Bill of Rights, the requirements and procedures for instituting such actions were previously unclear. There was also no clarity on how a class action should be instituted when the claim was based on a right that was not contained in the Bill of Rights; for example, when damages result due to price fixing. Indeed, the court last addressed the issue in *Ngxuzo*,² a case instituted by the LRC shortly after the adoption of the Constitution.

In light of the legal implications of the decision of the high court in the Consumer Application, the LRC intervened as *amicus curiae* in the SCA. Given that the LRC is regularly called on to litigate on behalf of large groups of people and in the public's interest, the LRC and its clients have a material interest in how class action law is determined in South Africa. The LRC called upon the SCA to extend class action standing (the right to sue on behalf of a large group) to rights outside of the Bill of Rights and to specify appropriate procedures for class actions that give effect to the constitutional right of access to courts. The LRC presented the SCA with information on class action procedures from around the world. The LRC was greatly assisted by research undertaken by the Oxford University's *Pro Bono Publico*³ and whose report formed part of the LRC's submissions.

The SCA determined that class actions are an appropriate way in which to litigate certain kinds of claims, even

when based on non-constitutional rights of action. In the Consumer Application, the claim was for damages suffered as a result of not paying a competitive price for bread. The judgment set out a range of requirements that must be met before a court could decide whether it was in the interests

of justice to allow the applicant to proceed with a class action. The purpose of proceeding with a class action is to enable a few claimants to represent all other claimants in a similar position. Of particular importance to a class action is that the class must be defined with sufficient precision so that, at all stages of the proceedings, the court is able to determine whether a particular person is a member of the class. However, there are numerous requirements that an applicant in a class action is required to establish prior to the court authorising class action proceedings, which were set out by the SCA in its judgment.

The procedure set out by the SCA judgment is welcome; however, it did not assist the applicants in the bread distributors' class action. This case involved a class of bread distributors who distributed bread to informal/spaza shops in the Western Cape and who alleged that they suffered damages as a result of the price fixing. The bread distributors' class action judgment was then appealed to the Constitutional Court. The LRC is once again seeking to intervene as *amicus curiae*, arguing that the SCA's decision narrowed the scope of opt-in class actions by limiting their availability only to “exceptional circumstances”, which is without a constitutional basis. ■



1 50/2012) [2012] SCA 182 (29 November 2012)

2 *Permanent Secretary, Department of Welfare, Eastern Cape and another v Ngxuzo and others* 2001 (4) SA 1184 (SCA)

3 <http://www.law.ox.ac.uk/opbp>

The LRC at the Marikana Commission

Since 1 October 2012, the Marikana Commission of Inquiry, chaired by retired judge of the Supreme Court of Appeal, Ian Farlam, has been conducting public hearings into the tragic incidents which took place during August 2012 near Lonmin Plc's Marikana mine in the North West province of South Africa. On 16 August, national and international news channels broadcast shocking footage of members of the South African Police Service (SAPS) opening fire on protesting mineworkers outside of the Nkaneng informal settlement in Marikana. After the dust had settled, 30 mineworkers had died at two separate "scenes", with another four mineworkers dying in hospital, 84 protesters had been injured and 271 of the protesters had been arrested. During the preceding week, ten people had died, which included two members of the SAPS. In total, 44 people died as a result of the violence.

The tragedy arose as a result of protest action over a wage dispute between rock drill operators and Lonmin management. The operators called for a "living wage" and were represented by two trade unions and an independent workers committee. The tensions between the opposing unions, coupled with the unwillingness of Lonmin management to negotiate with the protesters, led to even more tension in the area which eventually led to the tragedy.

The Commission has been split into two phases, the first dealing with the conduct of the SAPS and the second dealing with the issue of the socio-economic obligations of the mines towards their employees. The LRC has been instructed by the family and brother, respectively, of two victims of the tragedy in phase 1 of the proceedings and an NGO called the Benchmarks Foundation in phase 2. Apart from representing these clients at the Marikana Commission, we gave notice that the one client family intended to launch legal proceedings against the Minister of Police for damages resulting from the death of their family member.

Our mandate is to assist the Commission in its investigation. During the week subsequent to the tragedy, the LRC procured the services of two forensic

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Advocate George Bizos is acting as counsel for the LRC at the Marikana Commission.



Moving Targets in Human Rights Litigation

Much of the Legal Resources Centre's work involves litigating in complex factual circumstances where the terrain is constantly shifting underfoot. So, for example, when the LRC litigates on behalf of poor schools in the Eastern Cape to have teachers appointed to vacant posts, by the time the case is finally heard some of the schools for which we act may have had some teachers appointed to vacant posts. Similarly, when the LRC litigated on behalf of residents of Carolina to secure safe drinking water after the town's supply was polluted by acid mine drainage, the levels of acidity and heavy metals in the water supply fluctuated substantially during the litigation, making the water safer some times, and not others. A third example is when we litigate to secure the release of unlawfully detained refugees, only to have them released when we are at the doors of court. Sometimes this means the loss of an opportunity to set valuable legal precedents, even if there is an immediate successful outcome for the clients.

One of the challenges for LRC lawyers is, therefore, crafting cases and framing relief in a way that is sufficiently concrete to make a difference to our clients, but sufficiently flexible to cater for changing circumstances.

Part of this dilemma is about technical legal choices: how to draft a notice of motion, whether to amend the relief mid-stream before the matter is heard, how to approach settlement discussions and how to enforce an order when facts change after it is granted. There is no single textbook answer to these questions, which challenge the ingenuity of LRC lawyers differently in each new case.

This dilemma also raises an issue of principle; that is, how the LRC and its clients react to change, especially where the problems that forced us to court see improvement during the course of litigation. One approach is to proclaim victory and to show that the action by government or private respondents to address our clients' concerns demonstrates an acceptance of the strength of our cause. Another approach would be to accept any partial improvement and withdraw our litigation. Again, there is no one right answer.

However, in *Mazibuko*¹, the leading socio-economic rights decision of the Constitutional Court, Justice O'Regan explained that improvements in government policy which come about because of litigation are to be welcomed:

This case illustrates how litigation concerning social and economic rights can exact a detailed accounting from government and, in doing so, impact beneficially on the policy-making process. The applicants, in argument, rued the fact that the City had continually amended its policies during the course of the litigation. In fact, that consequence of the litigation (if such it was) was beneficial. Having to explain why the Free Basic Water policy was reasonable shone a bright, cold light on the policy that undoubtedly revealed flaws. The continual revision of the policy in the ensuing years has improved the policy in a manner entirely consistent with an obligation of progressive realisation. (at para 163)

In *Mazibuko*, the applicants (represented by the Centre for Applied Legal Studies) and the *amicus curiae* (represented by the LRC) sought to challenge the City of Johannesburg's policy on free basic water as failing to provide sufficient water to indigent residents and to challenge the introduction of pre-paid water meters. Relying in part on the changes to the City's policy during the course of the litigation, the Constitutional Court decided the case in favour of the City. Responding to the hypothetical retort that Justice O'Regan expected from public interest organisations such as the LRC, that the court was allowing the State to shift the goal posts in order to avoid an adverse finding, the Court offered the following reassurance:

It is true that litigation of this sort is expensive and requires great expertise. South Africa is fortunate to have a range of non-governmental organisations working in the legal arena seeking improvement in the lives of poor South Africans. Long may that be so. These organisations have developed an expertise in litigating in the interests of the poor to the great benefit of our society. (at para 165)

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The Link between Nutrition and Antiretroviral Medication: Accessing Social Relief of Distress Grants



While working with members of a village¹ outside of Estcourt in the uThukela District of Kwa-Zulu Natal, the Rural Women's Movement became aware of the community's difficulty acquiring adequate nutrition and referred them to the LRC. Community members reported that many women had stopped taking their antiretroviral medication because they could not afford to buy food to take with their medication. It was reported that some of the community members had died as a result of malnutrition or starvation, coupled with HIV/AIDS. This occurred despite their pleas to nurses at the local health clinics, their ward councillor and social workers for assistance.

