



ANNUAL REPORT 2015/2016

LRC

Legal Resources Centre



ON THE COVER: **RIGHT TO FOOD AND NUTRITION**

South Africans have a constitutional right to access sufficient food. In spite of this, the most recent health and nutritional status survey showed that 26% of households are food insecure, while 28.3% are at risk of hunger (South African National Health and Nutrition Examination Survey 2014). The largest food insecure populations are in urban-informal and rural localities.

For poor South Africans, their inability to access healthy and nutritious food is a primary issue. Not only is food accessibility a major issue, so too is adequacy. South Africa is suffering from the multiple burdens of malnutrition – either under-nutrition (hunger or inadequate nutrition) or over-nutrition (obesity and overweight).

There is a strong link between being malnourished as a child and experiencing obesity or being overweight in adolescence and as an adult. This means that those who have inadequate nutrition as a child are likely to suffer once again with weight-related illnesses as adults, perpetuating the social and economic problems associated with poor health.

Poverty negatively affects peoples' right to access food and nutrition, and the LRC seeks to address this basic need in all relevant areas of our work.

For example, in our Community Access to Land and Resources focus area, we assist people to reclaim their land and rights of access to natural resources which, in many cases, assists them to access adequate food through subsistence activities or livelihoods.

In the Equality and Non-Discrimination focus area, we challenge gender discrimination that leads to household food and nutrition insecurity, such as "food violence" (withholding of food in situations of domestic violence) and inequalities of the care economy (caring for families and households) that prohibit women from accessing the same educational and employment opportunities as men.

In the Education and Children's rights focus area, we investigate the effectiveness of decentralised procurement systems of school feeding programmes, as compared to centralised procurement models. We highlight the rights' violations of hungry children left without food on weekends and school holidays due to gaps in the National School Nutrition Programme.

In this report, we profile an important producer-based movement that is fighting for the right to nutritious food: Coastal Links small-scale fishers at Langebaan Lagoon. *Visit our Staff and Supporters section for more.*



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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 Legal Resources Centre is committed to a fully democratic society based on the principle of substantive equality. The LRC seeks 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.

CHAIRMAN'S REPORT: **THANDI ORLEYN**

South Africa is facing a challenging time; a refrain we hear time and again. Coupled with a national economic downturn and rising commodity prices threatening our international economic standing, we are wilfully lacking leadership at all levels and witnessing an increasing anger displayed through the rise of protest; some of it destructive.

While none of this is new, it seems that the confidence in the National Executive is at an all-time low.

In December 2015, we saw the sudden removal of Finance Minister Nhlanhla Nene from office and government grappling with the subsequent outflow of controversy and weakening of our currency. His replacement in David van Rooyen, who was then quickly replaced by former Minister of Finance, Pravin Gordhan, did little to reinstate confidence. The burden on the executive has grown with allegations of state capture by powerful business interests and the failure of the state to arrest Al-Bashir, and even assisting his departure from the country despite the High Court making a ruling to interdict this – a flagrant disregard for judicial oversight.

The clients of the LRC feel the burden of these national challenges as they fall into more and more desperate circumstances, burdened by debt and financial insecurity, preyed on by fraudulent schemes, ignored by state departments and battling to survive in an un-transformed and increasingly discriminatory institutional space.

And yet, South Africa is a country with a real chance for legal transformation, protection and change. Our judiciary has come out as the strongest branch of government. We can find comfort in its increasingly important role in enabling development, ensuring accountability of state and upholding the principles of substantive justice.

Our democracy has been strengthened by judgments such as Nkandla, in which Chief Justice Mogoeng found that, "[t]he President's alleged disregard for the remedial action taken against him, does seem to amount to a breach of a constitutional obligation"; in SABC, where, again, support for the Public Protector resulted in Judge Dennis Davis setting aside the irrational and unlawful appointment of Mr Motsoeneng as CEO of SABC, who was under a disciplinary inquiry at the time of his appointment; in National Prosecuting Authority, where Judge Aubrey Ledwaba found that the 2009 decision taken by former NPA head, Mokotedi Mpshe, to drop corruption charges against President Jacob Zuma was irrational.



Finally, we must mention, with praise to the Legal Resources Centre, the historic judgment in Silicosis, certifying a class action that could lift the burden of poverty and the familial strain of sickness for thousands of mine workers and their dependents across Southern Africa.

As we have witnessed the strengthening of the judiciary, and its support from everyday South Africans, so the attacks on judges have mounted. Leadership is looking for scapegoats and increasingly promising insurmountable and unrealistic solutions to socio-economic problems. Under the burden of criticism, the ruling party is looking to unaccountable and undemocratic chiefs to bolster votes, while putting pressure on any detractor; including civil society.

Threats to civil society are not new, but have recently become bolder. Actions such as the illegal raid on the Helen Suzman Foundation offices, the illegal interception of LRC email by British Intelligence, and the assassination of community activist, Sikhosiphi "Bazooka"

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NATIONAL DIRECTOR'S REPORT: JANET LOVE

The breadth and depth of the work of the LRC continues to inspire me and provides much hope and support to many, many people. Not surprisingly, the task of reflecting on this array of activities and ideas involving our exceptional lawyers, support staff, grant managers and paralegals, in just a few paragraphs is very daunting!

I would first like to recognise and thank our many clients who continue to have confidence that the LRC will persist in its efforts to ensure that the issues that they need to be resolved will be handled with professionalism and sensitivity; that we will do everything we can - including, where possible or necessary, drawing in the support of others. The trust of our clients in the LRC's determination and fearlessness is a huge source of strength.

The year under review saw a wave of student uprisings with demands for greater engagement around the funding of education and the need for higher education to respond to the imperatives of transformation in South Africa. Based on undertakings by the government and universities at the end of 2015 that substantial engagement would commence immediately after the 2015 exams, students completed the year. However, the period that followed in 2016 has seen a great deal of turmoil and an absence of the promised engagement. The hashtag protests on university campuses have vibrated with frustration and anger about unfulfilled promises and exclusion.

It is not only amongst students: there are numerous protest marches demanding more accountable governance on issues ranging from service delivery, to the condemnation of abuses of power that undermine key state institutions, and corruption linked to 'state capture'. Those from within the LRC who have contributed to this Openness and Accountability area of our work have been called upon to respond to issues around protest, policing, surveillance, whistle-blowing and transparency in State tenders. These are concerns that permeate through all of our work.

It is not only the State that is held accountable, but also those who occupy positions in corporations. We won a landmark victory in the Johannesburg High Court which certified a class of litigants who contracted silicosis while working in gold mines. This was an important victory as it was the largest certified class in South African class action history, and cleared the way for tens of thousands of mine workers to receive compensation for their damaged health and in some instances for families to claim on behalf of deceased workers.



The case also illustrates the extent to which abusive practices within the mining industry are pervasive across the different companies. This case has been appealed with a final outcome expected in 2017.

Land reform remains an important area of work for the LRC. We continue to represent clients who have been waiting, some for as long as twenty years, to have their land returned to them through the restitution process. We have engaged with the Department of Rural Development and Land Reform to attempt to remove obstacles to thousands of labour tenant claimants obtaining land that they have historical rights to. In the land reform area, we also work with networks and activists who assist the LRC in reaching remote clients and communities.

The area of housing rights has been bolstered by the training of LRC staff on the new spatial planning legislation, recognising that we need to be able to more effectively support local communities in municipal Integrated Development Plans (IDPs) and zoning to ensure that the housing and development needs of people living in poverty are properly addressed.

We work tirelessly in a range of ways to engage with the Department of Basic Education to ensure that children have access to quality education, which has to include classrooms, furniture, books and teachers who can be assured that their salaries will be paid. More and more cases linked to the rights of children with disabilities are being brought to the LRC. We see this, as well as broader issues related to challenges faced by of people living with disabilities, as a growing facet of our work.

We have recognised for some time that our Regional offices have struggled to engage sufficiently with those of our clients who are located at considerable distances from urban centres. Following the positive impact of our Limpopo satellite office, we have therefore established satellite offices in the Eastern Cape and Mpumalanga; and have plans to set up a satellite office in KwaZulu Natal. These offices will reduce the distances that our staff and clients travel to consult on cases, and will also serve as conduits for new clients to access our services.

The LRC has spent a considerable amount of time in the past year engaging in a strategic review of our work. This process involved a team of people from within the LRC, as well as an external advisor, visiting each of the regional offices and the national office to engage with staff around their work. We have engaged with the issue of whether they believe that the existing focus areas properly reflect the matrix of our workload. The end product of this engagement is a document that maps the strategic direction of the LRC for the next five years, as well as recalibrates our focus areas which are: community access to land and resources; environmental justice; housing, evictions and local government planning; education & children's rights; equality and non-discrimination; refugees, asylum seekers and migrant protection; openness and accountability; and access to justice and civil society support.

We remain thankful for the generous support – financial and 'in-kind' – that we continue to receive from a broad range of partners who stand in solidarity with South Africa as we pursue the constitutional promise of our democracy. The list is long and includes other civil society organisations in South Africa and abroad, institutional donors and individuals. Finally, to the staff of the LRC: your perseverance, commitment and dedication to our ongoing struggle to ensure that all South Africans are able to realise the promise of dignity, development, equality and justice for all is the work of patriots and an inspiration. Thank you! ●

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Rhadebe, in suspicious circumstances, shows the lengths that will be taken to protect the interests of a few. We must guard against the encroachment on the non-profit space and stand firm in our resistance to increasing numbers of detractors and threats; some direct and some more general. As our voices grow fiercer, so our environment grows more uncertain.

While the media recognises our need for independence and support, we cannot continue to rely on traditional media such as state broadcasting companies to speak the truth. We need to innovate, become more creative in airing our voices and take more precautions in our security.

But we can hold onto hope: the courts remain a strong source of resistance to state power.

We have chosen a noble path of constitutionalism and justice. But our work becomes even more important in a time when the judiciary is heavily relied upon to do the right thing. Many of the social and political battles that we face seek clarity through judicial process. We can take great comfort in this position, as the courts have again and again ruled in favour of our clients, while also realising its limitations.

The Legal Resources Centre continues on a warrior path of indignation at the prevailing inequality and poverty that blights our democracy. We effectively use what is available to us – a progressive constitution, support from an extensive donor base that recognises the might of our right and an innovative and youthful lawyer base. Our successes in 2015 were many, even while we have had to say goodbye to one of the bastions of our work, the late Lady Felicia Kentridge.

Much of our fight has remained at the coalface of peoples' lives: fighting for sick miners, for those who are losing their home to fraudulent schemes, for foreign nationals illegally detained, to secure the payment of teachers and provision of transport to learners, to secure the rights of women in customary marriages; amongst other battles.

I have also come to recognise how the LRC has influenced the law. We have thrust ourselves into the realm of remedy, either through class actions, through the provision of legal aid for commissions, through securing compensation for the injured or sick or through influencing the implementation of court orders.

I want to thank the lawyers and staff of the LRC for all they have done and continue to do. I must also thank the Trustees who stand with me.

Special mention and congratulations to Marjorie Ngwenya, who has been elected as the next President-elect of the Institute and Faculty of Actuaries in the UK, a not-for-profit professional body furthering actuarial science. She is the first IFOA President to be based outside the UK. ●

COMMUNITY ACCESS TO LAND AND RESOURCES

LABOUR TENANTS STILL FIGHTING FOR THEIR LAND RIGHTS

Section 25 of the South African Constitution was written to ensure that individuals and communities who had lost land, and rights in land, during the many years of colonialism and apartheid could claim back some redress in the form of land or other compensation.

Labour tenants are a specific category of farm dwellers that were granted protection of their land rights in the Constitution. A specific mandate was given to the state to pass a law that would create a mechanism to ensure that there are opportunities for labour tenants to secure their rights in land through land claims.

Labour tenants and other farm dwellers have a sad history in South

Africa. They are the people who work to produce food that is sold in supermarkets around the country. However, they are amongst the most poorly paid workers, they live in poverty and often subjected to abuse and illegal evictions. The Constitution and other land laws were drafted and passed in order to provide protection to this vulnerable group of citizens.

In 1996, the Land Reform Labour Tenants Act was passed by Parliament. The Act created the mechanism envisioned in the Constitution that allows labour tenants to make applications to the government to secure their land. Since the Act was promulgated, thousands of applications have been submitted.

Labour Tenants and supporters march outside the Land Claims Court



But many of these applications have not been advanced and are still outstanding.

The Association for Rural Advancement (AFRA) and labour tenants living on a farm owned by Hilton College in Kwa-Zulu Natal approached the Legal Resources Centre to represent them in bringing a case in the Land Claims court to compel the Department of Rural Development and Land Reform (the Department) to process all applications made by labour tenants.

In 2014, the Land Claims Court ordered the Department to report on outstanding land claims and create a plan for processing them – but this has yet to be fully implemented. The Department finally submitted a report to the Court in August 2015, after threats of further litigation. However, this report failed to provide important information; particularly the number of outstanding labour tenant applications still waiting to be processed, and where these labour tenants were located.

The Department missed another deadline for submitting a report to the Court and, as a result, the LRC took further legal action. In particular the LRC, on behalf of our clients, has continuously argued that a special master must be appointed in this case to ensure that the Department is able to overcome the challenges it faces in providing substantive information regarding labour tenant applications.

A special master is unprecedented in South Africa, but is regularly employed in other comparable jurisdictions. The special master will alleviate the burden in the Land Claims Court by ensuring compliance and acting as an independent intermediary between the Court and Department. ●



Labour Tenants and supporters march outside the Land Claims Court

“Labour tenant” as defined by the Land Reform (Labour Tenants) Act 1996

A person who has the right to reside on a farm;

A person who has or has had the right to use cropping or grazing land on the farm, or another farm of the owner, and provides or has provided labour to that owner or lessee; and

Whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and provided or provides labour to the owner or lessee of above mentioned farm/s,

Includes a person who has been appointed a successor to a labour tenant, but excluding a farmworker

The number of labour tenant land applications filed by the cut-off date: 19 000

NOT GUILTY UNDER CUSTOMARY LAW

The area of Hobeni in the Eastern Cape lies in the heart of the poorest district in South Africa. In September 2010, three traditional fishers from Hobeni entered a “no-take zone” in the Dwesa-Cwebe Marine Protected Area (MPA). They were fishing to feed their families. The fishers were arrested by rangers and charged in the Magistrate’s Court with “intention to fish in an MPA”.

The three fishermen are part of a community who successfully claimed their dispossessed land back; but in 2005 the authorities decided that fishing could no longer take place in that area, forcing local people to walk more than nine hours to access legal fishing areas.

This is devastating to a community whose history is rooted in fishing and whose main source of protein comes from fish. As one resident noted, fishing is much more than a right.

“We didn’t have a right to fish. Fishing was simply a way of life. What you call rights, for us, was simply a part of life” – Older resident of Hobeni

And yet, they have systematically been prevented from accessing the resource as a result of decades of forced removals under apartheid and subsequent regulations. This prohibition became absolute when the Dwesa-Cwebe MPA was declared a ‘no-take’ zone in 2001.

The trial of the three fishermen commenced in Elliotdale Magistrate’s Court in March 2012 with the LRC representing the three men. We argued for the court to recognise their customary rights to marine resources. We submitted that this constitutionally

Members of the Dwesa-Cwebe community are addressed on their human rights in relation to customary law



protected customary right mitigates any claimed unlawfulness of their actions. They should therefore be found to be “not guilty”.

When judgment was handed down in the Magistrate’s Court in May 2012, our clients were acquitted on three charges under the Transkei Military Decree, but convicted of the criminal charge of fishing without permits. While the Magistrate found that there is indeed a customary right, as a lower court, he could not strike down the legislation that ignored those rights. We approached the Mthatha High Court on appeal.

The case was argued in the High Court in 2015 and judgment handed down in early 2016, with mixed results. The judge found that the Marine Living Resources Act and the declaration of MPAs did not extinguish the exercise of the customary rights of access of coastal communities to their marine resources.

This was significant, as it is the first time that a High Court had confirmed the existence and status of the customary rights of a fishing community in South Africa and that legislation cannot extinguish such rights without doing so specifically and in a constitutionally-sound manner. In doing so, the Court has vindicated many similar communities, particularly in the Eastern Cape and KwaZulu-Natal, who have claimed the same recognition for years.

Unfortunately, the Court also found that recognising their customary rights did not make their actions lawful and that they should have applied to the Minister for an exemption in terms of the Marine Living Resources Act, despite the fact that their customary rights continued to exist alongside the legislation.

Ironically, evidence presented showed that the community had asked for such permission before. In October and December 2013, when the Legal Resources Centre had taken up the representation of the communities, the fishers requested an exemption from the Minister but never received any response.

The communities have noted their appeal against the judgment. In the meantime, the government has actually re-opened the MPA allowing limited fishing for the local communities. ●

COURT UPHOLDS COMMUNITY'S RIGHT TO ELECT ITS OWN HEADMAN



The Cala Reserve community outside of court arguing that the appointment of the headman was not in keeping with the customs of their community

"[Being able to elect a headman]...advances, rather than retards, the promotion of democratic governance and the values of an open and democratic society by recognising the customary law of local communities in the identification of those who will govern them on the local, and most intimate, level."

These are the words of Judge Plasket in a decision by the Eastern Cape High Court on the 18 August 2015 affirming that the traditional community of Cala Reserve must be allowed to elect their own headman; something they have done since time immemorial. This also affirms the customary law principle that communities should be allowed to make decisions that affect them directly.

The community approached the Legal Resources Centre in 2012 after the Premier of the Eastern Cape appointed a headman following the resignation of their long-standing headman. The community had already elected the successor, but the Premier refused to acknowledge or appoint the elected headman. The Cala Reserve Local Planning Committee decided to challenge the Premier's appointment of the unelected headman through various traditional and governmental channels, but their efforts came to nothing.

The place of customary law in our Constitution

Customary law is a core element of the South African legal system and exists on an equal footing with Roman-Dutch law. Customary law's legitimacy is determined by reference to the Constitution.

The LRC then launched an application in the Eastern Cape High Court against the decision of the Premier. We filed an affidavit by customary law expert, Professor Lungisile Ntsebeza, confirming that the customary law in most of the Xhalinga district of the Eastern Cape, for at least 100 years, has been to elect their headman.

Judge Plasket agreed with our arguments that the community's customary law must be respected and rejected the Premier's argument that no election of headmen, or even consultation with the relevant communities, should be required under the post-constitutional traditional leadership legislation. ●

COMMUNITY CHALLENGE ROYAL BOFOKENG NATION'S AUTHORITY TO ACT ON THEIR BEHALF

A small group of concerned community members, through the Bafokeng Private Land Buyers Association, the Setuke family and the Thekwana community, are challenging the power of a traditional authority to act on their behalf during a court case. Over 14 million people* in South Africa live under the rule of traditional authorities. However, some of these authorities were imposed upon the communities (in the past through the apartheid state and today through government appointment), and don't always represent the interests of the communities they are said to represent.

