



The Fundraisers' Lament

Please turn the fundraisers' plight
into a moment of delight
by making a contribution
to his deserving institution.

It is for the LRC that he does ask
for that is his chosen task.

A favourable response from a prospective donor
bestows upon him a great honour.

Gathering gifts for such a good cause
should be like collecting gifts from Santa Clause.

But, alas, it is not so
and the response is, oh, so slow.

However, we do not lose heart
as we make a fresh start
and with renewed vigour

Strive for a bigger and better figure.

Melville Pels is a retiree who volunteers at the LRC head office in Braamfontein where he has worked since his retirement in

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annual report

Legal Resources Centre and Legal Resources Trust

for the period 1 April 2003 to 31 March 2004

LRC

LEGAL RESOURCES CENTRE

SINCE 1979

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Mission Statement

The Legal Resources Centre (LRC) is an independent, client-based, non-profit public interest law centre which uses law as an instrument of justice. It works for the development of a fully democratic society, based on the principle of substantive equality, by providing legal services for the vulnerable and marginalized, including the poor, homeless, and landless people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or because of social, economic and historical circumstances.

Inspired by our history, the Constitution, and international human rights standards, the LRC, both for itself and in its work, is committed to:

- Ensuring that the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected, and fulfilled;
- Building respect for the rule of law and constitutional democracy;
- Enabling the vulnerable and marginalized to assert and develop their rights;
- Promoting gender and racial equality and opposing all forms of unfair discrimination;
- Contributing to the development of a human rights jurisprudence;
- Contribution to the social and economic transformation of society.

To achieve its aims, the LRC seeks creative solutions by using a range of strategies, including impact litigation, law reform, participation in partnerships and development processes, education, and networking within and outside South Africa.

LRC

LEGAL RESOURCES CENTRE

Chairperson's Message

The Legal Resources Centre continues to produce work and make interventions that significantly impact on the lives of the people of our country. This Report which we present with great pride and humility, compellingly displays how the LRC has used its mandate and the considerable opportunities the new constitutional order has created, to advance the interests of the poor and the marginalized.

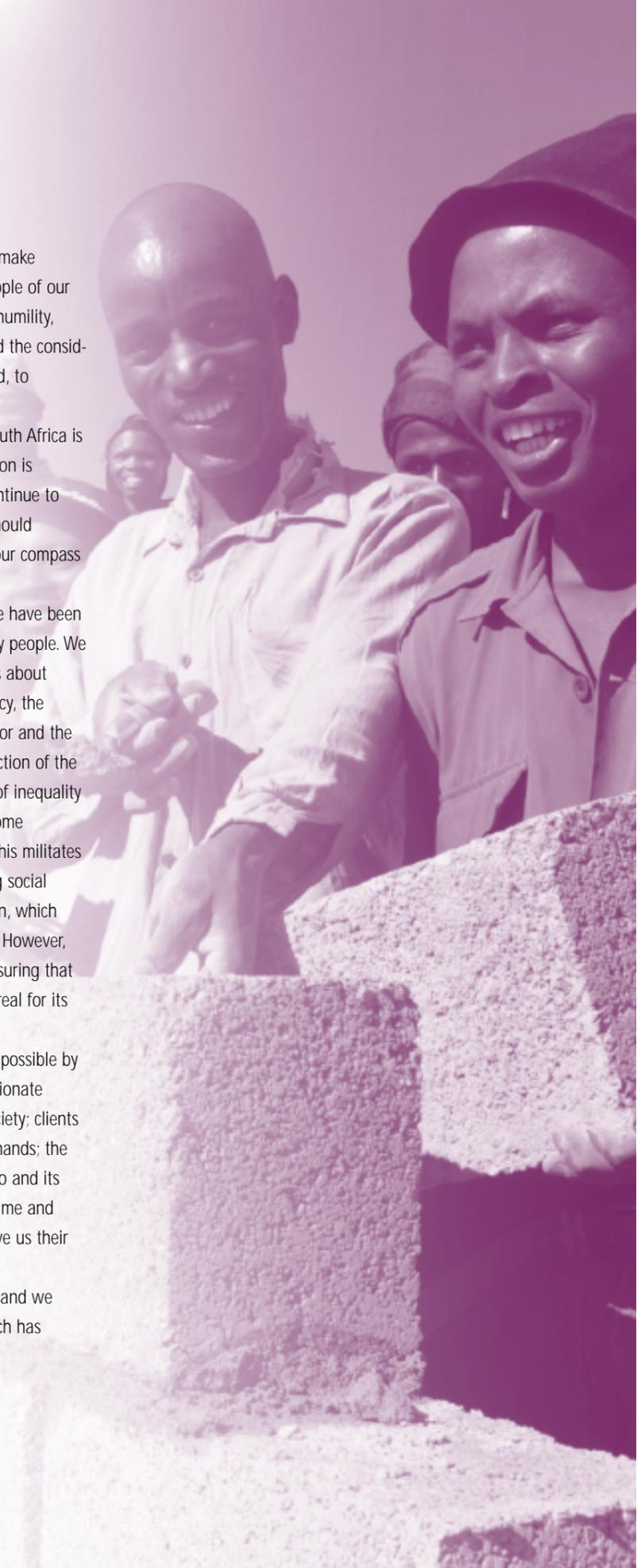
It is with great satisfaction that we can proclaim that South Africa is a Constitutional State where the supremacy of the constitution is accepted by all, including Government. Of course we will continue to contest exactly what the Constitution means and how we should interpret it, but it is significant that we have accepted it as our compass in charting the way ahead.