The community is comprised mostly of woman-headed households, with grandmothers and mothers looking after extended families. A large number of the women could access child support grants for the children they cared for but, ironically, could not access social assistance for their own nutritional needs. This was seemingly because they would not qualify for a disability grant - the only grant available to adult women between the ages of 18 and 60 (thereafter they would qualify for old age grants).

Without food, an HIV-positive person is unlikely to take her medication due to the side-effects of taking antiretroviral treatment on an empty stomach. Furthermore, her immune system requires nutritious food to fight the virus and stave off opportunistic infections. Some of our clients had received disability grants at an earlier stage, but when their CD4 counts improved because of being on antiretroviral treatment, they no longer qualified for the grant. It meant that, in many instances, although the women knew that the ARV treatment and adequate nutrition would delay the disease and bolster their immunity, they had no choice but to forgo the treatment.

The rights of access to health and sufficient food are enshrined in Section 27 of the Constitution. These two rights are also interdependent. Ultimately, the LRC sought to establish that the right of access to health care is meaningless without the right to sufficient food. After an initial meeting with community members, we were able to identify 30 women and one man who would qualify for social relief of distress grants, based

on their circumstances. We were assisted by the Rural Women's Movement, the Centre for Criminal Justice at the University of Kwa-Zulu Natal (UKZN), as well as a law student from Students for Law and Social Justice (UKZN). We advised the clients to approach the local office of the South African Social Security Agency (SASSA) to apply for social relief of distress grants. A social relief of distress grant gives the beneficiary the means (whether through food stamps or through money) to buy food for a period of 3 months and the grant can be renewed once upon application. This would be crucial for our clients' immediate survival.

Unfortunately, except for one successful applicant, all of our clients were denied social relief of distress grants. We sought to challenge these decisions and launched appeals internally in SASSA. After meeting with a representative from the Department of Social Development, a task team was set up and a 'war room' was subsequently established in the area under the 'Operation Sukuma Sakhe' project – a government-led project aimed at engaging with communities. This room would include short- and long-term empowering measures for the community. In the meantime, the LRC continued to wait for a response from the internal appeals. It was only in December 2012 that the internal appeals were heard. Fortunately, the appeals were all successful. Ten clients were able to access social relief of distress grants in the interim whilst the Department of Social Development works on developing long-term interventions.

Many men and women still fall through the cracks of the social security net in South Africa. It is unacceptable that women, who have the highest burden of care for extended families, are able to access basic social security services for the children they care for, but not for themselves. It is important that government departments cooperate to meet the stark need for food security and, further, that there is recognition that access to health is intrinsically linked with accessing sufficient food. ■

1 Note: Due to the sensitive nature of their HIV and poverty status, our clients have requested that we do not divulge the name of their village or their identities.



The LRC's Shirhami Shirinda listens to additional information from our client as he goes through court papers.

pathologists to oversee and report on the post-mortem procedures. Flowing from the post-mortem reports, the LRC has also filed a medico-legal report in relation the injured protesters; a forensic ballistic report and seven witness statements. We are also in the process of filing supplementary statements and a further expert statement by a consultant from the Institute for Security Studies. We have further engaged the services of a public order police expert based in Belgium who has 15 years of public order police experience in South Africa, to advise on whether the police followed protocol on the day of the tragedy.

The enquiry has taken longer than expected and has

now been extended to the end of October 2013, with the final report due by the end of December 2013. It is likely that the Commission will finish its work by the end of October due to the recent application brought by the injured and accused miners for funding at the State's expense. As the Commission slowly progresses, numerous parties have faced severe financial difficulties. However, as an organisation already steeped in the case, we need to continue to assist the Marikana Commission to establish the truth of what happened that day, so that recommendations can be made to effect change, both for our clients and for all South Africans, pursuant to the mandate of our clients. ■

→ Moving Targets in Human Rights Litigation, continued from page 24

Justice O'Regan added that the approach to costs in constitutional matters means that litigation launched to further constitutional rights, even if unsuccessful, will not result in an adverse costs order. She offered the reassurance that, although the challenges posed by social and economic rights litigation are significant, given the benefits it can offer, it should be pursued. Therefore, the LRC must continue to litigate its cases creatively and flexibly, adapting to changing circumstances. Where our litigation results in improved government policies and shapes the practices of private role-players for the better, we must welcome these developments. In some

cases, this may mean that the ultimate court judgment is not a 'success', as in *Mazibuko*, or that we obtain an order that is hollow or academic because the problem has gone away in the meantime. However, the LRC has always had as its primary aim not mere court victories for their own sake, but a desire to contribute to meaningful change in the lives of poor and disadvantaged people and communities. ■

¹ *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC).

Update: Three Cases of Hate Speech

The LRC has recently been involved in three cases concerning hate speech. Two of these cases have now been decided and the final case is pending in the High Court.

The LRC was involved as *amicus curiae* in the Malema dispute with AfriForum regarding the singing of *Ayesaba Amagwala*, a struggle song containing the (translated) lyrics, "Shoot the Boer". Our involvement in the matter aimed to obtain clarity on the interpretation of what constitutes hate speech in South Africa.

In 2011, the Equality Court had ruled that the singing of the song constituted hate speech and this decision was in the process of being appealed when a settlement was reached. In terms of the agreement, it was acknowledged that the ANC and Malema recognised that certain words in struggle songs could be experienced as hurtful by members of minority communities, and that ANC leadership would act with restraint to avoid such experiences. Both parties recognised that cultural heritage and freedom should be respected. Unfortunately, this settlement left the issue of the contours of hate speech unresolved.

In the Geleba matter, a white magistrate was accused of a racial slur against a black colleague whom the magistrate called a 'bobbejaan' ('baboon'). The LRC was involved in the appeal after a lower court found the comment to constitute hate speech. Shortly after commencement of oral argument, however, the appellant withdrew the matter. Again, the opportunity for vigorous debate of the issue was missed.

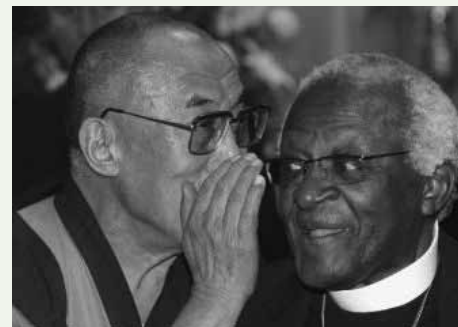
Finally, LRC advocates are involved in the Qwelane matter, where the Equality Court initially ordered, in Qwelane's absence, that Qwelane (the South African Ambassador to Uganda) make an unconditional apology to the gay and lesbian community for his comments about homosexuality in an article published in 2008. The complaint is that the article compared homosexuality to bestiality. The Court subsequently allowed Qwelane an opportunity to oppose the hate speech claim. The matter has been referred to the High Court and is pending determination. We are hopeful that this will provide a platform for debate on hate speech jurisprudence in South Africa. ■

Update: The Dalai Lama

The LRC acted as *amicus curiae* in a matter dealing with the reasonableness of decision-making by government in South Africa. The spiritual leader of Tibet, the Dalai Lama, was twice prevented from entering South Africa. This happened most recently because of a delay by the Department of Home Affairs in making a decision about his visa application. In 2011, the Dalai Lama was invited to South Africa by Archbishop Emeritus Desmond Tutu to celebrate the Archbishop's 80th birthday. However, this visit became impossible after no decision on the issue was taken by the Department of Home Affairs.