These concerned members belong to one of the biggest and wealthiest traditional communities in South Africa. The Royal Bafokeng Nation (RBN) in the North West Province includes approximately 300 000 people. The RBN holding company's

portfolio, which includes commercial assets, was estimated to be worth R25.1 billion in 2011 (RBN website, accessed 2016).

The Legal Resources Centre represents this group of community members in a court case between RBN and the Minister of Land Affairs and the Register of Deeds. The RBN have applied for all properties that are registered "in trust" for the Bafokeng tribe to be registered in its name. The land "in trust" traditionally formed part of the tribal lands of the RBN before they were displaced from the land during the colonisation of South Africa. The RBN allege that it regained the "trust" land by purchasing it back from the government.

The title deeds of the 61 properties in question are registered in the names of a government functionary in trust for the RBN. Yet the RBN argue that it is the registered owner of the properties and that the Minister has no right to ownership of the property.

RBN maintain that they represent the communities who currently occupy the properties. However, the communities occupying the land maintain that they have a right to occupy the land and that RBN is not authorised to act on their behalf.

The LRC's clients, The Bafokeng Private Land Buyers Association, the Setuke family and the Thekwana community, lodged an interlocutory (provisional) application (known as Rule 7 application) in the Mogwase Magistrate's Court to challenge the power of the RBN to go to court on behalf of the traditional community that they claim to represent.

Our clients also disputed the RBN's attorneys' authority to bring the main application, in terms of Rule 7 of the High Court Rules and brought an application in the Mafikeng High Court challenging this. They felt that the question of the authority should be determined first, before the main application can proceed.

In December 2013, the High Court ruled in favour of the LRC clients, stating that the RBN must prove that they were authorised to act on behalf of the communities they say they represent in the main case.

The case is ongoing. ●

* StatsSA 2010



During the Royal Bafokeng Nation court cases, community members could not all be accommodated in the court and an overflow area was set up outside the court



ENVIRONMENTAL JUSTICE

COMMUNITIES IN LESOTHO FIGHT FOR THEIR DELAYED COMPENSATION

“The Lesotho Highlands Water Project (LHWP) was one of the World Bank’s biggest African dam schemes, and the Bank took special pains with project resettlement. Despite a relatively large budget and greater-than-usual attention to this aspect of the megaproject, poverty has increased for many in Lesotho’s dam-affected areas.”

– International Rivers, “World Bank Dams Leave Lesotho Villagers in the Dust”, 3 April 2015

After the Lesotho Highlands Development Authority (LHDA) had completed the Lesotho Highlands Water Project, many communities had been relocated and promised compensation. This compensation was going to be paid in a communal manner but, over the years, millions of the compensation has been withheld.

The LHDA claims that the communities have failed to account for the previous monies received.

The Khabang Lejone Multipurpose Cooperative Society (Khabang Lejone) challenged this in the Lesotho High Court against the LHDA. The LRC’s clients, International Rivers, were successfully admitted as a friend of the court to make submissions to the court on certain aspects of the case. International Rivers has monitored the first phase of the LHWP and written many reports on the impacts that the development has had on communities who have been re-settled, re-located or acted as host communities.

Khabang Lejone argued that the LHDA was obliged to pay the compensation despite the failure of the communities to account for expenditure.

International Rivers did not make submissions regarding the merits of the matter; however, it made submissions on the Lesotho Constitutional provisions that apply, as well as LHDA’s obligation in terms of the right to development.

The organisation argued that the withholding of compensation infringes various provisions of the Lesotho Constitution, including the communities’ rights to obtain prompt payment of compensation and their rights to economic opportunities from the state.

They further argued that various international statutes and laws recognise that LHDA’s obligations towards the communities are not restricted to the payment of communal compensation, but include broader obligations such as providing communities with the necessary training and skills development to enable them to comply with the various policies on compensation, such as proper accounting and how to manage funds.

Therefore, the cooperatives that were formed to manage the compensation from the LHDA must be given relevant information that will capacitate them to manage the funds. ●



Mohale Dam is part of the Lesotho Highlands Project which displaced many communities_ photo Wikimedia

CHALLENGING THE PROCUREMENT OF NUCLEAR POWER FOR SOUTH AFRICA

“Ethical governance has to be the cornerstone of true democracy. This new democracy must be protected from people in positions of power who act without regard to proper process, without accountability and who risk bankrupting the country”.

These are the words of Liziwe McDaid, spokesperson for Southern Africa Faith Communities Environment Institution (SAFCEI), after papers were filed in the Cape Town High Court on the 12 October 2015 challenging the procurement of 9600 MW of nuclear reactors for South Africa.

The LRC is assisting Adrian Pole Attorneys, who represents environmental justice organisations, Earthlife Africa Jhb (ELA-Jhb) and SAFCEI, in their challenge. The organisations maintain that the Minister of Energy and the President failed to put the necessary processes in place to lawfully procure the nuclear reactors, with the result that the nuclear energy deal that was made with Russia is flawed and could have potentially devastating consequences for South Africa – financially and environmentally.

ELA-Jhb and SAFCEI are also challenging the failure of the Minister to determine if nuclear power is required in South Africa and how much

is required; a determination which should take place in consultation with the National Energy Regulator (NERSA) and in accordance with a procedurally fair public participation process.

The Minister also failed to ensure that the procurement of the nuclear deal was fair, equitable, transparent, competitive and done in a cost-effective manner. Instead, the nuclear deal was made before these two processes were completed.

While ELA-Jhb and SAFCEI are challenging the procurement process in court, they also highlight the problems of the deal explicitly; including the amount of money committed (approximately R1 trillion), the long-term effects on the economy and consumers of electricity, as well as the impact of nuclear waste on present and future generations of South Africans.

The matter is being heard in the Cape Town High Court in 2017. 

Protesters outside the Cape Town High Court supporting the challenge to the “Nuclear Deal”_ photo Sally Hurt



DEVELOPMENT ACTION GROUP CHALLENGE CAPE TOWN AIRPORT EXPANSION

“Low income communities (formal and informal) often have more pressing problems to deal with than aircraft noise. It is possible that despite the annoyance they may tolerate a noisy home/environment.”

This was a conclusion reached in the Socio-Economic Impact Assessment (S-EIA) supporting the expansion of the Cape Town airport. It is irrelevant, unreasonable and deeply troubling. Importantly, it also violates the Constitution and the principle of environmental justice promoted in the National Environment Management Act (NEMA); which states that:

“Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.”

In an effort to realise this NEMA principle, the Legal Resources Centre represented the Development Action Group (DAG) challenging a project by the Cape Town Airport to expand its runways; which will affect the poor and disadvantaged communities in the vicinity.

Expanding the airport will increase the frequency of flights and create new flight paths. As a consequence, there will be increased noise levels and a reduction in air quality, which will be detrimental to the health of the people living near the airport.

DAG, represented by the Legal Resources Centre, argued that the Environmental Impact Assessment (EIA) completed for the project overlooked the right to a healthy environment as contained in the Constitution. The project also failed to take into consideration the shortage of housing in Cape Town. The majority of the residential

Children and noise

A study conducted by European Environment Agency and World Health Organisation in 2002 found that, “children may be more prone to the adverse effects of noise because they may be more frequently exposed....and they are more susceptible to the impact of noise”. The study shows that a jet taking off 250 metres away has a decibel effect of 150 and can lead to an eardrum being ruptured. At 305 metres, hearing damage will occur after 1 minute. It is clear that an airport located near a residential area would have an adverse effect on the hearing health of residents, especially vulnerable groups such as children.

Children's health and the environment: A review of evidence.
Tamburlini G et al., eds. EEA-WHO, 2002

areas around the area are high-density, low-cost housing settlements, townships and overcrowded informal settlements, and the majority of people living in these areas can be considered socially, economically and environmentally vulnerable.

DAG and the LRC are also concerned by statements made in the S-EIA and EIA, like the one above, that are deeply troubling.

The LRC has been in discussion with the Airport's Company to address some of the concerns we have raised and we continue to monitor the process. ●

HOUSING, EVICTIONS AND LOCAL GOVERNMENT PLANNING

DEBT IN FLAMINGO COURT SENDS RESIDENTS TO COURT

The law governing sectional title schemes in South Africa came into effect in 1971 and oversees the roles and responsibilities of people living in blocks of flats or complexes. Sectional title schemes are managed by body corporates in order to benefit everyone living there.

Flamingo Court is a 200-unit high-rise building in Durban. It was built in 1968 in a historically disadvantaged community. The building was owned by the eThekweni Municipality and offered as low-cost rental accommodation to indigent persons, single parents and low income earners.

However, between 1998 and 2002, the Municipality converted the property into a sectional title scheme. The residents living in the building cannot afford the levy charges and the water to the units is not individually metered and, therefore, it became more difficult to manage the use and payment of levies for water use.

The body corporate failed to collect sufficient levies to pay the cost of water and the debt owed to the Municipality ran into millions and continues to increase. In addition, the body corporate has been unable to fund the cost of maintenance of the building. The residents feel that the Municipality did not consult with them sufficiently in order to establish what the residents are able to afford. After the water was cut off in 2013, the residents approached the LRC for assistance.

In September 2015, an agreement was reached between the Municipality and residents. The Municipality has been directed to write-off a portion of the debt and install separate water meters. The Durban High Court has also asked that oral evidence be presented at a later date on other issues; namely, whether the Municipality took all necessary steps to rehabilitate and restore Flamingo Court prior to selling it and transferring the sectional titles. The Court also wanted to hear evidence on whether the Municipality failed to sufficiently consult with the residents about the implementation of the sectional title scheme. The case is ongoing. ●

FAMILY HOME SAVED FROM FURTHER DEMOLITION

Many families were forcefully removed from their homes during apartheid and were never compensated for this loss. Unfortunately, the eviction of people from their homes continues and is sometimes done unlawfully. The Donyeli family were almost forcefully removed from two homes, which would have a huge impact on the family. Fortunately, the second time round, the Legal Resources Centre were able to secure reasonable compensation.

The Donyeli family has lived in Silver Town in the Eastern Cape since 1978 following their forced removal from a previous location. In 1993, after 15 years living in the area, the Donyeli family erected a 5-bedroom house on the land. They regarded their stay in Silver Town as permanent.

However, in 2008, the Makana Municipality instituted eviction proceedings against the Donyelis on the basis that Silver Town was classified as a heritage site. They were offered an RDP house as an alternative home. The Donyeli family refused to move because the RDP house was not large enough for their entire family and was worth less than the Silver Town home.

In 2012, the Donyelis and the Municipality had further discussions. The Donyeli family requested that they be compensated for the loss of their home, but the Municipality refused. The Municipality did not think that it had an obligation to compensate the Donyeli family or relocate them to a home of similar standard. The Municipality argued that it was under no such obligation as Silver Town was classified as a temporary site and the Donyeli family were not entitled to erect a permanent structure on the land.

On 9 May 2014, while proceedings were still ongoing, the Municipality unlawfully demolished a flat attached to the Donyeli house - in spite of the fact that the eviction application was enrolled for hearing on 17 June 2014.

When the eviction matter was heard in court, the Municipality was ordered to allow the Donyelis to remain living on the property and rebuild the flat that it had unlawfully demolished; or pay compensation to the family. The Municipality was also interdicted from evicting the Donyelis or demolishing the Silver Town home. The order came after the LRC approached the Magistrate's Court on behalf of the Donyelis.

The Municipality then approached the Magistrate's Court to have the order withdrawn. The Court did so because the Donyelis were not living in the house at that time and because it believed that they had been offered alternative accommodation.

The LRC then appealed this decision in the Grahamstown High Court. We argued on the Donyelis behalf that the Magistrate had failed to consider that the Donyelis were not living on the premises because the Municipality had demolished a large portion of the property, together with many of their possessions. The Magistrate also failed to consider that an RDP house was not equal to the value or size of the Silver Town home.

The Donyelis were successful and the Grahamstown High Court ordered the Municipality to provide the Donyeli family with a house of an equivalent standard or offer compensation. ●

NEPHEW FAILS TO EVICT HIS PENSIONER AUNT FROM HER HOME

The LRC were pleased to provide protection for a 78-year-old pensioner and sole breadwinner in a home of nine people, including a mentally and physically disabled niece, from her nephew's attempts to evict her from her home.

Ms Ngcobo's nephew brought an application for her eviction through the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), claiming that he was entitled to her home and that she was occupying it illegally.

But in August 2015, the Verulam Magistrate's Court found that she is not an unlawful occupier and cannot be evicted from her home.

Ms Ngcobo is a beneficiary of a government housing project in the Mount Royal Housing Project. Previously she had been living in the house in KwaMashu L-Section that her sister had also lived in. When her sister moved out in 1990, she invited Ms Ngcobo to live there.

In 2002 and 2003, the eThekweni Municipality began work on the Mount Royal Housing Project. Those living in homes in the Kwamashu L-Section could register to become a beneficiary of a new home. Our client registered and she and her family were successfully placed in a new home.

Her nephew launched the eviction application shortly after Ms Ngcobo moved to Mount Royal. She approached the LRC seeking assistance.

The LRC represented Ms Ngcobo in the Verulam Magistrate's Court arguing against her nephew's claim. Although the Magistrate's Court found that she cannot be evicted, it could not order the Department of Human Settlements to register Ms Ngcobo as the lawful owner. The LRC will continue to assist Ms Ngcobo to protect her home. ●

UNLAWFUL DEMOLITIONS IN MADLALA VILLAGE REQUIRE INTERDICT

Throughout South Africa, as population growth drives rural-urban migration, housing backlogs also grow. Along with the spread of informal settlements in towns and cities, evictions of occupiers from private and municipal land has become increasingly harsher and, in some cases, violent.

Approximately 390 people living in Madlala Village, Lamontville, in Durban have regularly faced attempted evictions and the demolition of their shelters, carried out by officials from the eThekweni Municipality. The demolitions have been carried out in a cruel manner: clients have been assaulted, shot with rubber bullets, and have had their supplies, food and medication destroyed.

Despite a court order being required by the Prevention of Illegal Eviction Act (PIE), much of the time the demolitions have been done without one. The Municipality has argued that it is protecting Durban from the threat of illegal "land invasions"; however, it has failed to produce any concrete evidence of such land invasions.

In Durban, the housing backlog is significant and eThekweni Municipality's development plan states that it will only clear the current backlog in 40-82 years (eThekweni Municipality IDP 2013-2017). Our clients lived in "backyard shacks" which became increasingly too expensive to rent. Out of

desperation, they built shacks on the land in Lamontville in September 2012. However, the land is not suitable for the development of houses as it has a large above-ground sewerage pipe running through it.

In March 2013, the Municipality and the Provincial Department of Human Settlements obtained a court order to prevent anyone moving onto more than 1 000 pieces of land in the municipal area without providing the court with any information as to the circumstances of the thousands of people who are already living on this land. Although the order wasn't finalised, the Municipality used it to justify demolishing the shacks of our clients and shacks in other communities.

The LRC challenged this court order in the Durban High Court. In August 2015, the court ruled that a blanket interim order, which

authorised ongoing evictions and demolitions in the absence of judicial oversight, was both contrary to PIE and the Constitution.

Despite this, in April 2016, the LRC had to obtain an interdict against the Municipality after the Madlala Village occupiers had their homes demolished three times in one week, without prior notification. Even when our clients were at our offices seeking advice, they heard word that the Municipality was carrying out demolitions. Fortunately, the court granted the interdict.

Sadly our clients' experience of violent demolitions is not unique and other occupiers across the country face the threat of eviction every day as municipalities struggle to provide sufficient land and housing to meet the needs of a growing urban populace. ●



Community members of Madlala Village outside court following the illegal eviction and demolition of their shacks.

The housing backlog over time

Research conducted by Africa Check and the Institute for Race Relations shows the housing backlog increase since the 1994 democratic elections.

The 1994 Housing White Paper estimated that the urban housing backlog stood at about 1.5 million houses and that the backlog was growing at a rate of 178,000 units per year.

The 1996 national census revealed that 1.4 million shacks or informal dwellings exist in the country. This represented 16% of the 9-million households in South Africa at the time.

In 2011, the census showed that the number of shacks and informal dwellings had increased to about 1.9 million.

In late 2013, the Financial and Fiscal Commission estimated that it would cost the government approximately R800 billion to eradicate the housing backlog by 2020.

In 2015, the Institute for Race Relations found that the housing backlog had increased to 2.1 million houses despite government delivering more than 3 million housing units (including both subsidised and rental housing) to poor and low-income households since 1994.

EDUCATION & CHILDREN'S RIGHTS

EDUCATION CLASS ACTION REAPS RESULTS FOR SCHOOLS IN THE EASTERN CAPE

In 2014, a successful judgment* handed down in the Grahamstown High Court proved to be a turning point for 90 schools in the Eastern Cape who were owed a large sum of money by the Eastern Cape Department of Education for the payment of teachers' salaries. These schools were also in a predicament due to the fact that the Department had not appointed teachers to vacant posts at their schools, even though their post provisioning plan (which manages teacher appointments per school) allowed them a certain number of teachers.

Schools that could afford to appoint and paid teachers using funds gathered from school fees or fundraising activities. But schools in poorer areas could not afford to appoint the needed teachers and went without. Teaching at the schools and the financial sustainability of the schools were severely compromised due to the failure of the Department to act. The success of the judgment offered hope that children in these schools would finally enjoy the benefit of education.

However, despite the judgment ordering the payment of the teachers and the publishing of educator bulletins (a necessary step in appointing teachers to vacant posts), only the first part of the judgment was effectively implemented.

The Department of Education appointed a firm of auditors to administer the payment of R82 million to schools and this was completed in 2015. But the Department failed to publish educator bulletins detailing vacant posts at schools in the Eastern Cape, which they were expected to do four times during 2015.

When the LRC served a contempt of court application in August 2015, we discovered that no open educator bulletins were published in the Eastern Cape in respect of Post-Level 1 vacancies since 2012 and that there were 1785 vacant posts in the Eastern Cape.

The LRC continues to closely monitor the progress of this case and work together with the Department to ensure that educator posts are properly advertised. ●

South Africa's first registered opt-in class action

*Linkside is South Africa's first opt-in class action. An opt-in class action is a court order allowing other similarly affected people to join a main court case. First, a class action must be certified by the court. In this case, a number of schools in the Eastern Cape approached the LRC's Grahamstown office because the Department of Education had failed to appoint teachers the schools needed and failed to pay teachers that the schools had, out of desperation, appointed themselves.

However, we knew there were other schools in the same position and we approached the court to certify a class action which would allow these schools to join the initial few. After the court certified the class action, 90 schools joined the application. The outstanding amount owed to schools for teachers they had paid out of their own accounts amounted to R82 million. The DBE was also directed to appoint 145 educators to vacant posts at those schools. This case represents the creativity of LRC lawyers in developing new approaches to litigation in South Africa which allows for greater protection of our clients' rights.