This Report gives broad overview of the kind of cases we have been involved in and the impact it has had on the lives of ordinary people. We constantly remind ourselves that the democratic process was about achieving social justice and that even 11 years into democracy, the promise of a better life remains illusive for many. It is the poor and the marginalized who expect and who are entitled to the protection of the constitution and the benefits that flow from it. Yet patterns of inequality have not substantially changed over the past years and in some instances the gap between rich and poor has exacerbated. This militates against the vision of a society that is committed to achieving social justice and creates a significant fault-line in our young nation, which must be addressed through appropriate policy interventions. However, organisations such as the LRC have a vital role to play in ensuring that the commitments, which the Constitution contains, become real for its intended beneficiaries.

The work of the Legal Resources Centre has been made possible by a variety of factors and these include: staff who remain passionate about what they do and dedicated to the vision of a just society; clients who put their faith, trust and sometimes their future in our hands; the donor community who intimately understand the work we do and its relevance in our society; trustees who voluntarily give their time and expertise and friends inside and outside the country, who give us their support – both moral and financial.

As trustees we are proud to be associated with the LRC and we remain committed to continuing the cutting edge work, which has always been identified with the LRC.

Jody Kollapen
Chairperson
Legal Resources Trust



National Director's Message

It was particularly significant that the Legal Resources Centre (LRC) was able to celebrate its 25th anniversary in the same year that South Africa attained its first decade of constitutional democracy. The vision on which the LRC was founded in 1979, has been realised in the relative successes of the past 25 years.

However, despite the attainment of political freedom and a constitutional democracy, major challenges remain in addressing the socio-economic legacies of apartheid. Poverty, homelessness, unemployment and inequality, *amongst others*, continue to impact on the lives of millions of South Africans who live in stark contrast to the affluence of a few.

In the strategic use of the rights framework of the Constitution, the LRC has only just begun a long journey of addressing both the historical and current disparities in the distribution of resources that directly impact on the social conditions of vulnerable South Africans. The organization has made extensive and creative use of the law and the courts. International practices and standards have skillfully been invoked in holding both government and private corporations accountable to their constitutional and international obligations. The LRC's staff have increasingly had to adopt new methods of analysis and have had to undertake social and economic research, often in close collaboration with other non-government organisations (NGOs) to substantiate legal challenges that are brought by its clients. New interpretive disciplines have also had to be explored in response to the State's social policies, statistics and compliance reports. These new methodologies of legal work have

increasingly enabled the Centre to act as *amicus curiae* in assisting the courts in arriving at complex and far-reaching decisions. While the organisation's work has become more focused in certain areas of law, it has had to retain its capacity to respond with equal vigour to the day-to-day problems experienced by ordinary people seeking basic access to justice. This task has, more recently, become much easier as the Centre has been able to refer many such matters to other service providers such as the newly established justice centres of the Legal Aid Board.