The Supreme Court of Appeal ruled that the former Minister of Home Affairs, Nkosazana Dlamini-Zuma, had unreasonably delayed her decision whether to grant or withhold the visas and acted unlawfully in doing so.

The Dalai Lama and
Archbishop Emeritus
Desmond Tutu
Picture from Global Post



This was a welcome decision because the underlying judgment had resulted in a dismissal of the application on the basis that no live issue was present to be decided by the Court. If the application had been dismissed, the reasonableness of the government's conduct in delaying its decision would not have been publically and properly examined. Instead, the SCA stated that the lawfulness of the authority's conduct remained a live issue and, in coming to its conclusion, reaffirmed the constitutional principles of entitlement to a fair decision-making process. Judgment was handed down on 29 November 2012. ■

REGIONAL WORK

Resources and Communities: The Promotion of FPIC

During 2012, the LRC's work with the African Commission was further defined through its focus on the protection of the rights of rural communities to their resources; whether land, minerals, forestry or fishing. A Harvard Development and Law Project, which the LRC supervised, supported this work from a conceptual standpoint. The students developed a position paper, in terms of the African Charter, on the rights of African communities to choose their own development paths. The paper investigated the tension between the state's duty to dispose of its resources in the public interest and the local communities' rights to develop in line with policies they have freely chosen. Hence, the paper's focus was on the right to self-determination.

Our work has increasingly advocated for the principle of "free, prior and informed consent" (FPIC) as a community right to ensure self-determination. However, while this principle is generally sourced from international law and thus available to indigenous peoples only, we have argued that consent is a principle inherent to customary law. The increasing recognition of customary law as an equal source of law across Africa thus provides a far broader basis for this all-important principle. This does not mean, of course, that customary law systems may continue to perpetuate the relationships of inequality that traditionally characterise them.

In partnership with the Centre for Civil Society Research and other community and research organisations, the LRC has embarked on the development of a FPIC toolkit for communities, which attempts to address these complexities. This toolkit will be officially endorsed by the African Commission's Working Group on Extractive Industries.

Through litigation, we are assisting a community in the North-Western province of Zambia to assert this principle against a Canadian mining company which is attempting

to acquire half a million hectares of the community's land (see the enclosed box for an overview of this matter). Similarly, with LRC's support a land claim on behalf of the Hai//om people on the Etosha National Park in Namibia is about to be launched by the Legal Assistance Centre in the Namibian High Court.

Meanwhile, our cooperation with Centro Terra Viva¹ enabled communities in Mozambique to insist on their right to consultation by the South African Department of Water Affairs. The Department was considering the classification of water quality of the Olifants River. A low classification would enable mining companies to pollute the water with some impunity. While this is aimed to help facilitate a balance between protection and use of the nation's water resources, it could have a potentially severe impact on communities in Limpopo and those in Mozambique who live along its banks. Following the submissions, the Department has put its process on hold. ■

1 An Environmental Research and Advocacy NGO based in Mozambique

The Matter of Kalumbila Minerals Limited

In May 2013, the Zambia Environmental Management Agency (ZEMA) issued an Environmental Protection Order to First Quantum Minerals, who are the proponents of Kalumbila Minerals Limited, in order to stop the illegal action of Kalumbila constructing the Chisola Dam.

Kalumbila had commenced construction of the Chisola Dam without the necessary approvals from ZEMA, as required by law. Kalumbila obtained 50,000ha of land for their project from the chief in the Solwezi District and submitted an Environmental Impact Assessment report for the mine, which was approved in 2011. Kalumbila then applied to ZEMA

for approvals for additional components to their project, which included the Chisola Dam. However, concerns were raised regarding the authorisation of the land, and the compensation and resettlement of the people that would be affected by the projects. For this reason, ZEMA suspended the decision-making process over the proposed dam and associated projects so that the concerns could be properly addressed.

The President set up an inter-ministerial task force to investigate the allegations. The task force carried out preliminary investigations and found that Kalumbila Minerals Limited had in fact obtained the 50,000ha surface rights in an irregular manner as no presidential consent had been given, as required by law. They directed that no further approvals were to be issued on Kalumbila projects until the surface rights issues were resolved. Consequently, ZEMA has been unable to make approvals on any of Kalumbila's additional projects, including Chisola Dam.

The LRC has engaged at the African Commission on Human and Peoples' Rights around a number of issues, particularly the extractive industries, and in support of the Working Group on Extractive Industries (WGEI). Wilmien Wicomb and Henk Smith are key members of our team who have been exploring the application of the principle of "free, prior and informed consent" in casework within South Africa and the region.



Wilmien Wicomb



Henk Smith

FINANCIAL STATEMENTS

LEGAL RESOURCES CENTRE

EXECUTIVE COMMITTEE'S RESPONSIBILITIES AND APPROVAL

ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2013

The organisation is required by their Constitution, to maintain adequate accounting records and are responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is their responsibility to ensure that the annual financial statements fairly present the state of affairs of the organisation as at the end of the financial year and the results of its operations and cash flows for the year then ended, in conformity with its accounting policies. The external auditors are engaged to express an independent opinion on the annual financial statements.

The annual financial statements are prepared in accordance with our accounting policies and are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The executive committee acknowledge that they are ultimately responsible for the system of internal financial controls established by the organisation and place considerable importance on maintaining a strong control environment. To enable the committee to meet these responsibilities, the executive committee sets out standards for internal control aimed at reducing the risk of error or loss in a cost-effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the organisation and employees are required to maintain the highest ethical standards in ensuring the organisation's business is conducted in a manner that is above reproach.

The focus of risk management in the organisation is on identifying, assessing, managing and monitoring all known forms of risk across the organisation. While operating risk cannot be fully eliminated, the organisation endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The executive committee are of the opinion, based on the information and explanations given by management, that the system of internal controls provides reasonable assurance that the financial records may be relied on for the presentation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or loss.

The executive committee have reviewed the organisation's cash flow forecast for the year to 31st March 2014 and, in the light of this review and the current financial position, they are satisfied that the organisation has or has access to adequate resources to continue in operational existence for the foreseeable future.

Although the executive committee is primarily responsible for the financial affairs of the organisation, it is supported by the organisation's external auditors.

The external auditors are responsible for independently reviewing and reporting on the organisation's annual financial statements. The annual financial statements have been examined by the organisation's external auditors and their report is presented on pages 2 and 3.

The annual financial statements set out on pages 4 to 15, were approved by the executive committee on the 10th November 2013 and were signed on its behalf by:



Date: 2013-11-13



Date: 2013-11-13

INDEPENDENT AUDITOR'S REPORT

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 2013, 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 set out on pages 3 to 15.

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.