CURATOR APPOINTED AFTER DISABLED LEARNERS ABUSED AT SCHOOL

During 2015, learners at the Vukuhambe Special School in East London (a Mdantsane school for children with physical disabilities) accused employees of the Eastern Cape Department of Education of physical, verbal, and emotional abuse. The Department had been notified about these allegations, but they were never investigated.

Parents from the School Governing Body, represented by the Legal Resources Centre, approached the court to ask for a *curator ad litem* (someone to act on behalf of the learners) to be appointed to investigate the claims and make recommendations to the court in order to protect the learners from further abuse.

The allegations of abuse were made against Department staff working at the school as “youth care workers” or “non-educators” and were documented by social workers from the Department of Social Development and from the Non-governmental Organisation, Masithethe Counselling Services.

It was a traumatic time for the learners. Disabled learners are particularly vulnerable members of society and there are waiting lists for facilities such as Vukuhambe. In fact, Human Rights Watch estimated that there were 5,552 learners on special school waiting lists in 2014 and an estimated half-a-million learners not in school (Human Rights Watch, August 2015). This negatively impacts on educational outcomes, resulting in children with disabilities being excluded from future employment and social opportunities.

In November 2015, a *curator ad litem* was appointed by the Grahamstown High Court. The Court directed Advocate Mayosi to act as curator and file a report with the court setting out her findings, as well as recommendations for further action to protect the rights and interests of the learners.

The LRC is monitoring the progress on this report, as well as the implementation of any recommendations made by Advocate Mayosi. ●

The exclusion of children with disabilities from schools

In 2015, Human Rights Watch released a report which shows that an estimated half a million children with disabilities are excluded from South Africa’s schooling system. The report found that many children are turned away from mainstream schools and referred to “special schools” because they have a disability. The referrals system forces children to wait up to four years at care centres or at home for placement in a special school such as Vukuhambe.

Human Rights Watch, August 2015:
“Complicit in Exclusion”
(www.hrw.org)

COURT CONFIRMS THAT CHILDREN’S RIGHTS MUST BE PROTECTED IN COURT CASES

Can children be part of a court case? The Constitution says they can and that their interests must be protected. Section 28(1)(h) gives every child a right to legal representation in civil court cases affecting a child, if a substantial injustice would result if they didn’t have legal representation. This right also applies when the child is merely affected by litigation, even if they are not part of the proceedings.

This right was confirmed by the Supreme Court of Appeal when it overturned a decision of the Johannesburg High Court regarding children involved in a case against their school. The SCA gave significant weight to the rights and interests of the children, in this case, over the rights of a school, which had asked to see information provided by the children for a court case.

Thirty-seven English-speaking learners could not find spaces in English schools in their area. The Department of Basic Education decided to place them in an Afrikaans single-medium school, Hoërskool Fochville. The school was opposed to these learners being enrolled in the school and decided to take the Department to court over its decision.

The Centre for Child Law (CCL), represented by the Legal Resources Centre, chose to be the legal representation for the learners in order to make sure that their views would be communicated to the court. CCL asked the children to fill in questionnaires about their experiences at the school.

This questionnaire was filled in anonymously in order to protect the learners. The school then demanded to see the questionnaires, but CCL refused to show them. The Johannesburg High Court then ruled against the CCL's decision and ordered them to allow the school to see the questionnaires, and also gave a cost order against the CCL.

The CCL appealed this decision and the matter went to the SCA. The CCL told the SCA why the children specifically requested that their confidentiality be protected and why the children would be left vulnerable if they are identified through showing the school the questionnaires. They also argued that Hoërskool Fochville had not shown that it was important for the school to see the questionnaires and how it would be prejudiced if it could not.

The SCA considered Section 28(1)(h) of the Constitution and concluded that the correct decision must be in favour of protecting the children. It ruled that the Johannesburg High Court had been wrong to rule that the school had the right to see the questionnaires and reversed the cost order against the CCL. ●

What the Children's Act says about participation in decision-making

The Children's Act 38 of 2005 states that children are allowed to have their say and participate in decisions that affect their lives and, when doing so, must be protected and supported. The Act was drafted after the government ratified the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

LEARNERS FACE DANGEROUS SITUATIONS AFTER BEING DENIED SCHOLAR TRANSPORT

In February 2016, six-year-old Angel Sibanda, from Diepsloot in Johannesburg, was swept down a river during a flash flood and drowned. Three other children had to be saved by emergency services.

Thousands of learners across the country walk long distances every day to reach school – often many kilometres. Learners arrive late at school and are tired when they reach home, affecting their academic performance. They are mugged, raped or assaulted and exposed to dangerous weather conditions such as flooding.

Some learners in the Eastern Cape walk many kilometres every day leaving them vulnerable to theft and poor weather conditions



In 2009, the South African Department of Transport published the "Final Draft National Scholar Transport Policy" in an attempt to assist learners with scholar transport. However, many learners who should be eligible for scholar transport do not receive it.

The Eastern Cape Department of Education came under scrutiny by the LRC in 2015 due to its ongoing failure to provide scholar transport for students in the province. We were approached by the Khula Community Development Project and the school governing body of Tyityaba Primary School who were acting on behalf of their learners who were walking long distances to get to the school and yet were denied scholar transport.

The LRC launched an urgent application in the Grahamstown High Court to compel the Department to provide transport to the qualifying learners. The Department was also required to supply them with a list of applicants for scholar transport and the reasons why their applications were denied.

Parents of the students are in dire financial positions. Most parents rely on the monthly child support grant to meet the needs of their children and are forced to spend the majority of their available income on transport costs.

Access to basic education goes beyond the provision of educational facilities such as classrooms, teachers and stationary, to ensuring that students can easily access these facilities without having to travel long distances. The situation in the Eastern Cape highlights the importance of the constitutional obligation on the part of public officials to facilitate access to basic education. ●

THE REPLACEMENT OF INAPPROPRIATE SCHOOLS SLUGGISH AND FULL OF DISCREPANCIES

In 2010, there were hundreds of schools across South Africa (but mainly in the Eastern Cape) that were made from mud, corrugated iron or crumbling bricks. Seven of these schools (known as "mud schools") and the Centre for Child Law (CCL), represented by the Legal Resources Centre, instituted a court case to induce the Department of Basic Education to replace the inappropriate and dangerous structures.

In a settlement agreement signed in February 2011, the Department undertook to spend more than R8.2 billion over three years to replace these schools. A programme called the Accelerated School Infrastructure Delivery Initiative (ASIDI) was created to roll out the replacement of 445 schools in the Eastern Cape.

Following the settlement, the LRC and CCL undertook an extensive monitoring exercise to determine whether the Department was fulfilling the court order or whether there may be discrepancies in the Department's plans and what the reality was on the ground. After months of travelling through the Eastern Cape, visiting schools in faraway places, we found that 93 schools required urgent replacement. Eight schools were in a terrible condition but close enough to neighbouring schools (less than 2 kilometres) that the schools could be combined. Forty-five schools did not need to be replaced and 46 schools were in a reasonable condition and do not require urgent attention. This data was different to that of the Department's.

Mud schools are inappropriate and often dangerous structures used as schools



This was an important step in the process of litigation, as we predicted that it would provide a factual basis to any further litigation that may be required. This turned out to be necessary.

When, by 2014, we found that approximately 197 schools in the Eastern Cape were yet to be included in the Department's plans for upgrading, and no implementing agent had been appointed to oversee the schools' replacement, we decided to go back to court.

The new litigation was brought in order to compel the Eastern Cape Department of Education to create a more inclusive plan. On the 21 August 2014, the court ordered it to do so.

But then in April 2015, on behalf of the CCL, we had to go back to court a third time. The Department failed to publish "an updated list of public schools in the Eastern Cape comprised of inappropriate structures...accompanied by a comprehensive plan setting out what every school on the list is scheduled to receive in terms of infrastructure improvements together with timeframes within which such improvements will be received."

Unfortunately, this court action was only partially successful. In August 2016, a report to Parliament on the ASIDI programme showed that underspending has been a problem since its inception. Budget allocations to the programme have decreased in response. Underspending is blamed on the poor performance by some implementing agents and the difficulty in replacing them. There have also been delays in finalising the merging and rationalisation of schools in the Eastern Cape.

In 2015, the Department of Basic Education underspent on ASIDI by R423.4 million. Of the total of 510 schools nationally, only 167 have been replaced by the first quarter of 2016, or 32.75%. This is unacceptable and the LRC continues to monitor the implementation of this programme. ●

How schools can produce inequality

Schools are vital in changing the lives of millions of underserved youth. An analysis by Nic Spaull of the most recent Southern Consortium for Monitoring Education Quality (SACMEQ) data shows that a child's socio-economic background matters less in determining his or her performance than the socio-economic conditions of the school he or she attends. This means that, although schools play a role in lessening inequality, they actually have the potential to interrupt and reduce social equity if they are in poor condition without appropriate resources. Improving the school system is therefore vital to ensure that inequality is not reproduced.

2016 Statistics: Mud schools

On the 18 July 2016, the Daily Dispatch reported the latest statistics on the unsafe schools (known as mud schools) in the Eastern Cape.

In 2011, there were as estimated 530 unsafe schools in the province that needed to be rebuilt through the ASIDI programme at

a cost of R8-billion. By 2016, the Eastern Cape education spokesman, Loyiso

Pulumani, stated that 137 schools had been

built – of which 110 were in the Eastern Cape.



COURT CLARIFIES PENSION FUND RULES TO INCLUDE UNISA STUDENTS

Many thousands of students who cannot afford to attend more expensive universities study with the University of South Africa (UNISA). While not a “contact” university and an option for part-time students, it also gives students the ability to choose to study full time.

The interpretation of what constitutes a “full-time student” came under scrutiny after a pension fund refused to allow a young student access to her deceased father’s pension due to their interpretation of the rules.

Ms Mthembu’s daughter is attending UNISA but was denied access to the benefits of her late father’s pension fund because the South African Local Authorities Pension Fund’s Trustees didn’t consider her enrolment in UNISA as “full-time” study.

The fund rules states that the pension would be paid to the daughter as a beneficiary until such time as she turned 18, with the option of

extending the pension pay-out to 23, provided that the daughter was registered as a “full-time student”.

With the assistance of the Legal Resources Centre, Ms Mthembu sought to challenge the decision of the Trustees of the Fund on their decision. According to the Fund, full-time study is only possible at the “traditional” residential universities.

In the Durban High Court, the judge found in favour of Ms Mthembu’s daughter and ordered that the Fund pay the benefits to her. The Fund’s Trustees then approached the Supreme Court of Appeal to appeal the decision of the Durban High Court. Again, the SCA ruled in favour of Ms Mthembu.

The Fund will now need to consider every application on its own merits, including Ms Mthembu’s daughter’s, and not just dismiss the student’s application based on the chosen tertiary institution. ●

The LRC represented a student at the University of South Africa after her late father’s pension fund refused to pay her tuition



SOME PROGRESS MADE IN DELIVERY OF SCHOOL FURNITURE BUT MORE CLARITY NEEDED

In a successful fourth round of schools' furniture litigation in January 2016 brought against the National Minister of Education by the Centre for Child Law (CCL), represented by the Legal Resources Centre, a final settlement was reached. The Mthatha High Court ordered the Minister to set up a "furniture task team" for Eastern Cape schools, audit the schools' furniture needs and supply all the furniture needed before 1 April 2017.

Court orders in 2012, 2013 and 2014 in *Madzodzo and seven others v the Minister of Education and four others* resulted in more than 200 000 units of furniture being delivered to schools in the Eastern Cape by 2015. But many schools continue to have learners sitting on the floor, sitting on makeshift seats made from bricks and paint tins, or sitting four to a desk designed for two.

While the 2014 judgment directed the Minister to deliver all furniture required by schools in the province by 30 May 2014, the Minister took the opportunity to ask for extensions on the timeframe.

When deciding on its latest verdict, which it handed down in January 2016, the Mthatha High Court heard evidence from the Department of Basic Education regarding furniture budgeting, allocation and delivery in the Eastern Cape. While signs of progress must be noted, there are a number of uncertainties remaining.

Approximately R300 million had been allocated to furniture production and delivery since 2014 and 280 140 units of furniture have been delivered to schools. However, there have been five attempts to audit furniture needs in the Eastern Cape (four by Eastern Cape Department of Education and one by the Independent Development Trust) but the data produced has always been seriously flawed.

The processes used to procure service providers to deliver the furniture have also been irregular, subject to lengthy delays and poorly administered

tenders. There have been a number of cases where the furniture delivered to particular schools was not what they ordered.

There are also significant gaps in the information available about deliveries, making it difficult to assess how much progress has been made.

The court order required the Minister to publish a list of furniture needs of all public schools in the Eastern Cape on the Department of Basic Education website by 31 May 2016 and verify it by 31 August 2016. The Minister is required to ensure that those schools needing furniture receive the age- and grade-appropriate furniture by 1 April 2017. The CCL and LRC had argued for an independent body to be appointed to undertake the work required of the Minister, but this was unfortunately not part of the order.

The actions taken by the Minister to-date have not solved the Eastern Cape furniture crisis because they have not offered systematic solutions. School furniture has a limited lifespan – it wears out, it breaks, and it gets lost or stolen. The number of desks and chairs that a school needs changes over time as learner numbers go up and down. Without an overarching strategy to tackle the root causes of poor furniture management, it is unlikely that the chronic shortages facing the province will be solved. ●

The LRC took the Department of Education to court because many schools in the Eastern Cape had severe furniture shortages



EQUALITY AND NON-DISCRIMINATION

COURT CONFIRMS MATRIMONIAL RIGHTS FOR WOMEN IN CUSTOMARY MARRIAGES

The application of the Recognition of Customary Marriages Act (RCMA) in South Africa has proved to be sporadic over the years, requiring interventions from organisations, like the Legal Resources Centre, to protect the rights of women within customary marriages. The Act was drafted in order to improve the position of women, by using measures that bring customary law in line with the provisions of the Constitution and promote equality.

A decision in the Durban High Court in the matter between SN and BM (acronyms used to protect identity of minor children) showed that, when the Act is applied properly, it can ensure that women in African customary marriages are given the opportunity to access equal matrimonial rights.

SN was married to her husband, BM, by the Induna of the Cunu Traditional Council and the marriage was celebrated in terms of Zulu customary law. The marriage was not registered with the Department of Home Affairs – but in terms of section 4(9) of the RCMA this does not invalidate the marriage.

However, when pregnant with her second child, SN found out that BM had subsequently married two other women, one through a customary marriage and the other through a civil marriage. The civil marriage would have superseded both the first and second unregistered customary marriages. Section 3(2) of the RCMA is clear that a civil marriage cannot co-exist simultaneously with a customary marriage,

What does it mean to be married in “community of property”?

According to the RCMA 1998, all customary marriages are entered into “in community of property”. This means that upon dissolution of the marriage, both husband and wife are entitled to an equal share of the joint estate.

unless the spouses are only married to each other.

SN approached the LRC to assist her to challenge the other two marriages in court. If the civil marriage superseded her customary marriage, she would have no claim to the matrimonial property if BM should die or they divorce. The Act states that customary marriages, when there are no other spouses involved, are marriages in community of property and of profit and loss between the spouses.

The Durban High Court ruled in favour of SN and declared the other two marriages invalid. It also ordered that SN be allowed to register her customary marriage to BM with the Department of Home Affairs. BM will now need to fulfil the requirements for a matrimonial contract as set out in Section 7(6) of the RCMA in order to regulate the matrimonial property system of all his customary marriages. ●

LRC FIGHTING FOR ASYLUM SEEKERS TO RENEW PAPERS IN CAPE TOWN

Asylum seekers come to South Africa to escape unbearable conditions of discrimination, conflict and great hardship in their home countries. Some may end up facing further hardships when attempting to obtain asylum status.

When asylum seekers enter South Africa they can apply for asylum at various Refugee Reception Offices (RRO), but these are few and far between. Often asylum seekers will initially apply for asylum at one RRO, but travel to live in another area or city.

If asylum seekers are unable to renew their permits in offices other than where they were first issued, they are forced to travel long distances every three to six months. This is a challenge for those who cannot afford travel and accommodation costs or who are unable to take time off from work and school.

Asylum seekers may also find themselves standing in long queues, faced with inefficiencies and confusing systems. Some will sleep outside the Refugee Reception Office in order to be amongst the first in the queue the following morning.

If their asylum seeker permits consequently expire, they are vulnerable to arrest, detention and possible deportation; and may find it difficult to access basic services or employment.

Asylum seekers were exposed to these hardships when the Cape Town Refugee Reception Office (CTRRO) stopped renewing permits that were first issued in one of the other RROs. On behalf of 450 asylum seekers, the LRC went to court and challenged this decision. More people with the same issue continued to approach us, until we had over 3 500 asylum seekers on our lists.

An initial order was granted by the court on 31 August 2015 which ordered the CTRRO to renew the asylum seeker permits of the initial 450 on our list.

But we had a specific request – that this order be extended to that any asylum seeker in a similar situation also be allowed to renew their permit. The matter was postponed so that the judge could hear further argument on this aspect of the court case. This happened on 8 December 2015 and we received judgment in June 2016. The order confirmed the previous order given and was also extended to all other

persons similarly situated.

We were disappointed to later receive a letter from Home Affairs expressing their intention to appeal the decision of the court. The appeal means that none of the permits will be extended at the CTRRO and none of their files will be transferred while the appeal is still pending.

The appeal process takes a number of months. Hence the fastest and only way that an asylum seeker, with a permit first issued outside of Cape Town, will be able to renew his or her permit is for that person to travel back to their original RRO and renew their permit there.

However, the LRC intends applying to the Court for a specific order that says that Home Affairs must implement the order while their appeal is pending. ●

Statistics: Asylum seeker applications

According to the United Nations High Commissioner for Refugees (UNHCR), at the end of 2015

South Africa hosted more asylum seekers than any other country in the world.

At the end of 2014, the number of asylum seekers was estimated to be

1 057 600.

The number of new applicants in 2015 was relatively low at

62 200.

Importantly, South Africa has, by a large margin, the highest reported number of applications pending at any stage of the asylum procedure, indicating inefficiencies in the processing of claims.

MANAGER ORDERED TO RECONSIDER HER REFUSAL TO RENEW ASYLUM SEEKERS PERMITS

The Cape Town office of the LRC is visited on a daily basis by migrants who need assistance with their asylum applications. After a change of management, a manager of the Cape Town Refugee Reception Office (CTRRO) refused to renew asylum seeker permits even when the asylum applicant had not exhausted all their opportunities in the asylum process to have their application considered.

Without a renewal of the section 22 permit (asylum seeker permit), migrants are left in the uncertain and vulnerable position of being illegal in South Africa. This leaves them at risk of being arrested or deported and, at the same time, denies them the ability to effectively exercise their right to judicial review.

Twenty-nine migrants from countries such as South Sudan, Cameroon, Burundi, and the Democratic Republic of Congo all had cases ongoing in the Cape Town High Court. They each had a final rejection for their asylum applications, leaving them no further options within the internal refugee system. We assisted them in taking their cases on judicial review to the Cape Town High Court, as we believe their cases

have merit for refugee status.