Although socio-economic rights remain the greater challenge, the organisation has had to remain on the alert to respond with unequivocal resolve to the often cynical and ill-conceived abuse of hard won civil liberties. Xenophobia has manifested itself very often in the unlawful decisions and actions taken by bureaucrats in dealing with refugees and asylum seekers. In an environment ravaged by crime, prisoners became the easy target for Government in a fruitless attempt at disenfranchising those incarcerated without the option of a fine. On the other hand, social movements such as gay and lesbian organisations have made full use of the equality clause and other rights in the Constitution to vindicate their dignity and assert their status of equality in the new constitutional democracy.

The record of the LRC over the past 10 years and indeed, over the past 25, remains impressive. It has grown significantly over the years and has become fertile ground for the lawyers within its ranks to attain the highest office of the judiciary and other influential positions both in South Africa and abroad.

All of this has been achieved through both the individual and collective efforts of the staff of the LRC in all its offices and at the level of administration, paralegal work and legal practice.

During the course of the year, the LRC used the opportunity to reflect on its 25 years of existence and celebrated the achievements of its many, many client communities. At the same time, the organisation undertook the challenging process of implementing the outcomes of its strategic review process. Faced with financial constraints, the organisation sought desperately to maintain both its financial and human sustainability.

During the latter part of 2003, the organisation was squarely faced with the incisive review undertaken through the Canadian International Development Agency (CIDA). This review, while acknowledging the resilience of the LRC, emphatically remarked that the organisation needed to address urgently, its managerial and sustainability challenges. In the strategic review workshop held in November 2003, the staff and Trustees unequivocally embraced these challenges and began a process of addressing them.

Change, however, in any organisation is never easy. The LRC has had to draw on the strengths of its entire staff, its Trustees, its loyal funders and friends in addressing many of the difficulties facing it. ***The LRC simply has to endure!*** This has been

the reassuring refrain that resonated within the organisation, amongst its Trustees, beneficiaries and many of its longstanding funders.

South Africa's legal and judicial system has created important opportunities for addressing the harsh consequences of poverty and marginalisation through the constitution. At a broader and international level, rampant privatisation of basic services such as the provision of water, municipal services and transport and the negative impacts of globalisation, have strengthened the growth and resolve of social movements worldwide to address the ravages and devastation of such policies and ever increasing world poverty.

In all of this, the LRC's use of the rights framework has remained both instructive and an important tool in meaningfully addressing the inequities of social and economic policies and laws.

As we prepare to celebrate 10 years of democracy, and 25 years of use of the law, the LRC is spurred on by the sheer enormity of the ever-continuing challenges to achieve much more than what we have modestly done thus far.

The work in some projects reflects a broad range of matters taken on. Other projects have grappled with the extent to which their work is focused. Overall, maintaining a mixture of work within many of the projects has not proved to be necessarily bad.

While it is difficult to single out particular cases, it is worth mentioning a few and I do so without derogating from the importance of any of the other cases:

- The unwavering determination with which the *Baphiring Community restitution case* was dealt with has brought about a successful outcome in that the Land Claims Court decided that the requirements of *just and equitable* compensation is not limited to market value of the land lost.





The manner in which the removal of the community took place, the lack of support and the sustainability of new land (which the community was moved to) are also to be taken as relevant considerations when determining compensation. The Land Claims Court was also requested to consider the international standards for the relocation of displaced communities and its impact on their changed socio-economic circumstances and livelihoods.