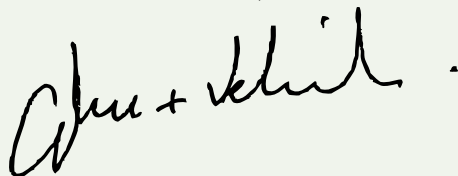
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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 2013, 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 receive sufficient funds by way of grants made by 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, 10 November 2013

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES CENTRE

STATEMENT OF FINANCIAL POSITION AT 31 MARCH 2013

	2013 R	2012 R	2011 R
ASSETS			
Non current assets	918,753	730,860	607,704
Equipment	918,753	730,860	607,704
Current assets	1,925,138	4,930,391	1,644,241
Trade and other receivables	975,757	1,010,401	760,002
Accrued income - cost recovery	-	-	38,279
Cash and cash equivalents	535,399	3,189,490	126,859
Client trust bank accounts	413,982	730,500	719,101
Total assets	2,843,891	5,661,251	2,251,945
RESERVES AND LIABILITIES			
Reserves	(2,146,199)	1,306,134	(1,874,986)
Accumulated funds	(2,146,199)	1,306,134	(1,874,986)
Current liabilities	4,990,090	4,355,117	4,126,931
Trade and other payables	3,515,457	2,781,646	2,386,752
Cash and cash equivalents	-	-	18,212
Provisions for leave pay	1,060,651	842,971	852,866
Sabbatical provision	-	-	150,000
Client trust funds	413,982	730,500	719,101
Total reserves and liabilities	2,843,891	5,661,251	2,251,945

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES CENTRE

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 31 MARCH 2013

	PROVISIONAL 2013 R	ACTUAL 2012 R	ACTUAL 2011 R
INCOME	35,326,312	38,087,871	29,712,555
Cost recovery	2,649,306	2,787,323	7,181,768
Distribution from Legal Resources Trust	31,464,631	34,724,648	22,370,543
Sundry income	1,134,684	532,145	153,725
Interest received	77,691	43,755	6,519
OPERATING EXPENDITURE	38,778,645	34,906,751	30,508,053
Salaries and contributions	8,720,616	8,172,452	7,247,766
Office expenses	7,007,185	6,228,928	5,735,141
Administrative costs	1,543,812	1,123,696	910,749
Books and periodicals	272,687	368,368	307,256
Computer expenses	485,110	445,704	355,947
Depreciation	243,579	339,188	355,902
Lease rentals on operating lease	3,177,296	2,750,146	2,694,961
Printing and stationery	236,355	204,965	229,380
Telephone and fax	537,338	584,383	522,416
Travel - local	511,008	412,478	358,530
Project expenses	23,050,844	20,505,371	17,525,146
SURPLUS/(DEFICIT) FOR THE YEAR	(3,452,333)	3,181,120	(795,498)

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES CENTRE

NOTES TO THE ABRIDGED ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2013

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 EQUIPMENT

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. Interest and fundraising income are accounted for on the accrual basis while donations, cost recovery and other income are accounted for as and when received.

2. RELATED PARTIES

Related party relationships

Legal Resources Trust

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

2013
R

2012
R

2011
R

31464631

34724648

22370543

FINANCIAL STATEMENTS

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263)

TRUSTEES' RESPONSIBILITIES AND APPROVAL

ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2013

The trustees are required by the Trust Property Control Act, 1988, and the trust deed, to maintain adequate accounting records and are responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is their responsibility to ensure that the annual financial statements fairly present the state of affairs of the trust as at the end of the financial year and the results of its operations and cash flows for the year then ended, in conformity with its own accounting policies. The external auditors are engaged to express an independent opinion on the annual financial statements.

The annual financial statements are prepared in accordance with its own accounting policies and are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The trustees acknowledge that they are ultimately responsible for the system of internal financial controls established by the trust and place considerable importance on maintaining a strong control environment. To enable the trustees to meet these responsibilities, the board of trustees sets out standards for internal control aimed at reducing the risk of error or loss in a cost-effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the trust and employees are required to maintain the highest ethical standards in ensuring the trust's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the trust is on identifying, assessing, managing and monitoring all known forms of risk across the trust. While operating risk cannot be fully eliminated, the trust endeavours to minimize it by ensuring that appropriate infrastructure, controls, system and ethical behaviour are applied and managed within predetermined procedures and constraint

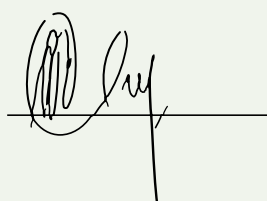
The trustees are of the opinion, based on the information and explanations given by management, that the system of internal controls provides reasonable assurance that the financial records may be relied on for the presentation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or loss.

The trustees have reviewed the trust's cash flow forecast for the year to 31st March 2014 and, in the light of this review and the current financial position, they are satisfied that the trust has or has access to adequate resources to continue in operational existence for the foreseeable future.

Although the board of trustees is primarily responsible for the financial affairs of the trust, it is supported by the trust's external auditors.

The external auditors are responsible for independently reviewing and reporting on the trust's annual financial statements. The annual financial statements have been examined by the trust's external auditors and their report is presented on pages 2 and 3.

The financial statements set out on pages 4 to 19, were approved by the board of trustees on the 10th November 2013 and were signed on its behalf by:



Date: 29 November 2013

FINANCIAL STATEMENTS

INDEPENDENT AUDITOR'S REPORT

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 2013, 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 set out on pages 4 to 16.

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 role 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 2013, 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, 10 November 2013

FINANCIAL STATEMENTS

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263)

TRUSTEES' REPORT FOR THE YEAR ENDED 31 MARCH 2013

The trustees have pleasure in presenting their report on the activities of the Trust for the year ended 31 March 2013.

NATURE OF ACTIVITIES

The Legal Resources Trust has an oversight and fiduciary role with reference to the Legal Resources Centre, 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. (2012: Rnil)

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 (Chairman)

Ms Janet Love (National Director: Ex-officio trustee)

Judge Lee Bozalek

Professor Harvey Dale

Mr Ezra Davids

Judge Thabani Brian Jali

Professor Michael Katz

Judge Jody Kollapen

Ms Joy -Marie Lawrence

Judge Dunstan Mlambo

Ms Lumka Mlambo

Judge Lex Mpati

Judge Mahomed Navsa

Ms Marjorie Ngwenya

Mr Taswell Papier

Mr Richard Rosenthal

Ms Tshepo Monica Shabangu

AUDITORS

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

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263)

STATEMENT OF FINANCIAL POSITION AT 31 MARCH 2013

	2013 R	2012 R	2011 R
ASSETS	32,515,086	24,441,490	27,868,715
Non - Current assets	32,224,960	23,936,403	24,772,373
Tangible assets	1,175,246	1,028,525	1,088,420
Investments	31,049,714	22,907,878	23,683,953
Current assets	290,126	505,087	3,096,342
Cash and cash equivalents	290,126	505,087	3,096,342
TOTAL ASSETS	32,515,086	24,441,490	27,868,715
RESERVES AND LIABILITIES	32,515,086	24,441,490	27,868,715
Equity and reserves	21,096,690	18,683,216	21,625,484
Initial trust capital	250	250	250
Revaluation reserve	1,175,246	1,110,979	1,068,878
Scholarship reserve	589,717	589,717	589,717
General reserve	19,331,477	16,982,270	19,966,639
Current liabilities	11,418,396	5,758,274	6,243,231
Deferred grant income	11,418,396	5,758,274	6,243,231
TOTAL RESERVES AND LIABILITIES	32,515,086	24,441,490	27,868,715

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263)