While their court cases were ongoing, they needed to renew their asylum seeker permits but weren't able to.

The manager of the CTRRO refused to renew the permits, even when presented with a letter from the State Attorney requesting her to do so. The manager stated that only a court can direct her to renew the asylum permit.

The LRC accordingly went to court on behalf of the 29 asylum seekers for an order directing the manager of the CTRRO to renew the section 22 permits until finalisation of the review process, or setting aside her refusal to do so.

The court justified our arguments, ordering that the manager of a refugee reception office has the discretion to renew a section 22 permit and may do so, from time to time, until an asylum seeker has exhausted all avenues of appeal and review. The court ordered her to reconsider her decision not to renew the permits of the twenty-nine migrants. ●

What is a refugee?

The 1998 Refugees Act defines a refugee as a person who has fled their "place of habitual residence" owing to a well-founded fear of persecution for reasons of race, tribe, religion, nationality, political opinion, or membership of a particular social group, such as being a member of the lesbian, gay, bisexual, trans, and/or intersex communities in a country where sexual minorities are persecuted.

REFUGEE OFFICE STAYS CLOSED DESPITE SECOND COURT BATTLE

Four years after the announcement that the Department of Home Affairs (DHA) will be closing the Cape Town Refugee Reception Office (CTRRO) to new asylum seekers, the LRC continues to fight in the courts for the reversal of this decision.

We are supported by many members of civil society who recognise its closure will greatly prejudice thousands of asylum seekers who will have to travel many kilometres and at great expense to Musina, Pretoria or Durban to submit and follow-up on their applications for asylum.

This makes it difficult for asylum seekers to apply for and be granted asylum - leading to uncertainty about their status in South Africa, making them illegal and suppressing their ability to integrate into communities.

On behalf of the Scalabrini Centre of Cape Town, the LRC and UCT Refugee Clinic challenged this closure in the Cape Town High Court. The DHA refused to open the office while the court case was ongoing, even though the High Court directed it to. When the case was finalised in the Cape Town High Court and judgment was given to the effect that the DHA's decision to close the CTRRO must be reversed and it must be reopened, the DHA appealed the judgment in the Supreme Court of Appeal (SCA).

In September 2013, the SCA dismissed the DHA's appeal but on the narrow basis that the DHA had failed to properly consult with civil society before making its decision. At a consultation with civil society in Cape Town in December 2013, every organisation and every individual who addressed the meeting was against the closure. Despite this, the DHA confirmed the closure of the CTRRO.

On behalf of Scalabrini, we launched a fresh challenge in the Cape Town High Court. The outcome was disappointing again. Our application was dismissed with the result that new asylum seekers can only apply for asylum in Musina, Pretoria or Durban; and also that any person with an asylum seeker permit first issued at those offices will not be able to renew their permit in Cape Town.

It is concerning to the LRC that our evidence presented on the inefficiencies of the RROs in the country was not taken into consideration.

The judgment instead found that “asylum determinations are being made as quickly as within a week”, and that the need to return to RROs has been, “greatly reduced owing to the improved efficiency in dealing with asylum applications at the remaining RRO’S and the reduction in the overall number of asylum-seekers in the country.”

The judgment also placed an emphasis on the “nuisance” caused by RROs and the difficulties and costs of opening and keeping open an RRO. This ignores the rights that are being infringed by the closure; including asylum seekers’ rights to equality, dignity, freedom and security of the person, freedom of movement, freedom of trade, occupation and profession, and children’s rights.

The ability of asylum seekers to support themselves and their family, as well as integrate into their community while their asylum applications are processed, is critically important if an asylum seeker is to enjoy these rights. ●

Delays and mismanagement in the processing of asylum seeker permit renewals and refugee status applications by the Department of Home Affairs means that many foreigners living in South Africa are vulnerable to deportation



UNLAWFUL DETENTION OF MIGRANTS A CONTINUING CONCERN

South Africa has one centre from which undocumented migrants are repatriated to their countries of origin. Lindela Repatriation Centre in Krugersdorp, Gauteng, has the capacity to house 6 000 detainees, but according to the officials who work there, only between 2 500-3 500 migrants are detained there at one time while they await deportation.

According to the Immigration Act, migrants can only be deported once a final rejection has been made on their application for asylum. That person has the right to exhaust all reviews and appeals under the Act.

The law also states that, once arrested, the detainee can only be held for 30 days, after which a warrant from the Magistrate's Court must be obtained to extend this. In total, someone can only be detained in Lindela for 120 days in total and then must be released or deported.

For many years, the LRC has assisted migrants who have been unlawfully detained at Lindela – this unlawfulness manifesting in various ways. In 2014, we brought a case at the Johannesburg High Court to challenge the actions of officials at Lindela and the Department of Home Affairs.

In South African Human Rights Commission and Others v Minister of Home Affairs: Naledi

The South African Human Rights Commission developed the Lindela Monitoring Project following the court case by the LRC on behalf of the Commission, in which unlawful detentions in Lindela were challenged

Pandor and Others (2014) the High Court ordered the Department of Home Affairs to “take all steps reasonably necessary or appropriate” to ensure that no person is detained for longer than 30 days without a warrant.

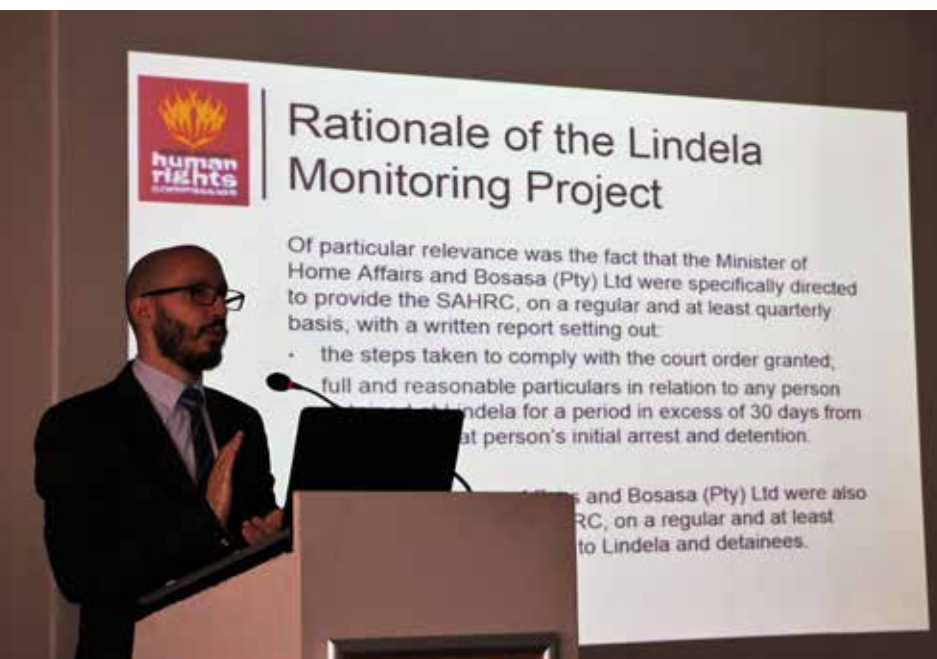
However, the LRC continues to consult with between 30 and 40 people per week at Lindela. The reasons for their detentions vary, but most often arise from delays on the part of the Department of Home Affairs in processing their documents. At times, failure by police enforcement to follow procedures in executing their duties, like accessing warrants for arrest on time, contributes to these unlawful arrests. Detainees are also held for longer than the days stipulated by law.

These unlawful arrests and detentions put migrants in a disadvantaged position as they are deprived of their chance to access basic services in the country, are separated from their families and often lose their jobs.

The story of Ms R shows just one experience of being unlawfully detained. Her asylum seeker permit was due to expire when she went to the Refugee Reception Office and she was turned away because the “system was not working”. The permit also indicated that her asylum application had been referred to the Standing Committee of Refugee Affairs (SCRA), meaning that she still awaited a final decision on her application.

She returned to the Refugee Reception Office on 18 December 2015, and she was arrested and detained at Musina Police Station. Ms R was then transferred to Lindela Repatriation Centre on 5 January 2016. She was denied the right to exhaust all reviews and appeals under the Act before being arrested.

Ms R was represented by the Legal Resources Centre in the Johannesburg High Court arguing that her detention was unlawful. On the 10 March, the High Court ordered her immediate release from Lindela. ●



OPENNESS AND ACCOUNTABILITY

LRC INTERVENES TO STOP UNREASONABLE POLICE FORCE AGAINST STUDENT PROTESTORS

In October 2015, it was announced that the University of the Witwatersrand (Wits University) had planned a 10.5% increase in fees. On the 15 October, protests against these fee increases began on the Wits University campus, soon spreading to other universities. Protestors adopted the hashtag #FeesMustFall and social media was abuzz with news of the protests.

In Cape Town, students were interdicted by the University of Cape Town management from protesting on campus. In solidarity with the students being interdicted and other protests across the country, on the 21 October, nearly 5000 protesters made their way to South Africa's Parliament in Cape Town to protest against fee increases; a march that coincided with a meeting of the National Assembly.

Riot police were brought in to disperse the largely peaceful protests. The police used stun grenades, tasers, coloured gas, riot shields and

truncheons on the crowds and a number of people were arrested and charged with contravening the National Key Points Act.

The LRC, representing a group of nine students, approached the Western Cape High Court on the evening of the 21 October 2015 with an urgent application for an interdict against the South African Police Services arising from the excessive use of force against the protestors.

The following day, on the 22 October 2015, the court granted an order recording an undertaking by the Minister of Police and the South African Police Services Provincial Commissioner (Western Cape) that the SAPS will fully comply with the laws regulating protest action and not use unreasonable force against peaceful student protests. The individual students agreed to comply with the Regulation of Gatherings Act which regulates gatherings and protest action in South Africa.



Wits University students protest an increase in fees. Protests at Wits spilled over onto other university campuses under the #feesmustfall movement

On the 23 October, protestors gathered outside the Union Buildings in Pretoria where the President was scheduled to make an announcement on the fees increase. The protests turned violent, but with many student protesters calling for calm. The President did not address the crowd directly but announced that there would not be a fees increase for the following year, vindicating the efforts of the protestors. ●

Some facts around free higher education according to the Institute for Race Relations

The current level of public spending on universities in South Africa is 0.8% of gross domestic product (GDP), a low figure by global standards. A more appropriate number would be 2.5% of GDP. Data produced by the Institute for Race Relations (IRR) on household spending levels suggests that only 5% of South African families can comfortably afford to pay university fees for their children.

If higher education is funded exclusively through taxpayer subsidies, then a further R71-billion, over and above the existing R25-billion taxpayers spend on funding higher education, would be required. The IRR's analysis suggests that, with sufficient prioritising by government, R71-billion could be raised.

CASAC PROVIDES USEFUL EVIDENCE ON INDEPENDENCE OF POLICE INVESTIGATIVE BODY

In South Africa, the Independent Police Investigative Directorate (IPID) is a body tasked to ensure oversight of the South African Police Service (SAPS) and other police bodies set up by municipalities. Its independence is crucial to ensure that complaints against the SAPS are investigated without government interference. Recent cases of police brutality, such as the Marikana massacre, highlight the importance of an independent body to investigate complaints against the police.

In 2015, the Executive Director of IPID, Robert McBride, was suspended by the Minister of Police due to allegations of gross misconduct. McBride went to court on an urgent basis in order to challenge the legislation which empowers the Minister to suspend the Executive Director, as this directly interferes with the independent nature of IPID. In fact, section 206(6) of the Constitution provides for "an independent police complaints body to be established by national legislation".

The Council for the Advancement of the South African Constitution (CASAC) approached the LRC as they wanted to introduce expert evidence as a friend of the court. When argument was heard in August 2015, CASAC introduced evidence to the court based on the evidence of Mr David Bruce, a policing expert.

Mr Bruce's evidence showed that there is a particular need for adequately independent oversight agencies in the realm of policing, that the position of the Executive Director of IPID is presently not given adequate structural and operational independence, and that the nature of the Minister's powers renders the Executive Director vulnerable to political interference. He argued that this shortcoming has consequences for the legitimacy of IPID in the eyes of the public and the police. This, in turn, undermines IPID's ability to perform its functions effectively.

On 4 December 2015, the Pretoria High Court handed down judgment, finding that the statutory provisions relating to the Independent Police Investigative Directorate (IPID) are unconstitutional for failing to give adequate independence to IPID as required by section 206(6) of the Constitution.

The judgment stated that, "If the public and police believe that the executive director is subject to political interference and operates in pursuance of a political agenda, IPID will lose its legitimacy and the efficiency benefits that accompany such legitimacy. This will undoubtedly result in IPID becoming considerably less effective in investigating corruption and the police's excessive use of force (including torture)."

The court was grateful for the expert evidence provided by Mr Bruce, stating that the evidence served to clarify the factual context of the debate, and to inform the meaning of the concept of "adequate independence" in relation to independent oversight bodies.

On the 6 September 2016, the Constitutional Court confirmed the High Court judgment. As noted by Constitutional Law expert, Pierre de Vos, in an analysis of the judgment*, "[i]n order for IPID to effectively and credibly fulfil its duties as mandated by the Constitution, it needs to be independent from both the police (which it now formally is) and from the executive branch of government. It must be independent and be seen to be independent from either in order to retain the trust of the public." ●

*Pierre de Vos (2016) *Constitutionally Speaking: Will IPID go after the Hawks for its abuse of power?*
7 September 2016

SA GOVERNMENT DEFIES INTERNATIONAL OBLIGATION TO ARREST AL BASHIR

In June 2015, the South African government defied international obligations and a court order by not arresting Sudanese President Omar Hassan Ahmad Al Bashir when he attended the African Union Summit held in Johannesburg. Despite efforts by civil society to compel the government to undertake its obligations, Al Bashir was allowed to leave the country on 15 June 2015.

Al Bashir has two warrants of arrest issued against him by the International Criminal Court (ICC) for crimes against humanity, genocide and war crimes he allegedly committed in his country, Sudan, which has been encroached upon by civil war for many years.

The South African Litigation Centre (SALC) sought the implementation of the arrest warrants for Sudan's President. The Pretoria High Court granted an order for arrest of Al Bashir on 14 June 2015.

The warrants of arrest list ten counts on the basis of his individual criminal responsibility under article 25(3)(a) of the Rome Statute. They include five counts of crimes against humanity, murder, extermination, forcible transfer, torture and rape.

Al Bashir also faces two charges of war crimes; that is, intentionally directing attacks against a civilian population not taking part in hostilities, and pillaging. He also faces charges of genocide; genocide by killing, genocide by bodily or mental harm, and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction.

As a signatory to the Rome Statute of the ICC, the South African government was under an obligation to execute the warrant of arrests and thereby arrest Al Bashir. The government argued that it could not arrest President Al Bashir because he enjoyed Head of State immunity.

The Minister of Justice and Constitutional Development appealed the high court decision in the Supreme Court of Appeal.

The Peace and Justice Initiative (PJI) of the Netherlands, and Centre for Human Rights (CHR) of South

Africa, represented by the Legal Resources Centre, were admitted as friends of the court in the Supreme Court of Appeal.

The PIJ/CHR argued that the *jus cogens* (a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted) nature of the crimes allegedly committed by Al Bashir and the nature of the ICC exclude the application of Head of State immunity when South African courts cooperate with the ICC.

They further argued that, in terms of the United Nations Security Council resolution 1593 (2005), the Rome Statute of the ICC (1998) has been imposed on Sudan with respect to the situation in Darfur, and, thus, Sudan is akin to a State party to that treaty.

As a result, South Africa would not have acted inconsistently with its obligations under international law in cooperating with the ICC with respect to the case concerning Al Bashir.

Finally, the PIJ/CHR argued that, in terms of the obligations imposed by the Genocide Convention (1948), the drafting history of the Rome Statute of the ICC, and the need for access to justice for victims of *jus cogens* crimes in Darfur, the government should have executed the arrest warrants against Al Bashir.

On 12 February 2016, the SCA ruled against the SA government, thereby affirming its obligations under international laws. ●

The International Criminal Court at The Hague _photo Wikimedia



CONSTITUTIONAL COURT OVERTURNS DEFAMATION CLAIM AGAINST MUNICIPAL EMPLOYEE

"Prior restraint of speech is among the most serious infringements of freedom of expression."

These are the words of the Constitutional Court after it overturned a wide-ranging interdict that was granted against a municipal worker who had omitted certain facts during an interview with *The Herald* where he spoke about his grievances against the South African Municipal Workers Union (SAMWU) National Provident Fund.

The Court also found that, "[o]ne may accept that Mr Mthyopo's omission was disrespectful of the journalist. And one may accept it was disrespectful of the readers he aimed to reach through her. This may warrant disapprobation and perhaps even censure. But it does not follow that his omission constituted actionable defamation."

Mr Ayanda Mthyopo represented 99 disaffected members of the SAMWU Fund who found that they were unable to leave the Fund and move across to another. Mr Mthyopo lodged a grievance with the Pension Funds Adjudicator, which was overturned on appeal.

After an interview with Mr Mthyopo was published in *The Herald* newspaper about these grievances, SAMWU obtained a retraction

and apology from *The Herald* because Mr Mthyopo failed to mention that the High Court had overturned the Pension Fund Adjudicators decision.

The Fund applied to Grahamstown High Court to interdict Mr Mthyopo from similar future actions, arguing that Mr Mthyopo had intentionally misled the journalist and that the Fund had been defamed by the article. The High Court granted a wide ranging interdict against Mr Mthyopo and ordered costs against him.

Mr Mthyopo applied for leave to appeal at both the Grahamstown High Court and the Supreme Court of Appeal but both of his applications were dismissed. With the assistance of the Legal Resources Centre, he approached the Constitutional Court.

In a unanimous judgment, the Constitutional Court dismissed the claim of defamation. It found that the article did not amount to defamation and that the Fund was not entitled to interdict Mr Mthyopo. The court protected Mr Mthyopo's freedom of expression in the process. ●

LRC EMAIL UNLAWFULLY INTERCEPTED BY BRITISH COMMUNICATIONS

In a matter that has left the Legal Resources Centre with more questions than answers, a ruling by the Investigatory Powers Tribunal (IPT) in the United Kingdom confirmed that an LRC email address was unlawfully intercepted by the British Government Communications Headquarters (GCHQ), violating the laws governing such surveillance.

However, it is not known which email address was intercepted, how often it was intercepted and what information was examined, as well as who authorised the interception. This email address was examined by the GCHQ but the ruling indicates that the intercepted material was not used in any way. However, the interception itself was a violation of their internal policies for selecting which communications to intercept, which made it unlawful.

This ruling reveals how invasive surveillance operations have become and confirms a serious breach of the rights both of the organisation and the individual whose communications have been intercepted.

The fact that communications were unlawfully intercepted – information that may never have come to our knowledge had this case not been instituted – is of serious concern. We are indebted to Liberty, a UK-based organisation that has been responsible for instituting the litigation before the IPT.