- In the matters of *Mahlaule, and Khosa and others*, the Constitutional Court ordered that social grants be made available to permanent residents. This will impact on at least 250 000 people in South Africa.
- In *Nicro and others*, a successful challenge was brought against the constitutionality of an amendment to the Electoral Act, which precluded prisoners who were sentenced without an option of a fine, from voting. This case once again demonstrated the importance of ensuring that civil and political rights under the Constitution are not undermined by Government's

response to rising crime in the country.

- The NPO project claimed a significant success in its lobbying efforts together with other organisations to bring about an amendment to the Income Tax Act that has enabled more non-profit organisations (including the LRC), to apply for donor deductible status.
- The involvement of the Women's Rights Project in the regional African Customary Law Project has seen the publication of a handy booklet on the workshops held in Lesotho and Zambia. This initiative was undertaken with the assistance of the Canadian Bar Association (CBA) and through the LRC's participation in the Southern African Legal Assistance Network (SALAN).
- The Grahamstown office remained actively involved in the monitoring of the implementation of the court order in a class action. In *State v Mfezeko and Zuba* and 23 similar cases, the High Court in the Eastern Cape ordered that the MEC of Special Needs and Education and the Director of Social Development in the Eastern Cape

submit quarterly reports to the Court, the inspecting Judge, an NGO and the director of the Grahamstown office of the LRC with regard to the progress achieved in the conversion of a school of industry into a youth facility. They must also report on a development of a protocol to be used when designating and transferring juvenile offenders to reform school in terms of the Criminal Procedure Act (as amended).

- A number of challenges have been brought by the Environmental Justice Project (EJP) against the establishment of various medical waste incinerators because of their potential impact on the air quality of surrounding residential communities.
- The challenge of the Natal Pounds Ordinance in the matter of *Xolisile Zondi*, resulted in the favourable judgment by Kondile J. in which sections of the ordinance were declared inconsistent with the Constitution. The matter has since been successfully argued for confirmation in the Constitutional Court.

The year under review has been both challenging and rewarding. The LRC has continued to enjoy the confidence of its clients and funders who have enabled the organisation to make a modest yet meaningful contribution to South Africa's young constitutional jurisprudence. The partnerships within which the organisation has worked has continued to thrive with a shared vision of building and sustaining a viable civil society.

The staff of the LRC has endured – this because of their commitment to the vision of the LRC and the fundamental values enshrined in our Constitution. But more so, I believe, because of their deep patriotism towards a State that they take great pride in rebuilding.

We are indeed indebted to all of them.

Vincent Saldanha
National Director

ENVIRONMENTAL JUSTICE

The sweet smell of success

About 5 kms away from East London is the Central Waste Water Treatment Works. Its benign title however, does little to disguise its real purpose – the treatment of sewerage.

Communities living in its vicinity know this from the unbearably offensive odours emanating from the plant. These have been so foul that residents suspected that harmful chemicals, detrimental to their health, were being used to treat sewerage.

One such community, living closer than others to the plant, is the Gompo Community. As a result of this proximity, the sewerage works is now referred to as the Gompo Sewerage Plant. Members of the community complained for years about the odours that befouled their lives, and their fears that the plant actually constituted a health hazard. Their complaints fell on the apparently deaf ears of the Buffalo City Municipality which is responsible for the plant. It did nothing to address the complaints of the community which eventually approached the Grahamstown office of the Legal Resources Centre to intervene on its behalf.

In meetings with the LRC, Buffalo City Waste Water Management, acknowledged that they had received complaints about the odours and return flow, not only from the Gompo Community, but from other neighbouring communities as well. An LRC staff member stated :

It seems that the problem started a long time ago, due to an increase in volume intake and a consequent

overloading of the current system at the Central Waste Water Treatment Works. An alarming development was the formation of a crust sludge covering the Anaerobic Pond Reactor. This resulted in the ineffective treatment of sewerage, odours and subsequent non-compliance with DWAF permit requirements.

Department of Water Affairs and Forestry (DWAF) requirements stipulate an adequate buffer zone of about 800m between communities and sewage plants. In the case of the Gompo Community, the buffer zone was only a tar road – a strip less than 300m wide.