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 31 MARCH 2013

	2013 R	2012 R	2011 R
Income	34,054,401	33,046,624	27,478,199
Grants and donations	32,848,845	31,601,510	21,622,786
Dividend revenue	119,252	436,075	234,737
Fair value adjustment on investments	(394,436)	(561,575)	4,147,605
Gain on disposal of investments	960,639	876,734	947,819
Interest received	520,101	693,880	525,252
Expenditure	391,996	1,264,244	508,411
Investment managing fees (Investec)	33,245	208,971	153,956
Audit fees	72,701	79,063	60,158
Bank charges	9,710	6,690	6,309
BEE rating	34,097	29,895	52,440
Depreciation	68,980	59,895	59,895
StratAlign process	-	663,586	-
Printing, postage and stationery	7,616	2,930	2,037
Travelling and accommodation - trustees	165,647	213,214	173,616
Surplus for the year	33,662,405	31,782,380	26,969,788
Distribution to Legal Resources Centre	(31,464,632)	(34,724,648)	(22,370,543)
(Deficit) / surplus for the year	2,197,773	(2,942,268)	4,599,245
Net transfer (to) / from reserves	151,434	(42,101)	(42,101)
Balance at beginning of the year	16,982,270	19,966,639	15,409,495
	19,331,477	16,982,270	19,966,639

ABRIDGED FINANCIAL STATEMENTS

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263)

DETAILED SCHEDULE OF GRANT AND DONATION INCOME FOR THE YEAR ENDED 31 MARCH 2013

	2013 R	2012 R	2011 R
Foreign funders	23,648,568	23,868,663	17,275,789
Anonymous	823,288	465,121	-
CS Mott Foundation	407,680	413,146	256,330
Canon Collins Trust	115,000	-	-
Comic Relief	4,463,019	4,775,531	4,082,215
Embassy of Belgium	402,360	1,900,020	1,312,296
Embassy of Finland	657,384	683,885	320,960
Evangelische Entwicklungsdienst (EED)	2,209,699	2,227,150	2,190,007
Freedom House	373,078	719,663	-
International Labour Organisation (ILO)	-	-	43,000
Julia Taft Fund for Refugees (US)	72,035	-	80,069
Norwegian Centre for Human Rights (NCHR)	-	-	125,000
Stiftel Sen Svenska AM	166,959	-	-
Surplus People's Project - T Amakhaya (EED)	380,921	38,279	-
The Atlantic Philanthropies	3,375,000	4,525,000	900,000
The ELMA Foundation	5,474,849	6,004,393	5,523,000
The Ford Foundation	3,654,491	947,313	1,333,228
The Sigrid Rausing Trust	1,072,805	1,169,162	1,049,668
Tides Foundation	-	-	60,016
Local funders	9,200,277	7,732,847	4,346,997
AULAI- DOJ	306,128	-	-
Bertha Foundation	1,268,175	1,000,000	-
Bowman Gillfillan Inc	-	100,000	-
Cape Law Society	-	190,412	-
C Carolus	50,000	-	-
Claude Leon Foundation	500,000	170,000	-
Cliffe Dekker Hofmeyr Inc	45,000	-	-
EU - Foundation for Human Rights	99,516	158,322	90,469
Former Chief Justice A Chaskalson	1,000	12,000	10,000
Inyathelo Award	-	-	90,000
Johannesburg Bar council	-	30,000	-
Legal Aid South Africa	985,292	1,043,250	1,275,083
Mones Michaels Trust	-	60,000	60,000
National Lottery Distribution Trust Fund	1,703,878	1,425,000	974,896
ND Orleyn	20,000	30,000	30,000
Open Society Foundation for Southern Africa	1,116,650	900,000	829,324
Raith Foundation	2,229,234	1,184,092	740,002
Sidney Kentridge	180,000	-	-
South Deep Education Trust	375,000	1,125,000	-
The Frank Robb Charitable Trust	110,000	100,000	110,000
Other donors	210,404	204,771	137,223
	32,848,845	31,601,510	21,622,786

Individual and In-kind Donors

LEGAL RESOURCES TRUST

Individual Donors

Anonymous Donation	Mr Sisa Makabeni
Adv Morris Basslian SC	Mr Lavery Modise
Judge Binns-Ward	Judge Lex Mpati
Mr Ryan Boyko	Ms Sue Myrdal
Judge Lee Bozalek	Judge MS Navsa
Ms Debbie Budlender	Adv Nelson
Adv Schalk Burger	Ms Nonhlanhla Dawn Ngwenya
Mr Jason Burns	Adv Ron Paschke
Prof Hugh Corder	Adv PC Pauw SC
Cliffe Dekker Hofmeyr Inc	Adv RM Pearse
Frank Robb Charitable Trust	Judge Clive Plasket
Adv Alec J Freund SC	Mr BP Rabinowitz
General Council of the Bar	Mr Koop Reinecke
Mr. Henry Gilfillan	Ms Mimi Samuel
Adv GD Goddard	Dr Felix Schneier
Mr Roger Graham	Judge MS Stegmann
Mr Moray Hathorn	Strat Align
Adv GI Hulley	Kurt and Joey Strauss Foundation
Johannesburg Society of Advocates	Adv Henry P Viljoen SC
Sir Sydney Kentridge QC	Mr Matthew Walton
Judge JC Kriegler	Ms Delysia Weah
Mr Menzi Kunene	
Mr Yves Laurin	
Mr Johan Lorenzen	
Mr EBD Loukombo	
Ms Janet Love	

In-Kind Donations

Microsoft SA
Solution 7

STAFF AND SUPPORTERS

Remember the Past and Question the Present

By Palesa Morudu

LAST Friday, a symbolic burial took place at Freedom Park for Moss Morudu, a member of the Umkhonto we Sizwe (MK) underground in Mamelodi.

In a report drafted last month, the Missing Persons Task Team of the National Prosecuting Authority (NPA) concludes that my brother was abducted, tortured and killed by the Northern Transvaal Security Police in Bophuthatswana in late 1987. The report names 30 young people from Mamelodi who were murdered by the same police unit.

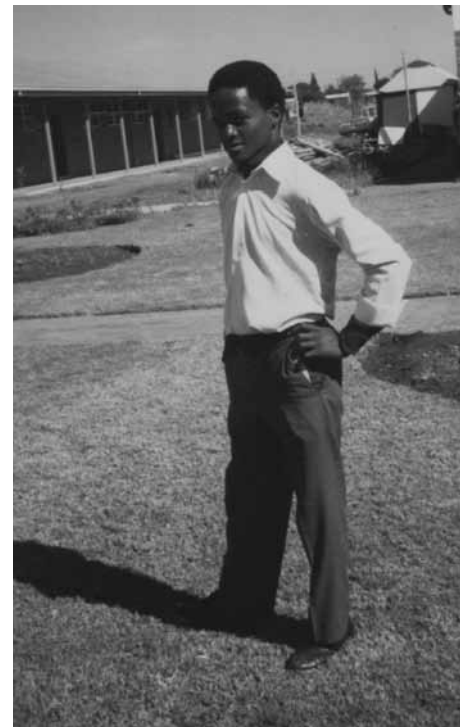
Below is an abridged version of the message I delivered on behalf of my mother at Freedom Park last week:

My mother and my family would like to thank the mothers of the many young people who went missing and who later found out that their children had been killed. She travelled this road with you for two decades. We thank you for your support, friendship, comfort, and for being here to walk the last mile with us. My mother and my family would like to thank the MK unit that Moss was part of. We remember Ting Ting Masango and extend our love to his family. We thank you Jabu Masina, Neo Potsane and Joseph Makhura.

My mother and my family want to thank advocate George Bizos and Miriam Wheeldon from the Legal Resources Centre for the work that they did on Moss's case, and for coming here today. We contacted advocate Bizos after we were dissatisfied with the Truth and Reconciliation Commission process, because we believed an injustice was done.

The Legal Resources Centre investigated and sent a detailed file to the NPA, which could have been used had they ever decided to prosecute.

Moses Morudu,
member of Umkhonto
we Sizwe who
disappeared on 26
October 1987, aged 22



For my mother, this event is about closure. She says that when you become a parent, you have to account for your children.