Following the IPT ruling, the Legal Resources Centre, Amnesty International and eight claimant NGOs brought a case to the European Court of Human Rights, arguing that the UK law governing various aspects of communications surveillance violated the country's human rights obligations, including the rights to privacy and freedom of expression. ●

ACCESS TO JUSTICE AND CIVIL SOCIETY SUPPORT

COURT AGREES THAT MORE JUDICIAL OVERSIGHT IS NEEDED IN DEBT COLLECTION

Hundreds of thousands of heavily-indebted people across South Africa have had negative experiences of Emolument Attachment Orders. When these are abused, they can impact on whether people can pay for food, clothing and shelter for their families.

An EAO is granted in terms of the Magistrates' Courts Act (MCA) and orders an employer to make deductions from their employee's salary or wages when that employee owes money to a creditor or its attorneys. In practice, this means that every month, the debtor's employer must pay a portion of the debtor's wages directly to the creditor until the debt is paid off.

A number of concerns have been raised about EAOs and the impact these can have on vulnerable members of society, especially the poor and least skilled; impacting on their dignity and socio-economic rights.

Firstly, in many instances, the amount of the instalments specified in the EAO left too little money for the debtor to support himself and his family. In addition, the Constitutional Court has held that property (including money) cannot be attached without judicial oversight, but EAOs can be issued by a clerk of the court, and not a Magistrate. However, it is necessary for a judge or Magistrate to hear the EAO application and to consider whether the instalment amount is affordable for the debtor.

Secondly, the MCA provides that debtors are allowed to challenge an EAO in the court where it was issued. However, the credit providers acquired consent from debtors to have the orders issued in distant courts (such as Kimberley, for a debtor living in Stellenbosch). As a result, the

impoverished debtors could not afford to travel to the courts where the EAO was issued in order to challenge the EAO, whether on the basis that the instalments were too large or the order was otherwise unlawful.

The University of Stellenbosch Legal Aid Clinic brought an application in the Western Cape High Court on behalf of fifteen clients. The applicants wanted to challenge the lawfulness of these EAOs based on the concerns above. The LRC represented the South African Human Rights Commission (SAHRC) as a friend of the court, advancing arguments about international best practice in judicial oversight.

On 9 July 2015, the High Court handed down judgment, finding that the EAOs that had been issued against the fifteen debtors are unlawful and set them aside. In addition, the court declared that certain sections of the Magistrates' Courts Act are inconsistent with the Constitution and invalid. The Court agreed that there must be more judicial oversight when issuing EAOs and that EAOs must be issued in the same jurisdiction as the debtor.

This case garnered a large amount of media attention and has also brought more awareness regarding the issue of predatory practices of small lending institutions. We are also pleased to announce that the changes to the MCA have been planned in order to respond to the court judgment. ●

The legal practitioners involved in the Stellenbosch Legal Clinic case included the LRC's Michael Tsele, Sarah Sephton, Jason Brickhill and Emma Webber



CERTIFICATION OF SILICOSIS CLASS ACTION COULD BE THE “PERFECT STORM”

On the 13 May 2016, a historic judgment was handed down in the Johannesburg High Court ordering the certification of a class action for thousands of former gold mine workers affected by silicosis.

The law firms at the helm of this judgment are Richard Spoor Incorporated and Abrahams Kiewitz Incorporated, as well as the Legal Resources Centre. The respondents in the matter are about 30 South African gold mining companies which operated 82 gold mines dating back to 1965.

The law firms are acting on behalf of thousands of current and former gold mine workers (estimated at between 17 000 and 500 000), and the dependants of those miners who have since passed away due to silicosis and tuberculosis diseases. The miners are from South Africa and surrounding countries historically known for their supply of

migrant labour to South African mines. Richard Meeren of the law firm Leigh Day, wrote in an opinion for the Mail & Guardian of the “silicosis epidemic among black gold miners”, showing the extent of disease and the devastating effect on the former miners.

Stuart McCafferty, a partner at the law firm Webber Wentzel, was quoted in a news article as saying that the class action was “the start of a perfect storm”.

“What may have been considered as inconceivable six or 10 years ago now looms as a very real threat, and that is the spectre of litigation against coal mining companies by their employees and former employees who suffer from respiratory disease, as a result of exposure to dust.”

Outside the Johannesburg High Court one of the applicants - a former miner who contracted silicosis - addresses the media after the judgment was given allowing for the certification of what could be the largest class action in South Africa



Class actions have a very recent history in South Africa and the silicosis class action has taken many years to reach the point of certification. Should it finally result in a judgment in favour of the miners, billions of rands worth of compensation will be awarded to thousands of affected people and their dependants.

McCafferty noted that the judgment could result in further class action claims by mine workers in other sectors who have also suffered the effects of being poorly-paid and vulnerable migrant labourers working in mines that have been negligent in protecting their health. What is seen as a threat to the mining companies and their representatives is an opportunity to finally gain justice for our clients and thousands of others who have lost their health and lives in extracting gold from the earth

It took more than a decade for the legal teams to bring this matter before the High Court. The length of time taken to get this far, even though there is still a long way to go if a settlement cannot be reached, speaks to the complexities of the case, the expert opinions sought, the number of people who were interviewed and the density of the issues involved.

During this time, the legal teams have witnessed many sick miners succumb to the disease and die, which has been devastating to the families. This judgment could have an effect on the common law itself with regards to the transmissibility of damages to the dependants of deceased mineworkers, which is something that the law firms are asking for on behalf of the mineworkers (see box).

Despite some of the gold mines appealing the judgment, the High Court found that the certification is “un-appealable”, although the transmissibility element of the judgment could be appealed. ●

Why a “class action” and transmissible damages claim was necessary

The certification of a class action is necessary for mineworkers to realise their legal rights. Most of the former mineworkers do not have the money to institute an independent claim for damages. Many are old and sick. The court recognised that a class action would be the only realistic option open to mineworkers and their dependants.

Currently, the common law does not entitle a dependant of a deceased person, or an estate (through the executor) of a deceased person, to pursue a claim for general damages. This would mean that if a mineworker should die before the court case goes to trial, their dependants would not be able to claim damages on his or her behalf.

The mineworkers specifically asked the court to deviate from the common law principles with regards to transmissibility of damages. The mineworkers urged the court to allow any claim for general damages made against any mining company to be transmissible to his estate should he or she die so that his family may benefit.

MARIKANA VICTIMS CHALLENGE RULES GOVERNING PROVISION OF LEGAL AID

The South Africa Constitution gives everyone the right to legal representation. Legal Aid South Africa (Legal Aid SA) provides poor citizens with tax-funded legal representation if they pass the means test – although, in some cases, legal representation is provided automatically.

However, the question of when, and under what circumstances, Legal Aid SA will be obliged to provide legal aid was answered before the Constitutional Court after the body refused to fund the legal representation of families of those injured and arrested during the Marikana protests. They required legal representation when appearing before the Farlam Commission of Inquiry.

This case was important to the LRC who acted on behalf of the family of the late John Ledingoane at the Commission. We supported the other legal representatives of the miners, the Socio-Economic Rights Institute, who argued that injured and arrested miners had a right to be provided with legal aid.

The matter was first heard before the Pretoria High Court where Legal Aid SA was ordered to provide legal aid; but Legal Aid SA appealed this decision. The Supreme Court of Appeal dismissed this appeal application because Legal Aid SA had, in the meantime, agreed to pay the legal costs of the miners and the matter was moot.

However, Legal Aid SA approached the Constitutional Court to seek clarity on its future obligations to provide funding for legal aid for those appearing at commissions of inquiry. The Constitutional Court judges found that the Pretoria High Court judgment only applied to the Marikana Commission. In the future, whether Legal Aid SA is required to provide legal aid in a civil matter, including before a commission of inquiry, will depend on the context of the matter.

Importantly, the judgment confirms that the right of access to courts in section 34 of the Constitution will require the state to provide legal aid in civil matters in certain cases. ●

RELIEF FOR BRUSSON VICTIM AS APPEAL COURT FINDS NO INTENTION TO TRANSFER OWNERSHIP

A judgment that was handed down in the Supreme Court of Appeal in November 2015 could bring relief to 900 victims of a reverse mortgage scheme that has threatened the ownership of their homes and resulted in many people finding themselves vulnerable to evictions and the sale of their homes. These schemes have proliferated over the last few years as people with poor credit records seek out companies that are willing to lend them money, regardless of their blacklisted status.

This scheme is not the first or only of its kind. The LRC aims to use these cases to send a clear message to banks that make loans to these types of schemes that it is unlawful to do so. We aim to create a basis for necessary regulations and guidelines to be developed to prevent this practice from happening to others.

In 2006, Brusson Finance (Pty) Ltd advertised itself as a company that can provide loans to blacklisted people. Their adverts indicated that if you owned property, you could approach them at one of their branches in Johannesburg or Pretoria. On approaching Brusson for a loan,

The Brusson Finance advert which lead to over 900 people seeking their services and, in the process, becoming vulnerable to losing their homes



NEED MONEY?
GOOD OR BAD CREDIT DOES NOT MATTER!!

- * Want to take a Family Holiday?
- * Need Money for your business?
- * Want to restructure your Finance in order to have more available cash at the end of each month?
- * Want to consolidate your debt ?

FINANCE ASSISTIT AND BRUSSON FINANCE CAN HELP YOU

IF YOU OWN PROPERTY CONTACT US AT ONE OF OUR BRANCHES:
JHB: 086 1432775 o/h (011) 432-2775
PTA: (012) 343-4642 o/h

WE WORK COUNTRY WIDE
Terms and Conditions Apply. Admin Fee charged

LRC attorneys, Nhlamulo Mvelase and Carien van der Linde, have been working on behalf of over 100 people who became victims of a fraudulent lending scheme called Brusson Finance



clients would be presented with an agreement, which they signed under the impression that their property was being used as security for the loan. In reality, the documents they signed authorised the sale of their home to a third party.

The clients continued to live on the property and pay monthly instalments to Brusson, unaware that their family homes no longer belonged to them.

Brusson had approached a number of individuals who had good credit records and asked them to sign on as investors, for which they would receive a fee. Using the names of the investors, loans would be taken out with any of the major banks, using the property of the Brusson clients as security.

Clients of Brusson took the company to court where the scheme was declared illegal in 2010. Following the judgment, Brusson went into liquidation, which meant that the payments to the banks were disrupted and the banks foreclosed on the properties that were part of the scheme, in some cases obtaining judgment declaring the properties executable.

This is where the LRC assisted families to stop the execution of the property and their evictions. The Moores are one such family. Their home's ownership was transferred to Mr Kabini who received a mortgage bond from ABSA over the property. When Brusson Finance was liquidated, ABSA proceeded to execute against the property.

The Moores challenged the validity of the transfer of the property from themselves to Mr Kabini because they had no intention to transfer the property to Mr Kabini in the first place. When the matter went to the Johannesburg High Court, it was found that the transfer was invalid because the Moores lacked the necessary intention to transfer ownership. Therefore, the Moores remain the owners of their home.

ABSA appealed the judgment in the SCA, but was unsuccessful. Instead, it found that the agreement between the Moores and Brusson Finance was invalid on the basis of lack of intention. The SCA confirmed that the mortgage bond in favour of ABSA must be set aside on the basis that Mr Kabini was not the owner of the property and therefore did not have the authority to register a bond. ●

FAMILIES OF MARIKANA VICTIMS SEEK COMPENSATION

On the 16 August 2012, events at the Lonmin Mine in Marikana, Rustenburg shocked South Africa and placed the country squarely in the spotlight of international media. Striking mineworkers were shot at with military assault rifles by members of the South African Police Service (SAPS), resulting in the deaths of 34 people and injuries to many more. The mine workers were seeking a pay raise, a "living wage" of R12 500, which Lonmin refused.

Following these events, the Marikana Commission of Inquiry was established to investigate the tragedy. The LRC was instructed to represent the family of the late Mr John Kutlwano Ledingoane, a mineworker killed at Marikana.

Almost three years after the tragedy, in July 2015, the Marikana Commission released its findings. The report confirmed that Mr Ledingoane and other mineworkers who were killed over 45 metres from the closest SAPS members "could not possibly have been perceived as presenting an imminent risk to the safety of anyone else". It went on further to state that, "at best, for the SAPS these are victims who were accidentally killed in the...volley".

As a result, in August 2015, the Socio-Economic Rights Institute (SERI), the LRC and the Wits University Law Clinic initiated civil claims for damages to compensate the families that we represented at the Commission. As was noted by SERI, the LRC and Wits Law Clinic:

"The majority of the deceased workers were the sole breadwinners of their families and supported large extended families on their meagre income. A total of 326 dependants relied on the deceased workers' wages. Their families, living in the North West, Eastern Cape and Gauteng provinces, as well as Lesotho and Swaziland, continue to live in unbearable conditions of grinding poverty, and, despite some ex gratia assistance from charities and churches, remain destitute following their deaths."

The civil claims are still ongoing. ●

LRC INTERVENES IN DETENTION OF EGYPTIAN-SOUTH AFRICAN IN CAIRO PRISON

While entering Egypt on the 1 December 2014, Sheikh Abdel Salam Jad Bassiouni (Dr Bassiouni), and his son Bilal, were arrested. Dr Bassiouni had travelled to Egypt to attend his daughter's wedding.

Dr Bassiouni is a South African and an Egyptian citizen and he is the Managing Director of the Al Tawheed Islamic Centres.

Following their arrest and interrogation at Cairo International Airport, Bilal was released on 3 December 2014 but Dr Bassiouni, who suffers from diabetes and back pain, was transferred to Torah Prison in Cairo and detained on unknown charges, without sufficient access to medication.

In April 2014, following various engagements with the South African Embassy in Cairo, the Bassiouni family instructed the Legal Resources Centre to petition the South African government to assist with the release of Dr Bassiouni.

Following multiple unsuccessful domestic engagements with the Department of International Relations and Cooperation, the LRC requested the Egyptian Initiative for Personal Rights (EIPR) to assist Dr Bassiouni in the Egyptian Courts. EIPR and the LRC are both member organisations of the International Network of Civil Liberties Organisations (INCLO).

Following the efforts of EIPR, Dr Bassiouni was eventually released from detention on 29 March 2016 but subjected to a travel ban pending the outcome of his case.

Dr Bassiouni's case is ongoing and the EIPR continues to operate in Egypt, despite the increasing political uncertainty and attempts by Egyptian authorities to limit civil society space. ●

A "Free Bassiouni" protest outside the African Union Summit in 2015



STAFF AND SUPPORTERS

LRC STAFF 2015

National Office

Janet Love _____ National Director

Teresa Yates-Wegerif _____ National Deputy-Director

Koop Reinecke _____ Finance Director

Annand Chaytoo _____ Training Manager

Martha Bopape _____ Finance Assistant

Topsy Mackenzie _____ Payroll Administrator

Isabella Rangata _____ Finance Assistant

Gontshi Ongezwa _____ Finance Intern

Lufuno Mamburu _____ Finance Intern

Zamashandu Mbatha _____ Finance Intern

Esme Wardle _____ Office Administrator

Madile Modisaesi _____ HR Generalist

Moleshiwe Magana _____ Development Officer

Nolitha Tiba _____ Grants Management Officer

Emma Broster _____ Grants Management Officer

Veronica Fletcher _____ Grants Management Officer

Claire Martens _____ Communications Officer

Lucky Xaba _____ Library Manager

Delysia Weah _____ Professional Assistant to ND

Constitutional Litigation Unit (Johannesburg and Cape Town)

Jason Brickhill _____ Advocate - Director

George Bizos _____ Senior Counsel

Tembeka Ngcukaitobi _____ Advocate

Michael Bishop _____ Advocate / Cape Town Based

Sayi Nindi _____ Attorney

Wilmien Wicomb _____ Attorney / Cape Town Based

Avani Singh _____ Attorney

Simone Sonn _____ Project Coordinator

Shona Gazidis _____ Researcher

Maxine Rubin _____ Researcher / Cape Town Based

Shireen Hartley _____ Senior Legal Secretary

Ocudy Mokoka _____ Office Assistant / Relief Receptionist

Johannesburg Regional Office

Naseema Fakir _____ Attorney - Director

Shirhami Shirandi _____ Legal Researcher

Sithuthukile Mkhize _____ Attorney

Carien Van der Linde _____ Attorney

Michael Power _____ Attorney

Josephine Mathebula _____ Paralegal

Bethuel Mtshali _____ Paralegal

Busisiwe Motshana _____ Paralegal

Mabatho Molokomme _____ Candidate Attorney

Jade Amman _____ Candidate Attorney

Johannesburg Regional Office (cont.)

Nhlamulo Mvelase _____ Candidate Attorney

Velemseni Zulu _____ Candidate Attorney

Kelly Kropman _____ Candidate Attorney

Tasneem Kader _____ Candidate Attorney

Ntebaleng Mokoena _____ Office Assistant/Relief Receptionist

Caroline Msimango _____ Specialised Administration

Constance Mogorosi _____ Receptionist

Durban Regional Office

Sharita Samuel _____ Regional Director

Anneline Turpin _____ Attorney

Thabiso Mbhense _____ Attorney

Cathy Mote _____ Paralegal

Ektaa Deochand _____ Candidate Attorney

Tawana Nharingo _____ Candidate Attorney

Shaun Bergover _____ Candidate Attorney

Suzanne Clarke _____ Librarian

Sandra Govender _____ Office Manager

Nomusa Mkhwanazi _____ Receptionist

Cape Town Regional Office

Sheldon Magardie _____ Regional Director

William Kerfoot _____ Attorney

Steve Kahanovitz _____ Attorney

Henk Smith _____ Attorney

Angela Andrews _____ Attorney

Charlene May _____ Attorney

Mandy Mudarikwa _____ Attorney

Ncunyiswa Hans _____ Paralegal

Anthea Billy _____ Paralegal

Zama Khumalo _____ Candidate Attorney

Lara Wallis _____ Candidate Attorney

Sally Hurt _____ Candidate Attorney

Elgene Roos _____ Candidate Attorney

Lara Sauerbier _____ Candidate Attorney

Pamela Allen _____ Librarian

Zulfa Mohammed _____ Secretary

Naomi Davids _____ Secretary

Nhikiza Matshaya _____ Administrator

Thembile Maneli _____ Receptionist-Interpreter

Thandiwe Gebengana _____ Office Assistant / Relief Receptionist

Grahamstown Regional Office

Sarah Sephton _____ Regional Director

Cameron McConnachie _____ Attorney

Rufus Poswa _____ Paralegal

Mandira Subramony _____ Candidate Attorney

Talita Mshweshwe _____ Candidate Attorney

Michael Tsele _____ Candidate Attorney

Valencia Morrison _____ Administrator

Nomfundo Somandi _____ Administrator

Ethel Libi _____ Receptionist

Amanda Moli _____ Office Assistant / Relief Receptionist

STAFF PROFILE: CONSTANCE MOGOROSI

The Legal Resources Centre bids a sad farewell to its very own daughter, sister and mother, Constance Mogorosi – fondly known as “MaConnie”. MaConnie left the LRC at the end of July 2016, having spent 25 years with us.