The Buffalo Municipality blamed the lack of an adequate buffer zone on *bad town planning* and the increasing encroachment of housing developments and informal settlements. While a buffer zone is not strictly a legal requirement, the lack of an inadequate zone clearly has negative consequences. For example, communities living close to sewerage plants are exposed to the potential health hazards associated with raw sewerage. The inefficiency of the treatment process results in increased offensive odours. In the case of the Gompo and other communities, an even more critical concern was the possibility of treated water being discharged into the conduit of First Creek which runs through informal settlements. The creek is contaminated and thus dangerous to human health.

Following the LRC's representations, the Buffalo Municipality took both long and short-term measures to address the complaints of the Gompo Community. Professor Rose of Rhodes University in

Grahamstown was appointed to assist with these. Short term measures included attempts to control the odours and the formation of a company to deal with the crust sludge covering the anaerobic pond reactor. As a long-term solution the Municipality will undertake a new Environmental Impact Assessment (EIA).

An application has also been submitted to the Department of Environmental Affairs and Tourism (DEAT) for the upgrading of the nearby Reeston Water Treatment Works to deal with a capacity of 15 megalitres per day. It is hoped that in this way, the flow from the Gompo Sewerage Plant will be diverted to Reeston, thus curbing the threat of overloading.

In this case, negotiations (as opposed to litigation) have certainly resulted in the **sweet smell of success!**

The thin blue veil



Asbestos is an extraordinary mineral. Its resistance to fire and its ability to produce a light, finely spun, but incredibly strong cloth, has made it a popular mineral for use since early times. It has remarkable adhesive qualities and is resistant to chemicals. It does not corrode, protects against electricity, dust and noise, is not affected by salt water or vermin, it conserves energy and above all, is resistant to fire. But the contribution that asbestos has made to the incredible material success of the western world came at a terrible price.

A piece of raw asbestos is like rock, yet the individual fibres can be teased apart. A fibre of less than an ounce can produce a thread of three hundred feet. Each fibre is made up of thousands of microscopic threads that can be divided over and over into ever-smaller particles. It is in these particles that the danger lies.

The structure of asbestos fibres, allows the smaller fraction fibres to enter into the deep and vulnerable parts of the human lung. Asbestos is associated with three major diseases: asbestosis, lung cancer and mesothelioma. Mesothelioma is a rare cancer of the lining of the lung and the abdominal cavity and has a latency period of up to 40 years. This means that any calculation of health cost associated with exposure to asbestos can only be

completed 40 odd years after the likely exposure. Whilst asbestosis and lung cancer are often fatal, there is no cure for mesothelioma.

Of the six types of asbestos, three have been mined on a significant scale. Blue asbestos is by far the most dangerous and very minimal exposure is sufficient to cause disease.

It is characterised by hard, straight fibres and when they enter the lungs, they act as tiny needles; scarring and tearing as they move.

By 1893 South Africa was already producing blue asbestos, but mining took place on a limited scale. It took the two world wars to propel the production of asbestos to the heights it achieved over the next three decades.

One small company, which initially produced only small amounts of asbestos, was the Griqualand Exploration and Finance Company (Gefco). This upstart transformed itself over a number of decades to become the world's largest producer of blue asbestos. During the 1950s, Gefco became an important producer of blue asbestos and in 1960 it recorded an unprecedented annual profit. The period from 1968 to 1977 was the most glorious for Gefco. It recorded maximum profit and output. Federale Mynbou Ltd, later GENCOR, acquired 65% of the shares in Gefco in 1962.

The veil of deception around the dangers of asbestos was kept in place long enough to allow Gefco, in particular, to benefit richly from asbestos production in South Africa. When it was finally torn away, it revealed a hideous beast with two heads – on the one a face of terrible suffering by those who had sacrificed their health for Gefco's quest for profit; on the other the bitter face of a giant brought to its knees

by its own greed, whimpering a jumble of excuses and justifications.