My mother says that when people ask where is Moyahabo, where is Tommy, where is David, where is Terry, where is Palesa? — she can account for them all. They are doing fine and they help to look after her. But she has not been able to account for Moss.

My mother says this event today will ensure that she can account for all of her children. She says when people ask her what happened to Moss, she will no longer say, “I don’t know”.

She will say Moss was strangled to death by the Northern Transvaal apartheid police.

She will say they tied his body to a pole and blew it up with a large amount of explosives and his bones will never be found.

She will say his symbolic burial took place on October 25 2013 at Freedom Park in Pretoria.

And she will have accounted for her fourth son.

My mother and my family would like to single out the Missing Persons Task Team at the NPA for special thanks. We hope you get to the bottom of each and every case of people who are still missing.

And finally, I want to say that we are proud of Moss and all those who we honour today. Our humble township of Mamelodi produced some real fighters. The ultimate sacrifice made by those young men and women of many years ago helped make possible the freedoms that we enjoy today, and the rights that should never be taken lightly.

Those young men and women lit a candle that can never be extinguished.

It is the knowledge that one day, those who are denied freedom will be free.

That one day, those who struggle to eat will have food. That one day, all shall share in the bounty of this land. That one day, we will speak of injustice as a time in history.

That one day, those who tell lies and enrich themselves at the expense of the majority of South Africans will be called to account.

That one day, we will achieve all the aspirations for which many sons and daughters of our land died.

That one day, our children, or their children, will enjoy a peaceful and nonracial country that truly belongs to all who live in it.

So we must continue to remember history, and also to question the present, so that we can realise a better future. ■

Musings of a Candidate Attorney in the Cape Town Office

Sarah-Jane Frith

Our Constitution is dedicated to substantive equality. If used in the way the drafters of the Constitution intended, I believe whole heartedly that our Constitution can be transformative and give effect to tangible change in the lives of the most vulnerable in our society. To me, this substantive change we strive for is at the heart of social justice, an ideal which is central to my understanding of what the law should be used to achieve.

The Legal Resources Centre is an organisation which understands this notion better than any other I have ever been in contact with. Working at an organisation where “bringing justice to the people” really happens in front of one’s eyes every day is quite remarkable. It is something

I appreciate deeply, but more importantly, it is something which gives me hope and motivates me to continue to work for change in South Africa.

My reasons for committing to using law as a tool for social justice and the eradication of inequality in our beautiful country are reflected in every corner of every case I have worked on during my short time at the LRC. People who are financially disadvantaged are empowered when assisted and advised on what is possible when their

Sarah-Jane Frith



rights are enforced. Working alongside attorneys and paralegals who have been tirelessly fighting for justice and equity on behalf of others over many years has been a massive learning curve in terms of the dedication and commitment required working on issues such as those which the LRC deals with. The dynamic office culture in the Cape Town office has led to robust engagement on all sorts of different issues which have contributed to my growth.

Some highlights have included working on: the Dwesa Cwebe customary law fishing case; the appeal of the Land Claims Court judgment in Mrs Florence's restitution claim; appearing for Domestic Violence clients in different magistrates' courts around the Western Cape and going to the Supreme Court of Appeal for the first time in the AgriSA matter. ■

Experiences at the LRC

Paula Jackson

I was an intern at the LRC Cape Town office for two and a half months. It has been a thoroughly enjoyable experience and I am grateful for it. I have been lucky enough to be working with two attorneys who are very involved in cases concerning land reform and customary law – two issues that interest me greatly and are very close to my heart.

Reading other interns or candidate attorneys' comments on their time at the LRC, I have to reiterate that I too have been given scope to do work that has contributed to cases, advice to clients and general work requirements. It has not been all about watching the big players 'strut their stuff' (as Wilmien once wrote in her review of her experience as a CA). I have been encouraged to step out of my comfort zone and produce work at short notice, which has been exciting for me and apparently useful to my supervisors.

Within a few weeks of working here I was taken to meetings to observe and experience the different facets of LRC's work. I have worked on a 'land grab' case in Northern Zambia, a land reform initiative in Ebenhaeser, a land reform oriented commonage project in Stellenbosch and a land claim in Rustenberg. I was also privileged enough to attend a meeting with advocates and attorneys from South Africa and Namibia where their strategy towards supporting a claim for land or land use rights by the Hai//om people in Namibia was discussed.

In my work on the other projects, I have attended meetings with clients (community members who receive legal advice from the LRC). Other meetings involved various stakeholders in land reform projects, such as representatives of government departments (Department of Rural Development and Land Reform, Department of Agriculture, local municipalities etc), engineers and experts, consultants, community representatives and other NGOs. Through these experiences, I have learnt a great deal about the roles of various parties in land reform, the processes that need to be followed and how best to represent clients' interests in these contexts.

I, like many others here, have felt fulfilled in my work because of the impact I know it has on people's lives. That is a wonderful experience for me and I have really enjoyed putting my interests and concerns about the world into practice in a work environment in which my education and research skills can make a difference. ■

Paula Jackson



Interview with Partner Organisation

Bongiwe Zuma from CREATE

The LRC has been working closely with the organisation, CREATE, on disability rights and the issue of forced sterilisation of disabled girls. CREATE is a non-governmental organisation based in Pietermaritzburg, South Africa, which focuses on advocacy for disability rights and community-based rehabilitation in its broadest sense. Community-based rehabilitation (CBR) is a strategy focused on the rehabilitation, equalisation of opportunities and social inclusion of all adults and children with disabilities. CBR is implemented through the combined efforts of disabled people themselves, their families and communities.

We spoke to Bongiwe Zuma, the Advocacy Officer for CREATE, about the organisation and the work which they are involved in.

LRC: Where are your offices located and do you have other regional offices?

Bongiwe: We are located in Pietermaritzburg and it is our only office.

LRC: How is CREATE funded?

Bongiwe: We receive our funding from the Finnish Embassy, the Foundation for Human Rights and another organisation from Germany.

LRC: What work does CREATE do besides the work on forced sterilisation of disabled and HIV positive girls and women?

Bongiwe: We do advocacy work and lobbying on the rights of disabled people. We work closely with the Premier's Office. We raise awareness on the rights of disabled people in rural communities especially with chiefs and ndunas. We also do investigative work as to why a case involving a disabled person living in a rural community will not be heard by the community's chief.

We have a project on HIV/AIDS and disability whereby we train and educate people (whether they are disabled or not) on what HIV is and what it means to be living with the virus, as well as what it means to be disabled.

We have another project where we encourage disabled people to enrol in tertiary institutions thereby enabling them to be employable as opposed to them solely relying on their disability grant for a living. Those that are not able to enrol in tertiary institutions, due to their disability being an intellectual one, are taught skills which they can use to generate an income.

Another project we run is called Inclusive Education, in which we work with the Department of Education. In this project, we are striving to have disabled children enrolled in mainstream schools due to the backlog of special schools; a disabled child will be on a waiting list for enrolment at a special needs school and by the time they have to start school, they have passed the age to commence the first grade and end up not being accepted by the school.

→ continued on page 47

Bongiwe Zuma from
CREATE at a community
meeting



Interview with Gerald Kraak – Atlantic Philanthropies

Please tell us about Atlantic Philanthropies. Can you give us some history about the Atlantic Philanthropies and explain why it was established?

The Atlantic Philanthropies was established in 1982 by Charles Feeney, an Irish/American entrepreneur, who had made his fortune in the duty free and leisure industries. A modest and frugal man, who grew up in the working class neighbourhoods of New Jersey in the US he has a strong sense of social justice and decided to invest most of his money in an endowment which evolved over time into what became the Atlantic Philanthropies.