MaConnie at her farewell

MaConnie still has a sharp memory of all of her good and bad experiences working with the LRC as the switchboard operator. In a short, frank conversation with MaConnie, it's obvious that LRC has become an integral part of her life.

MaConnie developed strong relationships with every staff member at the LRC, including those who have worked with the organisation in other regional offices, and those who have since left. “I consider some of the staff here as my own children, I will miss every aspect of this organisation and the work I am doing dearly”.

MaConnie developed a very resilient attitude as the front-desk person because she understood she was dealing with unhappy people on a day-to-day basis. “I have come to understand that some of the LRC clients are from far, and some have been referred to us by other legal organisations, and they come in here with their frustrations, temper and anger at times”.

Over the years, MaConnie says she has always had supportive



MaConnie at the 2016 AGM with Janet Love

colleagues. But she does recall one experience when she left the office after she was fed up with the actions of one paralegal who would not take clients after 10am. The tension between MaConnie and the paralegal went on for almost three months, but the incident was finally sorted out. She was supported by paralegal, Pinky Madlala, who always came to her rescue and would assist with clients. Ms Madlala has sadly passed on.

One of MaConnie's happiest moments at the LRC was when the late Former President Nelson Rolihlahla Mandela came to visit. “Mandela came to visit his old time friends, George Bizos and Arthur Chaskalson, but he had all the time to greet everyone in the office”, she says.

The LRC wishes MaConnie all the best in her retirement. The LRC will dearly miss her and her long-standing contribution to the organisation. Indeed, she has given so much to the clients and staff. Her love for everyone, strong commitment and dedication to her work will, without a doubt, leave a vacuum in the organisation but the LRC was blessed to have such a warrior working for us for so many years. ●

STAFF PROFILE: SHARITA SAMUEL

The LRC warmly welcomes Sharita Samuel as Regional Director of the Durban Office.

After completing her BA and LLB degrees at the University of Kwa-Zulu Natal, Sharita joined the LRC as a fellow in 1992. She then completed her articles of clerkship in the Durban office and went on to work as an LRC attorney between 1995 and 2009.

During this time, she led in the development and presentation of a number of significant human rights cases that continue to have impact today. One example is *Gumede v The President of South Africa & Others* [2009(3) BCLR 243(CC)] in which the unlawful discrimination of section 7 of the Recognition of Customary Marriages Act 120 of 1998 was successfully challenged, thereby upholding the property rights of

women who enter into customary marriages.

Before coming back to the LRC as Regional Director, Sharita has added to her practice experience a significant body of work that includes arbitrating and conciliating labour disputes for institutions such as the CCMA, public sector and industry-based bargaining councils and private clients.

We are very happy to have Sharita back and we wish her continued success in leading the Durban office and look forward to her contribution to the management team of the LRC! 🌟

Sharita with the Durban office staff at the 2016 AGM



SUPPORT STAFF AND PARALEGALS

The Legal Resources Centre's support staff include:

Koop Reinecke (Finance Director); Annand Chaytoo (Systems Manager); Martha Bopape (Finance Assistant); Isabella Rangata (Finance Assistant); Topsy Mackenzie (Payroll Administrator); Ongezwa Gontshi (Junior Accountant); Lufuno Mamburu (Junior Accountant); Esme Wardle (Office Administrator); Madile Modisaesi (HR Generalist); Zamashandu Mbatha (HR Assistant); Shireen Hartley (Senior Legal Secretary); Ocudy "Tumi" Mokoka (Receptionist); Delysia Weah (Professional Assistant to National Director); Ntebaleng Mokoena (Office Assistant/Relief Receptionist); Caroline Msimang (Office/Administration Manager); Lerato Lebotse (Receptionist); Sandra Govender (Office/Administration Manager); Zama Ndokweni (Receptionist); Zulfa Mohammed (Secretary); Naomi Davids (Secretary); Nhikiza Matshaya (Office/Administration Manager); Thembile Maneli (Receptionist-Interpreter); Thandiwe Gebengana (Office Assistant/Relief Receptionist); Valencia Morrison (Specialised Administration); Nomfundo Somandi (Office/Administration Manager); Ethel Libi (Receptionist); Amanda Moli (Office Assistant/Relief Receptionist)

Johannesburg office paralegals from L-R:

Busisiwe Motshana, Bethuel Mtshali and Josephine Methebula



LONG-SERVICE AWARD RECIPIENTS

The LRC is fortunate to have staff members that have remained committed to our mission and vision over many years. In appreciation for their commitment, we are proud to recognise and congratulate the following people on receipt of their long service award certificates for 20 years of service to the Legal Resources Centre:

Martha Bopape, Finance Assistant in the National office



Martha Bopape with Koop Reinecke, Finance Director

Esme Wardle, Office Administrator in the National office



Esme Wardle shakes the hand of Koop Reinecke.

Anthea Billy, paralegal in the Cape Town Regional Office



Anthea Billy stands with Janet Love, National Director, and Sheldon Magardie, Cape Town Regional Director

Rufus Poswa, paralegal in the Grahamstown Regional Office



Rufus Poswa stands between Janet Love, National Director, and Sarah Sephton, Grahamstown Regional Director

CANDIDATE ATTORNEY REPORT: ZAMANTUNGWA KHUMALO

Cape Town Regional Office

I joined the Legal Resources Centre as a candidate attorney in 2014. I heard about the organisation through my dissertation supervisor, Ms Carina Du Toit, who was based at the Centre for Child Law at the time. I was immediately impressed by the work that the organisation had done and I knew that I could make a positive contribution and learn a lot from working in the organisation.

I commenced with my articles at the Cape Town office. While there, I was able to work with all of the attorneys whose practices include refugee law, housing, land and extractives, customary law, child law, sexual minority rights and environmental law; amongst others. I really enjoyed interacting and assisting the duty clients who came to the Cape Town office. Through that experience, I was able to learn how to manage case files, consult and give advice.

I worked on a number of cases including *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*. This case challenged the validity of the Restitution of Land Rights Amendment Act of 2014. It raised concerns, amongst others, around the public participation process of the Restitution Amendment Act.

I also worked on *Premier of the Eastern Cape and Others v Ntamo and Others*. This case concerned the appointment of a headman in the Cala Reserve in the Eastern Cape.

Zamantungwa Khumalo



The LRC's 2015/6 Candidate Attorneys: (front from L-R) Zama Khumalo, Lara Sauerbier, Kelly Kropman, Jade Amman, Tasneem Kader, Ektaa Deochand, Talita Mshweshwe (Back from L-R) Velemseni Zulu, Elgene Roos, Mandira Subramony, Sally Hurt, Shaun Bergover, Lara Wallis, Tawana Nharingo, Michael Tsele (absent) Mabatho Molokomme and Nhlamulo Mvelase

The MEC appointed Mr Yolelo as the headman of Cala Reserve. The community maintained that, according to their custom, a headman cannot be appointed but must be elected by the community.

Other cases include *Mohamed v Minister of Home Affairs and Others* which questioned whether the Standing Committee for Refugee Affairs (SCRA) was *functus officio* at the time when the appellant's further submissions were sent to the SCRA.

Some of my highlights include conducting week-long workshops on the Cala Reserve judgment in the Eastern Cape. I also enjoyed appearing in criminal court, as well as family court.

I enjoyed working as a CA at the Cape Town office. It was challenging, like all new experiences, but I can safely say that I grew and I learned a good deal about public interest litigation. If anything, the work fueled my passion and I will forever be grateful to the organisation for granting me this opportunity. ●

FELLOWSHIP REPORT: ISAAC SSEMAKADDE FROM LEGAL BRAINS TRUST

Why Would Anyone Want to Be a Public Interest Lawyer?

In June 2016, I had the special honour of being the visiting counsel in residence at the Constitutional Litigation Unit (CLU) of the Legal Resources Centre (LRC) under the mentorship of Advocate Jason Brickhill.

Founded in 1979 and reputed for its avant-garde role in the legal struggle against apartheid, the LRC is South Africa's largest public interest human rights law clinic.

As a young public interest lawyer and NGO executive from Uganda, I was eager to learn from the 37-year old legal aid behemoth the technique of litigation at the CLU and how to improve community outreach and organisational development, especially through digitized communication and fundraising.

Unbeknown to my hosts were the feelings of exhaustion, frustration and even self-doubt that I had carried with me, having spent the past 5 years building a public interest advocacy organisation from scratch.

Public interest attorneys and advocates typically earn much lower salaries (if at all) than their colleagues in private practice, yet they are required to carry the same or probably a higher caseload. Private practice lawyers, and indeed some clients, may think that you are not a smart lawyer because if you were you wouldn't have settled for public interest law.


Isaac with Advocate Bizos in the LRC's offices in Johannesburg



Public interest lawyering is by and large a thankless endeavour. Our clients give us quizzical looks, wondering if we are "real lawyers", because we give them free or low-cost advice that they may not want to hear. They are rarely courteous or cautious when the occasion calls for either or both virtues. Sometimes they may even cost us cases by making inscrutable decisions while paying no regard whatsoever to the countless hours of (unpaid) work we have invested in their cases.

Despite all of this, I am most grateful for two things I discovered hidden in the archives and DNA of the LRC: that I am part of a Pan-African tribe of restless lawyers and activists who, like Bram Fisher or his client Madiba, would rather die striving for the ideals of social justice, equality, dignity and freedom for all, than pursue a life of selfish opulence, and that life has its special rewards for those who, like Felicia Kentridge and George Bizos SC, have the courage and integrity to be the last hope the client has at turning a desperate situation around.

For instance: why was I, a non-descript hoodie-wearing alien, blessed with the opportunity of sharing a seat with President Jacob Zuma and the Dutch Ambassador to the Rainbow Nation at the VIP section of Orlando Stadium in Soweto during the Youth Day celebrations on June 16? The short answer – because I had accompanied George the Guru to this event. And the hoodie – ah yes, it was the standard LRC issue. People respect George and the LRC community for giving a voice to the people who need it most.

The astonishing stories of the LRC attorneys, advocates and development workers that I read about, interviewed and observed at work at the 15th and 16th floors of Bram Fischer Towers in Marshalltown, Johannesburg, gave me fresh insights on public interest lawyering, and a sense of renewed optimism and enthusiasm. I am eternally grateful for the residency and more prepared than ever before to take my organization, the Legal Brains Trust, and my own career as a public interest lawyer to the next level. *Aluta continua!* 

About Legal Brains Trust

Legal Brains Trust (LBT) is an independent nonprofit organisation that seeks to establish the rule of law, ensure equal and equitable access to justice and tackle the root causes of exclusion, vulnerability and poverty in Africa. It was registered in Uganda on 5 November 2008 by the Ministry of Justice and Constitutional Affairs as a company limited by guarantee (No. 102896).

By promoting legal empowerment of the poor through our Centre for Legal Aid, conducting public interest litigation, and undertaking research and analysis projects, advocacy campaigns, training and capacity building programmes, documentaries and other initiatives, LBT contributes to a better Uganda, where rights are respected, laws are valued, and all citizens have confidence in public institutions.

LBT work is conducted by a small full-time staff of qualified lawyers, affiliated scholars and other volunteers, particularly law students and recent graduates, assisted by an expanding international network of dynamic thinkers. It is supported by consulting revenues and grants or donations received from foundations and individual supporters worldwide.

Legal Brains Trust

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INTERN REPORT: CAITLIN CONYERS

Constitutional Litigation Unit: Johannesburg

In December 2015, I returned home to Bermuda after spending six months interning in the Constitutional Litigation Unit (CLU) of the Legal Resources Centre (LRC) in Johannesburg. The experience was invaluable. Not only did I have the opportunity to work with some of the best legal minds in the country and to gain a deeper understanding of public interest litigation, I was also able to immerse myself in the culture and beauty of Johannesburg.

As an intern that had spent the previous six months clerking at the Constitutional Court of South Africa, I was given a great deal of responsibility from the beginning. I attended conferences with representatives of the World Bank to discuss the new Economic and Social Framework, I travelled to mining communities in Rustenburg and the North West province near Marikana to carry out consultations, I visited six different prisons alongside British and South African attorneys to interview clients that had been forcibly injected with antipsychotic medication and/or assaulted while in a private prison in Bloemfontein, run by the British security company, G4S, and I attended the High Court for the silicosis class action certification, where mineworkers are claiming compensation from gold mining companies for contracting lung diseases at work.

Outside of the office, I had the opportunity to participate in the students' #FeesMustFall movement where I marched together with thousands of South Africans to Luthuli House in Johannesburg and also the Union Buildings in Pretoria. I learned how to speak greetings in Setswana, isiZulu, Sesotho and isiXhosa (not very well, I might add, but I tried); I witnessed the most incredible lightning storms in the world; I saw the jacarandas bloom in October; I climbed mountains in the Drakensburg; I rode 94.7km in the Ride for Justice charity race; and I ate at Daleah's in Braamfontein at least once a week.

I fell in love with South Africa during my time there – its people, the activeness of its civil society and the depth of the conversations – and I still hope that I will find a way back there in the future. I am very grateful to the LRC for being such a formative part of my life! ●



INTERN PROFILE: DUSTIN KLAUDT

Durban Regional Office

I had the pleasure of working in the Durban Office for seven months, with the support of the Canadian Bar Association's Young Lawyers International Program and a sponsorship from Global Affairs Canada. My experience with the LRC counts amongst the most impactful and transformative of my life.

I was very excited to work in South Africa given its progressive Constitution, history of recent social justice successes, and extensive use of international law within its legal system. From the beginning, I was welcomed into all aspects of the Durban office's ongoing litigation, advocacy, and public education efforts. My colleagues gave me a perfect blend of support, guidance and autonomy; all of which allowed me to navigate some of the many intricacies of operating in a foreign legal system. I was also able to travel outside the office to visit clients in

Dustin speaks to local school children about the Constitution



their local environments and really see South Africa in all its vastness and diversity.

Through participating in multiple strategic litigation files, advocacy initiatives, conferences, and public education seminars, I was able to build my substantive knowledge of human rights law and refine my practice skills in working in a public interest setting. I was passionate about all my work at the LRC, however, some notable highlights include:

- Coordinating an intervention by the Commission for Gender Equality, as *amicus curiae*, to the Constitutional Court on the issues of the interpretation of court orders and the protection of substantive equality for same sex partners (*Laubscher v Duplan*);
- Chairing the Durban office's annual planning meetings, to bring an international opinion and provide feedback on strategic litigation and advocacy to further the LRC's many noble goals; and
- Providing litigation support on a number of ongoing equality and non-discrimination matters for the benefit of:
 - Disadvantaged women in cohabitant relationships and customary marriages who are disadvantaged;
 - The hearing and visually impaired who are denied access to essential media sources; and
 - Schoolgirls who are denied access to equal enjoyment of their right to education.

Many thanks are due to everyone in Durban and other offices who made my experience so memorable and rewarding. Special thanks are due to my frequent collaborator, Ektaa Deochand, for her unwavering enthusiasm and good humour, and to Sharita Samuel for her constant and sage mentorship and encouragement to follow my passions and convictions, and to, in the true African spirit, be a "legal lion". ●

Would you like to volunteer at the LRC?

Interns are an invaluable resource for any non-profit organisation. The LRC invites applications from both legal and non-legal volunteers (interns) from all over the world. Legal interns will be exposed to legal research and litigation and will be expected to assist with drafting legal memoranda, providing legal opinions, interviewing clients and assisting the LRC to prepare applications and actions.

The LRC also accepts internship applications from students with an interest in fundraising, communications, marketing, management, accounting, social science research or similar fields.

If you have completed at least one year (preferably two years) of your legal or other studies, you are welcome to apply for an internship. All of our offices accept applications (Durban, Johannesburg, National, Grahamstown, Constitutional Litigation Unit or Cape Town, as well as our satellite offices in Mthatha, Nelspruit and Makhado). Simply email interninfo@lrc.org.za with the relevant documents (CV, motivational letter, academic transcripts and list of referees).

PARTNER PROFILE: ASSOCIATION OF COMMUNITY-BASED ADVICE OFFICES OF SOUTH AFRICA

Community Advice Officers (CAOs) occupy an important space in the legal sector – they are both part of their community and an important source of advice to fellow community members. They understand the nuances of their communities, can understand what issues must be addressed through legal mechanisms and can be a source of information for organisations such as the Legal Resources Centre. Working to capacitate them has benefits for the communities they live in and can deepen understandings of human rights in areas where access to legal structures and information is limited.

We are pleased then to have a strong partnership with the Association of Community-based Advice Offices of South Africa (ACAOSA). Launched in November 2013, ACAOSA was founded as part of a long-term sector development plan that was adopted by the National Alliance for the Development of Community Advice Offices. ACAOSA serves as an operational body, unifying the sector through national leadership and committees.

Together with its members, we are drafting a Bill to regulate community advice offices and their paralegals. In addition, we are currently working with ACAOSA to support their work to regulate, expand and deepen the curriculum that paralegals receive. To supplement this, ACAOSA are also conducting a survey of the needs of CAOs.

We conducted a hackathon* with paralegals from ACAOSA in order to develop a mobile-based app to assist them with their work commitments. They identified the need for an app-based case management system to be developed, which can record progress on cases and notify clients of updates by SMS. The mobile system will also enable CAOs to travel to remote communities to offer assistance. A working group has been established to provide input into the app while it is being developed and tested.

ACAOSA has provided a valuable entry point into communities across the country and assisted us to identify new issues and to provide widespread training. ACAOSA is also an excellent resource for ensuring that our work remains relevant and valuable to our clients.

“Our partnership with the LRC has been very fruitful. This year, we have worked on drafting a Bill for the regulation of Community-Based Advice Offices (CAOs) and Community-Based Paralegals (CBPs). Through a series of consultations and discussions with our member organisations, experts and partners, LRC has walked side-by-side with ACAOSA to make remarkable progress over a relatively short period of time. ACAOSA has managed to access technical assistance through the LRC, which has enabled us to submit the first draft document of the proposed Bill to the Department of Justice.

Aside from the progress made on the Bill, paralegals attending ACAOSA’s Dullah Omar School for Paralegals have benefited from the LRC training on urban evictions, and so have CAOs in the Gauteng and the North West provinces who went through the much-needed training on housing evictions. This is a need that has been identified for some time; particularly for townships and farmworkers. In addition, CAOs from the North West and Mpumalanga have been empowered by the Local Government workshops that were facilitated by LRC in partnership with the Local Government Action.

We are truly grateful for the LRC’s assistance and look forward to future collaborations on the draft Bill and other interventions that we believe will benefit the CAO sector.” ●

- Margaret Kusambiza ACAOSA

What is a hackathon

*A hackathon is a design event in which computer programmers and others involved in software development, including graphic designers, software designers and project managers, collaborate creatively and intensively on software projects. In this instance, the hackathon sought to solve a problem identified by the community advice officers.