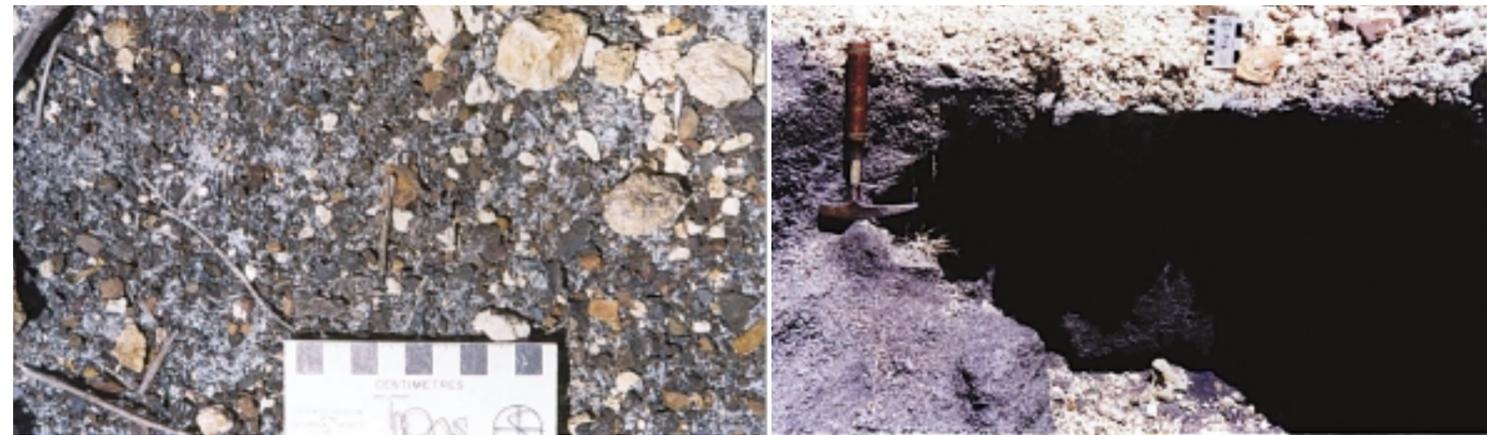
Dotted across the Northern Cape landscape, small communities continue to pay the terrible price at which asbestos improved the material wealth of a few over a short period of a few decades.

One such community is the Heuningvlei community which lives on the edge of a large saltpan virtually in the middle of nowhere. The name Heuningvlei is beautifully descriptive. The banded ironstone, in which the asbestos in the area is found, forms a low cliff with the slabs of stone steeped, one on top of another. Over the distance of a few hundred metres the steeple slides and the slabs of stone, no longer directly on top of one another, form a low ridge. Where the slabs of stone form the cliff, the asbestos has eroded between the stone and honeybees used the crevices as a natural hive, filling it with honey or "heuning".

Next to the cliff of ironstone, there is an "eye" – an opening from which fresh water flows. This is the "vlei". The fresh water is the only natural water in the area and local residents bring their goats and other livestock to drink at this spot. The water supports a bit of vegetation and a surprisingly varied population of water and other birds. Separated from the cliff of ironstone by the small vlei, lies a large salt pan, Heuningvlei Pan, from which locals harvest a bit of salt.

The combination of such unlikely features in the dry and desolate Northern Cape area, gives Heuningvlei a unique charm.

Bute mine is situated about 20 kilometres from Heuningvlei. Owned by Dublin Consolidated Asbestos Mines (Pty) Ltd, it commenced mining in or prior to 1954. In such a harsh area, Heuningvlei was the obvious spot to establish a mine camp to house the European and local employees of Dublin, a mill to process the asbestos fibres and its administrative offices.



In the mid 1970's Dublin sold the right to mine asbestos to Griqualand Chrysotile Mines (Pty) Ltd. Soon afterwards Gefco, as part of its expansion, acquired the shares in Griqualand Chrysotile. A period of intense mining followed and production of the mine and mill increased. The slump in the market in the late 1970s led to the mine being closed in 1979.