Atlantic's mission is to make lasting changes in the lives of disadvantaged and vulnerable people. It is currently active in six jurisdictions and has four international programmes:

- Children and Disadvantaged Youth;
- Ageing;
- Health of Populations;
- Reconciliation and Human Rights.

Of these, the latter two apply in South Africa.

How long have you been at the organisation and what would you say has been the organisation's impact in South Africa?

Atlantic established a part-time presence in South Africa in 1994. I worked with Atlantic as a consultant until 2002 when I set up a full time office; I am still there!!

Since 1995 Atlantic has invested some \$334 million in South Africa – that is more than R2 billion – chiefly in higher education, public health and human rights. I would say that the organisation's impact has been four—fold:

- Through its investments in higher education, it strengthened the Humanities (which in the early 1990s were underfunded) at five universities and it grew a cadre of black and women academics in environments traditionally dominated by (white) men
- It contributed to building what we hope is an enduring infrastructure to protect the human rights of vulnerable groups such as refugees, asylum seekers and migrants; the LGBTI community; and the rural poor. Atlantic's has also supported some of the more important litigation in the Constitutional

Gerald Kraak – Atlantic Philanthropies



Court leading to greater access to socio-economic rights by these vulnerable groups

- Through its Health of Populations programme Atlantic has helped strengthen the public health service, particularly nursing. It has been a mainstay of the Treatment Action Campaign and of the roll out of ARVS to treat HIV/AIDS through the public health service
- Atlantic has contributed to some signature capital projects such as the new School of Public Health at the University of the Witwatersrand and the Life Sciences Complex at the University of the Western Cape.

What are some of the organisations that you work with in South Africa?

In the rights field we work with most of the organisations involved in advancing human rights – the Legal Resources Centre, Lawyers for Human Rights, Section 27, the Socio Economic Rights Institute and many others. We are also a strong supporter of the advice office movement.

In terms of our Health of Populations programme we are proud supporters of the Schools of Public Health at the Universities of Western Cape and Witwatersrand, the Reproductive health Rights Unit, nursing colleges through the country and initiatives to retain medical professionals in rural areas, where they are most needed.

In your experience, what are some of the characteristics of an organisation that make it successful?

Strong, effective leadership, a clear sense of strategy based on the realities of the (changing) environment, an ability to attract and retain committed, skilled staff who see their work as a vocation rather than simply a salaried post, well net-worked and highly collaborative with others and a vision about how to sustain itself into the future.

What are the key characteristics that Atlantic Philanthropies look for in a non-profit organisation?

Pretty much the same as above.

If you could change one thing about the NPO environment in South Africa, what would it be? How would we/you go about changing this?

I would set out to change the fractured nature of civil society in terms of its engagement with government, donors and others that it seeks to influence in the socio-economic environment.

I think civil society is unaware of the extent of the “political” influence it might wield in terms of the generic issues that need to be tackled such as corruption, lack of service delivery, lack of political accountability to the populace and growing infringements on the gains of democracy. But this requires a greater sense of common purpose and agreement to work behind common programmes.

Currently civil society operates in silos. I am not sure however, how one changes this. It may that competition

over resources and political difference mitigate against greater collaboration.

Tell us about Atlantic Philanthropies’ relationship with the LRC. Why do you think funding NPOs like LRC is important?

Atlantic has supported the LRC since 1994, chiefly in recognition of its role in opposing apartheid through strategic use of the law, even in the constrained circumstances of those times. Those strategies have proved as effective in the democratic era and the litigation of the LRC has proved seminal in advancing social change.

According to your website, Atlantic Philanthropies will conclude all of its operations in 2020. Can you tell us more about that?

Atlantic is a spend-down foundation. Atlantic elected in 2002 to spend out its remaining endowment over the next ten to fifteen years. The philosophy behind this is that, given a limited life span, such a foundation will focus on social problems which can be resolved in a given time and that the impacts of its investments will be greater.

Personally, what are your future plans?

I don’t have specific plans at the moment other than to have a break from full-time work. ■

➔ Interview with Partner Organisation, continued from page 47

CREATE also does workshops with nurses and teachers, educating them about the rights of people with disabilities.

LRC: How did CREATE come across and identify the problem of forced sterilisation of disabled girls?

Bongiwe: CREATE and the LRC had a group discussion on work that could be done to advocate the rights of people with disabilities and in that group discussion, Willene Holness (a former employee of the LRC) identified the issue of forced sterilisation of disabled girls. From then on, CREATE was able to, through our research, ascertain that forced sterilisation occurred in great numbers in rural communities and that it was strongly encouraged by nurses, social workers and teachers. Most of the girls that are sterilised have cerebral palsy and other forms of intellectual disabilities and it’s rare for a physically disabled girl to be sterilised.

The reason why parents chose to have their disabled daughters sterilised is to manage periods, because adult nappies are expensive and have to be changed more often when the girl is on her period. The nurses encourage sterilisation for girls who are intellectually disabled and have cerebral palsy as it saves the parents money.

Furthermore, the nurses encourage hysterectomy procedures as it solves painful period pains. The parents of the disabled girls admitted that they don’t know how to talk to their girls about sex and that, in their communities, there is still a social stigma attached to having a disabled child. ■

If you would like to contact CREATE, e-mail them on info@create-cbr.co.za or phone +27 (0) 33 345 5088.

Memories of the late Nhlakanipho Mnguni

Thobani Trevor Mnyandu and Michael Power

In different capacities during our careers, we have had the honour of working closely with Nhlakanipho at the Legal Resources Centre (LRC) and the South African Human Rights Commission. During this time, we came to understand the calibre of the man that Nhlakanipho was. In his quiet, friendly and respectful way Nhlakanipho impressed upon us a great humility in the way that he conducted his affairs and, most importantly, in the way that he treated people. We will never forget his catch phrase: “yeah man.”

A lover of rap music and a passionate football fan, Nhlakanipho was a friend to many. For Nhlakanipho it did not matter whether a person was rich or poor, male or female, black or white, because he wanted to help people when they were weak and he knew that all people, at some stage in their lives, would be in a position of weakness. In providing legal services to those in need, Nhlakanipho went about his work in a manner that often times left us in awe. He had a unique ability, no matter what the circumstances, to treat each and every person equally and to give each and every person an equal share of his time whilst trying to help them. He did all of this in a friendly, calm and insightful manner.

Working closely with Nhlakanipho, we also came to understand how deeply he cared about equal rights for all people and how, if given the chance, he would have continued to fight for a free, fair and democratic South Africa. This country has truly lost a good person who would have, in some way, altered the course of our future for the better.

Nhlakanipho was born in Empangeni in Kwa-Zulu Natal and later moved to Newcastle. He is survived by his parents, Dolly Grace Nomusa Mnguni and Thulani Vincent Mnguni, and his siblings, Nondumiso Wendy Mnguni, Sithembela Belle Mnguni and Nompumelelo Melisa Millicent Mnguni. After reading towards a LL.B. at the University of Kwa-Zulu Natal, Nhlakanipho worked at the South African Human Rights Commission as a legal intern for two years before joining the LRC to begin his articles of clerkship in January 2012.

We know that by having met Nhlakanipho, a small piece of him will live on in us. He taught us how to treat people; he taught us how to smile; and he showed us humility. He has, in many ways, showed us what it means to be a good person.