PARTNER PROFILE: CONSTITUTIONALISM FUND

A conversation with Shaun Samuels, fund coordinator

What and who is the Constitutionalism Fund?

The Joint Fund to Promote and Advance Constitutionalism in South Africa (Constitutionalism Fund – CF) is a collaboration between The Atlantic Philanthropies, the Ford Foundation and The Open Society Foundation. The three contributing foundations, each of which has decades of experience working in South Africa, and which ordinarily support civil society organisations, the local philanthropic community and also government, has provided a collective \$25 million to South African organisations whose purpose is to advance a democratic and open society.

The timeline for the fund is 10 to 12 years and is managed by an independent local Selection Panel, empowered to make grant allocation decisions. The panel is chaired by former Constitutional Court Justice Yvonne Mokgoro and includes Yasmin Sooka and Aubrey Mashiqi.

The CF is totally separate from the decision and grant-making processes of the Ford Foundation Southern Africa and the Open Society Foundation for South Africa. The CF has a mandate to support the efforts of civil society organisations to promote and advance constitutionalism in South Africa with a specific focus on internal transformation and sustainability.

The fund has a three-year grant cycle starting 2016 and, for this cycle, prioritised 12 organisations that were given grants. These organisations include the Black Sash, Equal Education, Legal Resources Centre, Centre for Applied Legal Studies, Centre for Law and Society, Centre for Child Law, Lawyers for Human Rights, Section27, Socio-Economic Rights Institute, Ndifuna Ukwazi, Probono.org, and Social Justice Coalition.

What are the challenges faced by South Africans?

There is a growing view that the Constitution has failed the poor, failed students, and failed to tackle the structural inequalities that are the apartheid legacy. The issue of structural inequality and, indeed, of deepening inequities in post-apartheid South Africa, are core challenges for the country. The view also arises because the Constitution does not provide for immediate resolution of inequalities in education, health care and other sectors, but rather ‘progressive realisation’ and ‘reasonable measures’.

In addition, there is a powerful and growing narrative that the

Constitution does not and has not supported social justice. Those committed to social justice need to recognise and address this. The public at large, and particularly marginalised and excluded groups of people, need to understand the content of the Constitution, in particular its commitment to the realisation of social and economic justice. They also need real opportunities to test the Constitution in support of justice. They need to experience justice.

What are the three priorities of CF grant making?

Promoting and advancing constitutionalism requires holding government, the business sector and civil society accountable to the values and intentions of the Constitution. It requires strengthening the capacity of the state for sustaining a legal and regulatory environment that enables the realisation of rights and for delivering or facilitating the delivery of services for which the Constitution holds it responsible. It requires protecting the independence of Chapter Nine institutions whose mandate is to assist in supporting constitutional democracy, while holding them accountable for delivering on their mandates. It requires investing in and building the capabilities of individuals and grassroots-based structures (community advice offices, networks and social movements) to take action and support others to claim and realise their rights. Also, building the capabilities of our judges, lawyers, attorneys and paralegals, while also building the capacity of community-based groups to understand and use the law and Constitution.

Advancing transformation requires building capacity among organisations and movements to critically reflect on institutional power dynamics in order to ensure that working environments do not discriminate or stigmatise on the basis of race, gender, sexual orientation, disability, citizenship or anything else. This requires investing in, mentoring, growing and retaining young black people in leadership and second-tier roles in the various NGOs, social movements and community organisations in the field, as well as developing inclusive organisational cultures that recognise, and even celebrate, difference.

Sustainability of organisations and social movements refers to institutional capacity to pursue goals over the long term and resilience to withstand inevitable changes in staff, leadership and funders. It refers to the extent to which the external environment is conducive to civil society organising.

What does the CF consider?

The Fund itself is supporting the further institutionalisation of transformative organisational cultures. Conversations acknowledging and

PARTNER PROFILE: COASTAL LINKS

In 2016, a traditional net fishing community successfully defended their 300+ year history of net fishing practices at Langebaan Lagoon, on the West Coast of the Western Cape. Net fishing – the heart of the community's identity – forms the primary basis of local livelihoods. Skills have been handed down through the generations. It provides community members with important access to nutritious food through both subsistence and livelihood means.

Over time, and particularly in the apartheid era, the traditional net fishers experienced the increasing marginalisation of their trade. Currently, the fishers are facing further discrimination and limitations to their harvesting practices through fishing permits that restrict them from accessing certain traditional harvesting grounds in an area termed "Zone B," with no apparent environmental reasoning backing the decision. However, authorities allow white cottage owners to fish in these areas.

The government released and is currently rolling out a 2012 Small-Scale Fisheries Policy. This policy was drafted as a result of a 2005 Equality Court case that explicitly argued the right to food. It is currently being implemented to the exclusion of many of the traditional net fishers, in particular, women.

The eligibility requirement to be classified a small-scale fisher – and so to both earn a livelihood and produce one's own food – is defined in the Small-Scale Fisheries Policy as:

... the use of marine living resources on a full-time, part-time or seasonal basis in order to ensure food and livelihood security. For the purposes of this policy, fishing also means the engagement (by men and women) in ancillary activities such as, (pre and post harvesting, including preparation of gear for harvesting purposes), net making, boat-building, (beneficiation, distribution and marketing of produce) which provide additional fishery-related employment and income opportunities to these communities).

The criteria for fishers to become members of a community-based legal entity, as per the Policy, include being able to show, "direct historical involvement in the small-scale fisheries sector (through 10 years [sic] experience at any one time but not necessarily over the past 10 years)". In spite of its broad definition, in practice the Policy is being narrowly interpreted as the act of fishing only, ignoring the ancillary activities that women perform, such as helping to mend and repair nets, and clean and market the fish.

The traditional net fishers from Coastal Links, represented by the LRC, challenged the relevant governmental decisions on the basis of irrationality and unreasonableness, as well as unfairness based on racial discrimination. On 31 October 2016, the Western Cape High Court found in the favour of the fishers. The Court found that the decision by the Department of Agriculture, Forestry and Fisheries to ban the Langebaan small-scale community from fishing in Zone B is arbitrary and irrational and constitutes unfair discrimination against the fishers on the grounds of race. These restrictions were set aside.

The LRC welcomes the court order and supports the Court's call upon the departments to engage with the traditional fishers, "with a view to arriving at a fair and suitable accommodation in terms of which they are granted some rights to fish, of a sort, in such areas as the experts may deem to be suitable, and on such terms and conditions as may be deemed to be appropriate in the light of the various factors which need to be taken into account including the applicants' historical claim to traditional fishing rights, the imperatives of transformation and the need for ecological conservation whilst also allowing for sustainable utilisation and development of the resources concerned." ●

Solene Smith from Coastal Links stands in front of her boat



REMEMBERING BAZOOKA RHADEBE

The Legal Resources Centre remembers Mr Sikhosiphi “Bazooka” Rhadebe who was assassinated on the 22 March 2016 outside of his home in the Eastern Cape. Mr Rhadebe was the chairperson of the Amadiba Crisis Committee (ACC) in Xolobeni.

The LRC and Richard Spoor Attorneys have been the legal representatives of the ACC for many years. A mining right over the community's indigenous land was granted to an Australian mining company, against the express wishes of those who stand to lose their land and livelihoods as a result of the mine's proposed activities.

Intra-community tensions between surrounding villages and those directly affected escalated, creating divisions between pro- and anti-mining factions and leading to assaults on community members; including allegations of previous murders. Concerns have been raised by the LRC and others about the slow response of the South African Police Services to the investigation of Bazooka's death and the failure of the state to

provide adequate resources for an investigation of this nature.

Bazooka's death comes at a time when international activists opposing mining have had their lives threatened, have been harassed and assaulted, and even killed.

The LRC raised the issue of protecting human rights defenders at the 116th Session of the United Nations Human Rights Committee. In our statement, we called on the Commission to condemn in the strongest terms Bazooka's killing. We further called on them to urge the South African government to ensure that a proper and full investigation into the incident is undertaken and those responsible are appropriately punished.

It is concerning to the LRC that there are growing threats on the rights to freedom of expression, assembly and association in our country. Intimidation, harassment and unlawful surveillance of human rights defenders should not be tolerated under any circumstances, and certainly not in South Africa where the Constitution clearly protects such freedoms, and where such tactics were commonly used by the former apartheid regime.

The death of Bazooka received international attention. He is remembered for his courage in standing for his principles and his community. ●

Bazooka (left) in 2008, here with his brother and the LRC's Rufus Poswa



The area in Xolobeni threatened by mining — photo Sally Hurt

ALLIED ORGANISATIONS

FRIENDS OF THE LEGAL RESOURCES CENTRE OF SOUTH AFRICA

The Friends of the Legal Resources Centre of South Africa (FoLRC) is a U.S. § 501(c)(3) charitable organization based in Washington, D.C., which has long supported the Legal Resources Centre (LRC). Formerly known as the Southern Africa Legal Services Foundation, FoLRC assists the LRC financially, contributes to its work through joint initiatives, and helps to publicize its accomplishments in the United States and globally. Tax-deductible contributions may be sent to FoLRC, c/o Ann Satchwill, Executive Director, 7409, Beverly Road, Bethesda, MD 20814. For further information, please visit www.folrc.org.

CANON COLLINS TRUST

Canon Collins Educational & Legal Assistance Trust (CCELAT) works to build a community of change agents across southern Africa who create and use knowledge for positive social impact. Through its project grants, higher education scholarships and international events programme, it cultivates a dynamic space where activism and research meet. CCELAT firmly shares the LRC's commitment to the protection of the constitutional rights of South Africa's most marginalized citizens and the two organizations have worked in partnership for over 25 years in pursuit of legal justice. In 2016, we continued to build on this long and fruitful relationship by securing a R30 million Comic Relief grant to support the LRC's litigation work in the realm of housing and the right to shelter, which is to be monitored and evaluated in partnership with CCELAT over a five year period. Visit www.canoncollins.org.uk for more information. ●

LRC PATRONS AND TRUSTEES

PATRONS

Sir Sidney Kentridge QC, SC

Most Honourable Reverend Desmond Tutu

Baron Joel Joffe, CBE

TRUSTEES

Ms Thandi Orleyn (Chairperson)

Ms Joy-Marie Lawrence

Mr Taswell Papier

Professor Harvey Dale

Justice Dunstan Mlambo

Mr Richard Rosenthal

Mr Ezra Davids

Ms Lumka Mlambo

Ms Tshepo Shabangu

Mr Thabani Jali

Justice Lex Mpati

Judge Mahendra Chetty

Professor Michael Katz

Justice Mahomed Navsa

Justice Jody Kollapen

Ms Marjorie Ngwenya

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managing privilege are needed across civil society organisations and activists who have positions of privilege, whether as whites or as men or as heterosexuals or as people without disabilities. Civil society organisations need to recognise that much of their organisational cultures are built on a western ethos of what is appropriate and what is not. New, more inclusive, forms of organisational culture need to be explored and built up.

The Fund is often challenged to consider focusing on activities that are unapologetically activist and in visible defence of the Constitution – taking care to historicise and contextualise the existence thereof. There is also no single solution – the Food Sovereignty Campaign, for example, is looking to build power from below by strengthening the organisational base and capacities of small-scale farmers, even while exercising symbolic power through the Hunger Tribunal and the bread marches. There are day-to-day efforts to increase individuals' access to justice through the network of community advice offices across the country, the day to day struggles and victories against illegal evictions, for school books and toilets in schools, for visible policing and against police corruption. All of them matter and are making a difference.

Some of the failures of government and business have often been

addressed and corrected by courts through public interest litigation, rendered more effective when supported by legal activism. Debates are, however, ongoing about how best to use public interest legal services as a strategy towards social justice and systemic change. Litigation is key, but should be considered as a last resort in favour of advocacy and other activist and capacity development processes.

What can we expect going forward?

The Constitutionalism Fund is now in a space to consider round two of the granting process. Our grantees have done significant work on so many different issues. Round two brings in the other voices. We don't want to interpret Constitutionalism only at one level, with a strong litigation element – what about social movements, what about other broad-based entities, what about sector-level interests? If you stand at the forefront of a whole sectoral move and we can support entities like community advice offices, it's a far more compelling way of interpreting Constitutionalism and facilitating access to social justice.

As the Constitutional Fund, we are a learning organisation, we try to walk with our grantees and we learn. We try to attend processes to learn so that we are sufficiently informed on how to proceed. ●

LEGAL RESOURCES CENTRE EXECUTIVE COMMITTEE'S RESPONSIBILITIES AND APPROVAL

ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2016

The organisation is required by its Constitution, to maintain adequate accounting records and its Executive is 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 acknowledges that it is 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 that an acceptable level of risk. These controls are monitored throughout the organisation and employees are required to maintain the highest ethical standards in ensuring that 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.

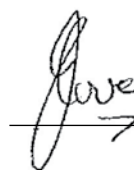
The executive committee is of the opinion, based on the information and explanations given by management, that the system of internal controls provides reasonable assurance that the financial records may be relied on for the presentation of the annual financial statements. However, any system of internal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

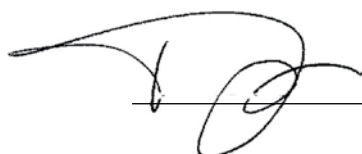
The executive committee has reviewed the organisation's cash flow forecast for the year to 31st March 2017 and, in the light of this review and the current financial position, they are satisfied that the organisation has a reasonable expectation of or has access to adequate resources to continue in operational 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.

The annual financial statements were approved by the executive committee on the 16th January 2017 and were signed on its behalf by:

 02-12-2016

 02-12-2016

LEGAL RESOURCES CENTRE

STATEMENT OF FINANCIAL POSITION AT 31 MARCH 2016

	2016	2015
	R	R
ASSETS		
Non current assets	1 643 938	1 077 511
Equipment	1 643 938	1 077 511
Current assets	7 601 545	3 938 849
Trade and other receivables	1 167 440	864 953
Cash and cash equivalents	1 908 538	2 397 619
Client trust bank accounts	525 652	676 277
Distribution in advance	3 999 915	-
Total assets	9 245 483	5 016 360
RESERVES AND LIABILITIES		
Reserves	1 346 049	5 016 360
Accumulated surplus	1 346 049	1 104 928
Current liabilities	7 899 434	3 911 432
Trade and other payables	5 901 370	2 220 460
Provisions for leave pay	42 353	1 014 695
Distribution received in advance	1 430 059	-
Client trust funds	525 652	676 277
Total reserves and liabilities	9 245 483	5 016 360

LEGAL RESOURCES CENTRE

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 31 MARCH 2016

	2016 R	2015 R
INCOME	56 236 788	47 486 626
Cost recovery	1 523 275	1 498 879
Distribution from Legal Resources Trust	50 166 454	43 579 522
Donation income	3 382 881	-
Fundraising events	669 615	2 058 034
Interest received	74 484	40 055
Sundry income	293 769	310 136
Training Income	126 310	-
OPERATING EXPENDITURE	55 995 667	44 224 081
Salaries and contributions	12 362 216	10 319 672
	12 362 216	10 319 672
Office expenses	8 944 700	7 101 992
Administration and management fees	112 803	110 639
Advertising and marketing	133 797	67 836
Assets expensed directly	57 460	63 730
Auditor's remuneration	82 148	2 125
Bank charges	77 301	60 031
Books and periodicals	624 423	557 710
Computer expenses	557 300	450 846
Consulting and professional fees	136 133	179 431
Depreciation	439 905	403 901
General expenses	185 861	74 171
Insurance	194 090	176 540
Interest paid	22 301	6 193
Lease rentals on operating lease	4 390 386	3 571 317
Motor vehicle expenses	48 703	76 970
Postage and freight	94 688	85 189
Printing and stationery	651 358	365 576
Repairs and maintenance	178 043	67 520
Telephone and fax	651 012	473 158
Travel - local	306 988	309 109
Legal matters and related project costs	34 688 751	26 802 417
Counsel and court fees	2 699 715	2 344 419
Expert fees	1 011 561	637 186
Grant payments to project partners	1 080 816	-
Salaries and contributions - professionals	21 098 327	17 395 023
Travel, accommodation and other direct costs	4 722 194	4 380 722
Publications	1 149 962	835 723
Research	886 920	127 144
Workshop costs	2 039 256	1 082 200
SURPLUS/(DEFICIT) FOR THE YEAR	241 121	3 262 545

LEGAL RESOURCES TRUST (TRUST NUMBER IT.8263) TRUSTEES' RESPONSIBILITIES AND APPROVAL

ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2016

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 the trust's 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

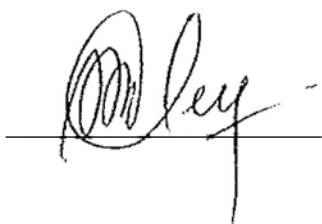
The trustees are of the opinion, based on the information and explanations given by management, that the system of internal controls provides reasonable assurance that the financial records may be relied on for the presentation of the annual financial statements. However, any system of internal financial 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 2017 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 auditing and reporting on the trust's annual financial statements. The annual financial statements have been examined by the trust's external auditors.