Bute mine has never been rehabilitated and is a major source of wind blown blue asbestos fibres. At Heuningvlei, most of the buildings associated with the milling of asbestos had been demolished, but the bag house (where asbestos was bagged for onward sale) and the waste dump remained. The administrative buildings and houses were given to the Bareki Tribal Authority that now uses the administrative buildings as tribal offices. Local residents of Heuningvlei occupy the houses.

The waste dump was not immediately rehabilitated upon closure of the mill. It contains a high level of asbestos and forms a major source of asbestos pollution. The bag house was never cleaned and asbestos fibres continue to spill from it.

In 1985, Gefco made a half-hearted attempt at rehabilitation of the Heuningvlei dump and covered the dump with a thin layer of soil. The soil layer quickly deteriorated as a result of wind and water erosion, foot traffic, termite activity and animals grazing. At the moment asbestos fibres from the dump are unsecured and

form a major health hazard for the community which lives next to and around the dump. The data base of the Department of Minerals and Energy list Heuningvlei and Bute as rehabilitated.

Around the dump, the Heuningvlei residential area is heavily polluted with asbestos fibres. It hangs in the trees, it clumps together among the rocks and stones, it floats in the fresh water from the



vlei, it gathers in houses and buildings and it finds its way into the lungs and intestines of the residents. The Barekis are understandably worried about the situation. They refer to the asbestos fibres as "garing", the Afrikaans word for thread.

Who is responsible? Dublin Consolidated Asbestos Mines no longer exists. Gefco had benefited from its mining at Bute and its use of the mill at Heuningvlei, but this was only for a short period. The responsible government departments allowed a hazard to exist continuously without taking useful steps to address the problem.

The Legal Resources Centre issued summons on behalf of Chief Bareki in his

official capacity, in an action to secure the rehabilitation of Bute mine and the Heuningvlei dump as well as the cleanup of the secondary pollution caused by the mine and the dump. Nkululeko Environmental and Development Group is the second plaintiff. The action is brought against Gefco and Gencor on the basis of the direct management and control that Gencor exercised over Gefco during the time that Gefco was involved in mining and milling at Bute and Heuningvlei. The Government of South Africa, the Minister of Minerals and Energy and the Minister for Environmental Affairs and Tourism are the other defendants.

In September 2004, exceptions raised by the defendants against the plaintiffs' case will be argued in the High Court. One of the interesting issues that will be debated is whether or not section 28 of the National Environmental Management Act (NEMA) No 107 of 1998 is retrospective. The section states that anyone who has caused pollution or degradation is responsible for rectifying the situation. The defendants argue that this does not cover pollution or degradation caused before 1998 when the act came into operation.

While the defendants defend the action arguments strategic to the the protection of their interests, every mother in Heuningvlei knows her child will die from the "garing".

The air that we breathe



For over a decade, the Legal Resources Centre (LRC) has assisted communities who are suffering as a result of health damaging emissions from industries to lobby for the reform of our antiquated and inadequate air pollution laws.

The Air Quality Bill is the Department of Environmental Affairs and Tourism's response to the health concerns of communities such as South Durban and Sasolburg where hundreds of thousands of residents from disadvantaged communities have been forced to live in direct proximity to oil refineries and other hazardous chemical industries. These residents, who are forced to breathe a cocktail of toxic and health damaging chemical emissions, suffer from asthma and leukemia at rates which health professionals have described as being amongst the highest recorded in the world.

Litigation and social action over the years has contributed to a significant decline in the levels of these pollutants but cannot replace proper state

regulation. After years of promises, the Air Quality Bill was drafted in response to this pressing need. The Bill shifts the focus of regulation of air pollution from regulation of individual sources to regulation of area wide pollution ("air shed management") in order to address the problem of multiple sources of air pollution contributing to a situation of severely degraded air quality around many of South Africa's large industrial areas. The Bill went through three drafts before it was finally passed by Parliament.

The LRC was actively involved throughout the process, representing community based and non-governmental organisations in advocating for stronger standards for the control of air pollution emissions in order to protect the health of poor communities who bear the brunt of the environmental damage caused by South Africa's large polluters.