Yeah man, Nhlakanipho, it was an honour to have worked alongside you. We will miss you. ■

Nhlakanipho Mnguni
– Left



BOOK REVIEWS

Book review: David Fig & Rachel Wynberg (2013) *A Landmark Victory for Justice: Biowatch's Battle with the South African State and Monsanto*

An overview of this book can be explained in just a few sentences: a big story about a small non-profit organisation, Biowatch, conceived by two activists on a summer's day in 1997, taking on a major legal battle against a \$10 billion company, Monsanto.

This story is analogous to the David and Goliath fable and details what seems to be a common trend in how major issues were trivialised by various institutions in the process leading up to what Biowatch's aim and vision was and is today.

The lessons learned and the journey travelled leading up to what we have come to know as a landmark case in South African jurisprudence started off in 1999 as a simple request for official information from the National Department of Agriculture on Genetically Modified Organisms (GMOs). The request was submitted on the grounds of the Constitutional right to access of information under section 32. This presented an opportunity for civil society to defend rights where litigation seemed impossible.

At the early stages of litigation, the first hurdle was to access information from the Pretoria High Court. Unfortunately, there were struggles within the organisation which impacted on its preparation for court. This was exacerbated by an intervention in the court proceedings by other companies on the State's side. These were major companies with endless resources to carry out litigation at all levels. The battle field was already uneven at this point. With alternative options, other than litigation, open to civil society, Biowatch campaigned and raised awareness

amongst the public. Major alliances were formed in an effort to lobby for legal reform.

The second hurdle was in the litigation process itself, in terms of all the negative press Biowatch endured from Monsanto. The media, a tool civil society can utilise to campaign for their cause, was instead used against Biowatch. A request to access information was said by Monsanto to be, "opening the door for thoughtless activists to continue to misinform and mislead the public by poking holes in all assessments and reviews previously conducted by experts in the field" (p.42). Through this statement, Monsanto managed to trivialise the efforts of Biowatch.

Once judgment is passed, the reader becomes so hopeful and remains in support of little David as he wins the battle against Goliath. However, the victory was short lived. The court granted a cost order against Biowatch in favour of Monsanto but allowed Biowatch access to the information requested. Ultimately, information was attained but at an unexpected cost. Their reaction to this gives a further insight into Biowatch's resilience, as they did not accept the judgment. The aim was to win the war.

The subsequent journey through the High Court, Supreme Court of Appeal and the Constitutional Court, where the cost order was unanimously reversed, makes the reader feel as though they were part of the process alongside the author. The book also provided a startling degree of transparency. The internal issues of the organisation are made part of the journey, giving the reader an even clearer inside story.

The threat, purpose and impact that the cost order had on civil society, and the importance of the victory, is explained in an interview with Janet Love, Director of the LRC, within the book. She states that, "the order posed a threat to the vibrancy and survival of civil society and NGOs..." (p.49). However, with the precedent set, civil society can proceed with litigation in pursuit of justice, without fear of being financially crippled by an opponent.

Little David ultimately won the war. The story of David and Goliath is a success story that is continually shared amongst people for encouragement; and so the book serves the same purpose for civil society in its efforts to continually access justice.

Mabatho Molokomme

Book review: Christa Kuljian (2013)*Sanctuary: How an Inner-City Church Spilled onto a Sidewalk, Jacana: Auckland Park*

Seeking sanctuary during difficult times is a concept that is not unfamiliar in human history.¹ Indeed, the notion that those in need can find refuge in places of worship and those who harm persons in places of worship will invite divine retribution, has continued through the ages. Human sanctuaries therefore provide people with a space where they are protected and cared for, until such time as they can protect and care for themselves.

From 2001 until the present, the Central Methodist Church in the centre of Johannesburg has acted as such a sanctuary for immigrants, asylum seekers and refugees from Zimbabwe and other African countries embroiled in civil conflicts or governed by oppressive regimes. It is not widely known that this sanctuary exists, what sacrifices those who seek its services have made, how the difficult choices of those who administer the sanctuary have been taken and how the tensions which ripple into the broader community have been managed. Christa Kuljian's insightful account of the history of this sanctuary does just that. By tracking its history through eye-witness accounts, interviews and, through her attendance at the weekly Friday night refugee meetings held within the Church, Kuljian exposes the hidden truths which exist below the surface of our society and which permeate into our daily lives. These truths expose the South African mind-set, test the moral fibre of our society and compel us to look northwards to try and find solutions.

From the arrival of the first wave of people at the "Sanctuary" in 2001, to the xenophobic violence which traumatised South Africa in May 2008, and to present times, Kuljian's reflection takes the reader through the history of the Sanctuary in both the apartheid and democratic era and highlights the willingness and courage of both Peter Story and Paul Verryn to right the wrongs of their respective times. In doing so, it draws parallels between the struggle for equality amongst South Africans during apartheid and the struggle that South Africans currently face in treating all persons, irrespective of ethnicity and nationality, equally. It shows how NGO's such as the Legal Resources Centre, Lawyers for Human Rights and *Medicins Sans Frontieres* come together in times of need and how the broader community may not always be quick to accept the good deeds of others when those deeds affect them adversely in the short term. Most importantly, it follows the mind of the author as she meets the individuals most affected by the decisions of others and how she comes to terms with what can and, sometimes, can't be done to help those in need. Sanctuary examines the social aspects within which the law should, but often does not, operate and questions

how we can, through co-operation with our neighbours, avoid the situations that lead to social conflict through dialogue and perseverance.

The Sanctuary has become a home of the brave in a country which is freer than others. It has become a home to those who personify the individual struggles that can accompany life on the African continent. In a note that Kuljian writes, documenting a meeting at the Sanctuary during August 2010, she refers to Divine Love, an immigrant from Zimbabwe, who has been transformed from an aspirant young artist, to an unstable, traumatised man with a history of violence, brandishing a toy-machine gun fashioned from some wire. She questions "how Divine Love would find his way in this harsh world, and whether anyone really cared."²

But, through Sanctuary, Kuljian finds her answer: human nature compels us to care and, although we may not be able to give everyone everything that we believe they may be entitled to, there are people who will, at least, give people in need a sanctuary and, where possible, a fresh start.

In her concluding note, Kuljian states that "Paul Verryn estimates that about 30 000 people have passed through [the] Central Methodist [Church] over the past decade"³ – almost all sleeping amongst the church pews. She notes further that: "...many of them had moved on, getting jobs as teachers, plumbers, construction workers, welders, journalists, archivists, computer technicians, lecturers, counsellors and medical practitioners." This was all made possible by one man who brought the right people together. "That's Paul...wherever he goes he will house those who are vulnerable. That's the way he is."⁴

The story of the Sanctuary will live on. By examining individuals, it shows us how the collective should act. It teaches us what the human spirit can and does achieve every day. It teaches us how each and every one of us can effect change.

Michael Power

1 Geoffrey of Monmouth *Historia Regum Britanniae* (1136).

2 Christa Kuljian *Sanctuary: How an Inner-City Church Spilled onto a Sidewalk* (2013) at pages 123-124.

3 *Ibid* at page 330.

4 *Ibid* at page 331.

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The Legal Assistance Trust (LAT) has merged with a London-based charity, the Canon Collins Trust, to form the Canon Collins Educational & Legal Trust (CCELAT). By raising funds for free legal services for poor people in countries outside of the UK, CCELAT aims to relieve poverty and suffering. The organisation, through the LAT, has supported the work of the LRC for over 24 years. Visit <http://www.canoncollins.org.uk>

SALS Foundation

The Southern African 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. Visit <http://www.sals.org>



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LRC Staff and Interns

Our staff of 80 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 is available on our website 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 documents are available at <http://www.lrc.org.za/resources/documents>

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