The financial statements were approved by the board of trustees on the 12th November 2016 and were signed on its behalf by:



14 DECEMBER 2016

Date

LEGAL RESOURCES TRUST

STATEMENT OF FINANCIAL POSITION AT 31 MARCH 2016

	2016	2015
	R	R
ASSETS	41 782 697	36 330 498
Non-Current assets	41 684 305	35 913 896
Tangible assets	2 014 316	2 100 842
Investments	39 669 989	33 813 054
Current assets	98 392	416 602
Cash and cash equivalents	98 392	416 602
TOTAL ASSETS	41 782 697	36 330 498
RESERVES AND LIABILITIES	41 782 697	36 330 498
Equity and reserves	22 841 708	22 367 547
Initial trust capital	250	250
Revaluation reserve	2 272 206	2 272 206
Scholarship reserve	616 634	589 717
General reserve	19 952 618	19 505 374
Current liabilities	18 940 989	13 962 951
Deferred grant income	14 941 074	13 962 951
Distribution payable	3 999 915	-
TOTAL RESERVES AND LIABILITIES	41 782 697	36 330 498

LEGAL RESOURCES TRUST

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 31 MARCH 2016

	2016	2015
	R	R
Income	53 490 387	44 197 771
Grants and donations	51 646 909	40 880 732
Dividend revenue	598 273	479 960
Fair value adjustment on investments	-	200 135
Gain on disposal of investments	-	1 592 360
Interest received	1 245 205	1 044 584
Expenditure	2 876 689	545 863
Investment managing fees	146 594	122 060
Audit fees	76 290	74 987
Bank charges	16 133	10 365
Depreciation	86 526	-
Fair value adjustment on investments	1 301 877	79 391
Loss on disposal of investments	70 136	5 715
Printing, postage and stationery	10 567	-
Secretarial services	112 982	96 064
Travelling, accommodation and facilitation	1 055 584	157 281
Net Income for the year	50 613 698	43 651 908
Distribution to Legal Resources Centre	(50 166 454)	(43 579 522)
Surplus for the year	447 244	72 386

LEGAL RESOURCES TRUST

DETAILED SCHEDULE OF GRANT AND DONATION INCOME FOR THE YEAR ENDED 31 MARCH 2016

	2016 R	2015 R
Foreign funders	37 755 518	32 641 494
Anonymous donor	720 214	-
The Atlantic Philanthropies - Natural Resources	-	4 000 000
Alliance for Open Society International	2 000 000	-
Bread for the World	3 659 902	-
Canon Collins Trust	200 000	250 000
Comic Relief - Urban slums GR002-01807-DCBE	1 119 795	2 574 423
Received	102 600	2 298 391
Deferred to 2015	-	1 301 227
Deferred to 2016	1 017 195	(1 017 195)
Comic Relief - ID 1259307	1 708 801	-
Received	2 835 205	-
Deferred to 2017	(1 126 404)	-
C S Mott Foundation	1 601 223	264 250
Received	1 336 973	528 500
Deferred to 2016	264 250	(264 250)
Dutch Embassy	307 997	-
The ELMA South Africa Foundation - Capacity building - 10-ESA001	3 950 000	4 016 399
Received	4 450 000	4 016 399
Deferred to 2017	(500 000)	-
Evangelische Entwicklungsdienst (EED)	-	3 151 548
The Ford Foundation - 0140-0291	8 306 662	15 586 418
Received	-	16 993 080
Deferred to 2015	-	6 900 000
Deferred to 2016	8 306 662	(8 306 662)
The Ford Foundation - 0150-1063	9 841 495	-
Received	18 574 305	-
Deferred to 2017	(8 732 810)	--
Freedom House	361 699	871 804
Received	361 699	871 804
Millennium Trust	600 000	-
Open Society Institute	259 946	-
SALS - S A Legal Services	1 659 067	736 985
Swedish Society for Nature Conservation	1 038 146	451 759
Surplus People's Project - T.Amakhaya	420 571	737 908
Balance carried forward	37 755 518	32 641 494

LEGAL RESOURCES TRUST

DETAILED SCHEDULE OF GRANT AND DONATION INCOME FOR THE YEAR ENDED 31 MARCH 2016

	2016 R	2015 R
Balance brought forward	37 755 518	32 641 494
Local funders	13 891 391	8 239 238
Bertha Foundation	4 594 297	1 352 969
Received	4 517 813	4 517 813
Deferred to 2016	3 164 844	(3 164 844)
Deferred to 2017	(3 088 360)	-
Bertha Foundation	-	227 829
Claude Leon Foundation	1 500 000	1 500 000
Received	1 500 000	1 000 000
Deferred to 2015	-	500 000
EU -Foundation for Human Rights -5550	108 000	17 500
Received	108 000	17 500
EU -Foundation for Human Rights -5690	109 000	-
Received	109 000	-
The Frank Robb Charitable Trust	110 000	110 000
National Lotteries Distribution Trust Fund	1 000 000	-
ND Orleyn	25 600	27 500
Open Society Foundation for South Africa NPC -03881	1 500 000	-
Open Society Foundation for South Africa NPC -03410	1 000 000	-
Open Society Foundation for South Africa NPC -03413	100 000	-
Open Society Foundation for South Africa NPC -03476	300 000	-
Open Society Foundation for Southern Africa NPC	-	1 204 167
Received	-	700 000
Deferred to 2015	-	504 167
RAITH Foundation	2 828 500	3 339 208
Received	3 112 000	3 515 875
Deferred to 2015	-	1 033 333
Deferred to 2016	1 210 000	(1 210 000)
Deferred to 2017	(1 493 500)	-
Other local donors	715 994	460 065
	51 646 909	40 880 732

LIST OF INDIVIDUAL GIVERS, INCLUDING IN-KIND GIVERS

Advocate Ori Ben-Zeev	Fionnula Gilsenan	Judge MS Stegmann
Adam Conyers	Frank Robb Charitable Trust	Kathryn Serafino-Dooley
Advocate Maume	Gcina Malindi SC	Khadija Magardie
Advocate Nelson	General Council of the Bar South Africa	Kim Robinson
Advocate NS Gama	Geoff Budlender	Koop Reinecke
Aga Wlodarski	Gordon Brockhouse	Kristin Prince
Alec Freund SC	Greta Engelbrecht	Kurt and Joey Strauss Foundation
Alex Conyers	Hayden Plath	Lavery Modise
Alice Brown	Henry Gilfillan	Lumka Mlambo
Alistair Franklin SC	I Chitapi	Lynne Aschman
Andre Gautschi SC	Irish Embassy	Madile Modisaesi
Anonymous	Isabel Goodman	Marc Nardini
Anthony Stein	Janeen de Klerk	Menzi Kunene
B P Rabinowitz	Janet Love	Michelle le Roux
Barbara Conyers	Jason Burns	Mones Michael Trust
Bowman Gilfillan	Jean du Plessis	Moray Hathorn
Bronagh Carr	Jean Meijer	N Mvelase
Cliffe Dekker Hofmeyer	Jeff Conyers	NA Matshaya
Constantino Casasbuenas	Jenny Cane SC	Nedbank Foundation
Damian de Lange	John Gibbs	Nicola Slyper
David Unterhalter SC	John Mulaudzi	Nkoko Sekete
Delysia Weah	Jonathan Timm	Nolitha Tiba
Emma Broster	Joy-Marie Lawrence	Nomganga
Faizel Ismail	Judge Kriegler	Patje
Felicia Kentridge Estate	Judge Mahomed Navsa	PC Pauw SC

Penny Bosman

Pricewaterhouse Coopers

Prof HM Corder

Prof Michael Katz

Raoul Hunziker

Robin Pearse SC

Rupert Nanni

S Makabeni

Simone Sonn

Sir Sidney Kentridge

Steven Budlender

Strat Align

Stuart Slyper

Tania Prinsloo

Teresa Yates

Thandi Orleyn

Troth Wells

Veronica Fletcher

Wandile Mazula

William Perry

Willie Hofmeyr

Yves Laurin

Schools

Alexander Road High School

Altona School

Berlin Primary School

Bethelsdorp Road Primary

Cambridge High School

Cape Recife High School

Clarendon High School

Clarendon Primary School

College Street Primary school

Collegiate Girls' High School

Cotwold Preparatory School

De Vos Malan High School

Dr Viljoen Primary

George Randell Primary

Gill Laerskool

Gonubie Primary school

Greenwood Primary School

Hangklip Hoerskool

Hudson Park High School

Jansenville High School

Kidds Beach Primary

Komga Junior School

Kuswag Primary School

Laerskool Newton Park

Laerskool Verkenner

Laerskool Volkskool

Linkside High School

Miguyo Primary School

Moregrove Primary

Mount Pleasant L Skool

Nico Malan High School

Oatslands Prep School

Parkland Primary School

Pearston Primary School

Queen's College Boys High School

Queen's Junior

Queenstown Girls' High School

Rowallan Park Primary

Stirling High School

Stutterheim High School

Templeton High School

Tjaart van der Walt School

Union Preparatory school

Victoria Girls High school

Victoria Park Grey Primary School

Victoria Park High School

Victoria Primary School

Westering High School

GET INVOLVED

BE PART OF OUR ONGOING BATTLE FOR JUSTICE AND HUMAN RIGHTS

DONATE

You can donate once-off, monthly, quarterly, or annually using a stop order or direct deposit.

You can make a secure payment via GivenGain: lrc.givengain.org

Alternatively, you can deposit your donation into the following bank account:

Account Name: Legal Resources Trust

Account Number: 2957333716

Bank Name: Nedbank

Account Type: Savings

Branch Code: 198765

SWIFT Code: NEDSZAJJ

Reference: Your Name and Contact Number

For Standard Bank clients, please use Branch Code: 19876500

The LRC is a registered Public Benefit Organisation under section 18 A of the South African Income Tax Act and all donations are tax deductible.

For more information, email donation@lrc.org.za

MAKE A BEQUEST

In addition to providing for those nearest and dearest to you, seek other ways to give your children a better future! Plan your legacy. Make a bequest to secure freedom, development and equality.

A bequest is a sum of money, items or property left in your will to another person, group, organisation or charity. Leaving a bequest to a non-profit organisation means that the deceased's estate is able to claim the bequest as a deduction to the estate.

If you already have a will it is easy to add a section called a codicil which names the Legal Resources Trust as a beneficiary. A codicil is prepared and signed just like a will.

To learn more about the process or to inform us of a bequest, contact us:

Send a letter to the Development Unit, Legal Resources Centre, P.O. Box 9495, Johannesburg 2000

Or email us on donation@lrc.org.za

JOIN THE CONVERSATION

Visit us online at www.lrc.org.za

Like our Facebook Page – search for Legal Resources Centre

Follow us on Twitter @LRC_SouthAfrica

Read our blog at Realising Rights

Watch videos on our YouTube channel: TheLRCSouthAfrica

COME TO AN EVENT

Members of the public are welcome to attend any of the LRC's events, including our biennial Bram Fischer Lecture, which was first delivered by Nelson Mandela in 1995. We also host regular fundraising events, seminars about topical issues, workshops and training sessions.

You can keep informed about all of these events through following us on social media, visiting our website or joining our mailing list, which is under the "get involved" section of the website.



George Bizos and Beatrice Mtetwa at the Bram Fischer Lecture. The 2015 lecture was delivered by Advocate Mtetwa and dealt with threats to human rights defenders

RIDE FOR JUSTICE CAMPAIGN

In November 2013, a team of seven cyclists taking part in the Momentum 94.7 Cycle Challenge in Johannesburg joined the LRC's Ride for Justice Campaign. Although a small team initially, their commitment has been the impetus to start a dedicated campaign in support of the LRC. Every year since, the group has grown with this year's team having more than 30 riders!

You too can become part of this group of spirited and engaged social justice campaigners who are committed to protecting and promoting the rights and responsibilities outlined in the South African Constitution.

We plan to Ride for Justice every year and hope that you will join us!

All that is required from you is to enter the 94.7 Cycle Challenge and commit to ride under the Ride for Justice Campaign wearing our cycling shirt. Build-up to the race involves a number of training rides which you are invited to attend with other team members.

If you are interested in joining the Ride for Justice Campaign, or want more information about the race and the team, please contact the National office of the LRC at 011 838 6601, or "like" our Facebook page "Ride for Justice" to view calls for your support.



COMMUNICATIONS AND PUBLICATIONS

The Legal Resources Centre has been exploring new platforms for communicating with clients and networks. We would like to introduce the following additions and updates:

NEW LRC WEBSITES

Main website

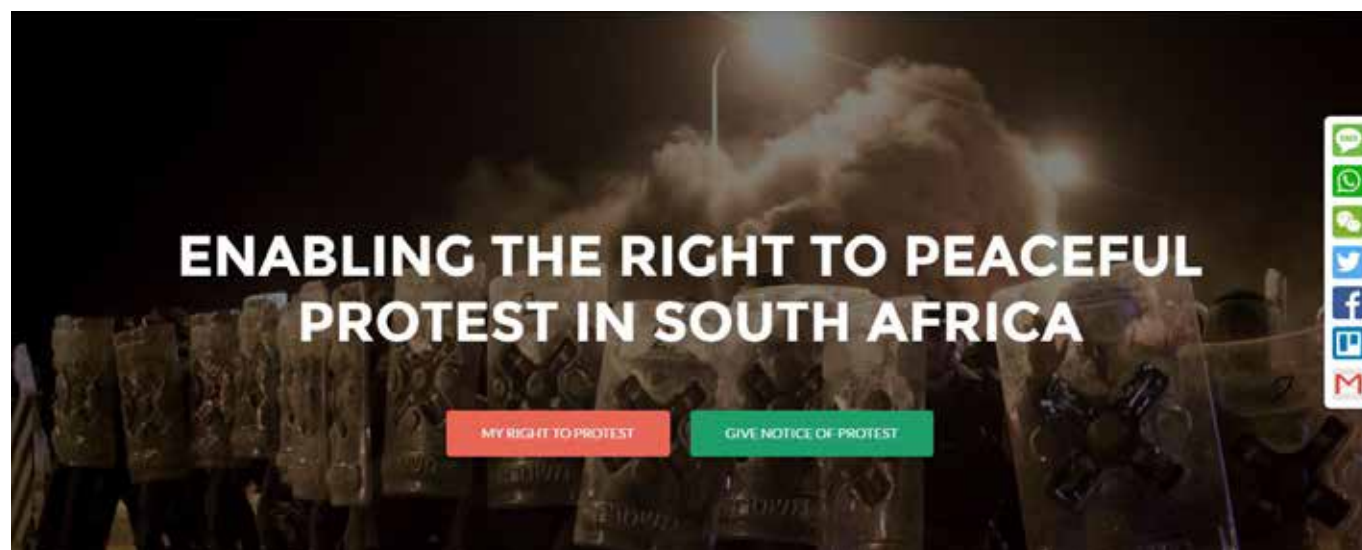
We are in the final stages of finishing a completely new website and look forward to launching it in 2017.

Resources website

We are currently developing a resources website, aimed at legal scholars, activists and practitioners who can use the site to access key documents attributed to the work of the LRC. Through this website, we can upload publications and materials for easy-reading and virtual updating.

Protest Info

We present a brand new website which provides guidance to protesters on how to gather in compliance with the Regulation of Gatherings Act and relevant resources for exercising the right to assembly. <http://protestinfo.org.za/>



APPS 2016

The LRC has been coordinating hackathons during 2015 and 2016 which will contribute to the development of new apps for use by clients and community advice officers. We look forward to launching them in 2017.

PUBLICATIONS 2015/6

We have developed the following publications during the 2015-2016 financial year and plan to launch many more during 2017. Copies of these publications can be accessed on the LRC's website www.lrc.org.za.

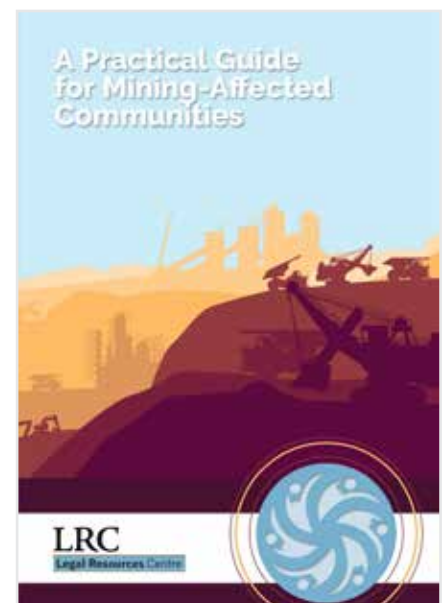
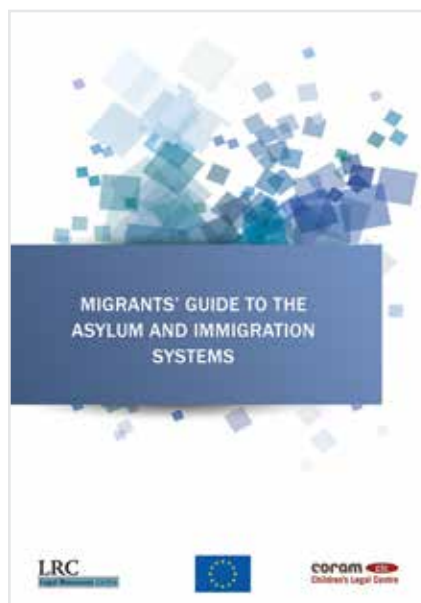
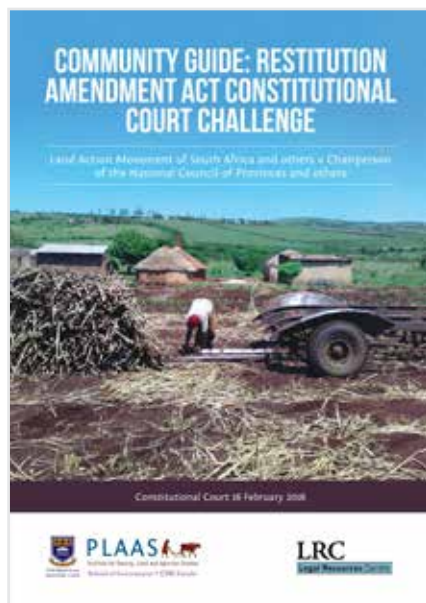
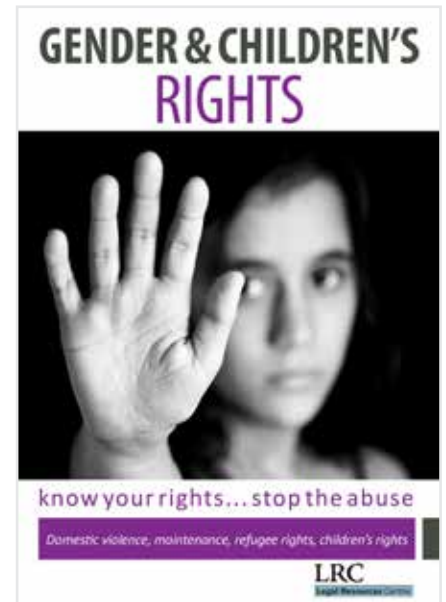
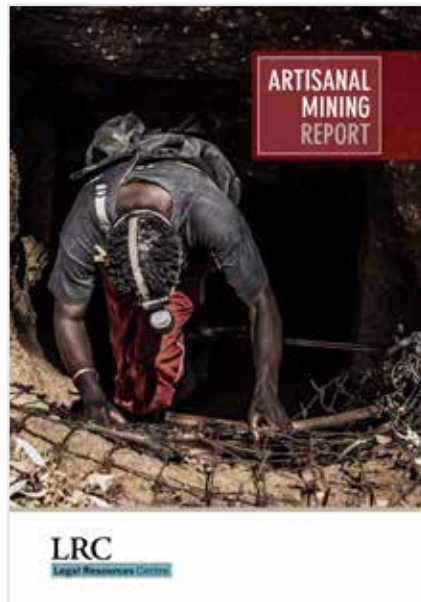
Gender and Children's Rights – provides information on social grants, protection orders and acquiring asylum seeker status in South Africa.

A practical guide for mining affected communities – provides information for public participation processes involved in mining applications and way to monitor compliance and ways to hold mines to account for transgressions.

The artisanal mining report – presents discussions on the legal and policy challenges faced by artisanal or small scale miners, known as zama-zamas, in South Africa.

Migrants' guides to the immigration system – provides information on the process of seeking asylum in South Africa.

Community guide to the Restitution Amendment Act constitutional challenge – details the actions of land NGOs and communities who approached the Constitutional Court in order to challenge a key piece of legislation affecting land claimants in South Africa.



ACKNOWLEDGEMENTS

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the LRC.

Design and layout by

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Produced and printed by

Synergetic Fast Services

Printed in 2017

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edging the Legal Resources Centre and "Annual Report
2015-2016" as source.

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