The first draft of the Bill allowed much of the implementation of air quality control measures to be left to the discretion of the Minister of Environmental Affairs and Tourism and avoided the approach of setting emission standards for industry based on modern available technology. It preferred, instead, to regulate air pollution on an area wide basis based on unenforceable air quality management plans. Three submissions were made by LRC to the law reform process in order to attempt to persuade government to adopt an approach to air pollution regulation more in line with successful measures that have been adopted in other jurisdictions. The LRC was able to bring considerable international technical and legal experience to the process through the assistance of E Law and its expert advisor, Dr Eugene Cairncross. It was pointed out that without mandatory emission standards based on minimising emissions, the Bill was unlikely to improve air quality significantly.

After the first submission a number of

amendments were made that reduced the extent of discretion allowed to government officials in implementing the Bill. However the Bill remained an inadequate regulatory measure to guarantee the adequate protection of health.

When the Bill was presented to the Portfolio Committed for Environmental Affairs and Tourism for the first time, LRC obtained an opinion from a constitutional law expert and presented this in support of its original submission. It was argued that the Bill, as it stood then, was unconstitutional in certain respects, while in other respects, it would fail to discharge the regulatory duty set out in the Environmental Clause of the Constitution that guarantees everyone an environment that is not detrimental to their health and well being. These submissions complemented the submissions made by client communities from around the country who also attended the Parliamentary hearing, represented by Groundwork, South Durban Community Environmental Alliance and the Environmental Justice Networking Forum. The result was a heated controversy around the Bill. It was, therefore, not passed into law but returned to the drawing board for a serious reconsideration of the objections and submissions that had been made.

Finally, it was substantially amended taking into account the majority of the submissions made by LRC and also accepting the reasoning behind its submissions. Although it is not perfect, the Air Quality Act is now considerably closer to being a statute which can be used as an effective regulatory tool to ensure that air quality in South Africa is managed in a manner that ensures that the health of communities is protected.

The Air Quality Bill has been passed and has been tabled in Parliament as the National Environment Management: Air Quality Act, No 39, 2004.



Assuring social security

Previous annual reports of the LRC have consistently highlighted the pervasive indifference and inefficiency of various provincial and local district offices of the Department of Welfare, entrusted with the delivery of social assistance.

Indeed, these reports capture the LRC's long history of struggle with the Department, primarily through litigation, to get its "house in order".

The cases set out below are a part of a more recent integrated campaign using litigation to systemically redress shortcomings in the delivery of social assistance. They represent the test case aspects of these campaigns, which were supported by often hundreds of other individual cases not aimed at setting precedents, but at implementing rights or improvements in delivery.

The administration of social assistance had been assigned to the various provinces by the President, acting under the interim constitution. It allowed provinces to select which programmes out of the national legislation they chose to introduce and to modify national qualifying standards for

social security. Far from streamlining delivery of social assistance, such discretion has usually resulted in a plethora of set-backs for social assistance applicants. The case of Mr Mashava, a disabled person who was made to wait for more than a year for a social grant owing to the administrative practices peculiar to the Limpopo province, illustrates this point.

In *Mashava v the President of the Republic of South Africa* and others, which has been central to the reform of the social assistance system, the Pretoria office of LRC assisted Mr Mashava in his application to strike down the assignment on the grounds that it breached the constitutional requirement of uniform national norms, was vague, was ultra vires, and operated partially and unequally.

The High Court granted the orders sought in November 2003. The matter has been argued before the Constitutional Court for confirmation, and judgment is presently awaited. The state has, irrespective of the outcome in the Constitutional Court, accepted the need to standardise social assistance delivery and has introduced legislation in Parliament to establish a national social security agency which will centralise social security administration. The

LRC-Pretoria initiated academic and civil society comment on this Bill. It was passed in February 2004 and is awaiting promulgation. The outcome has been to make the national minister politically and legally liable for the actions of the provinces, and thereby establish a closer degree of control over the provinces, it has established national norms on social assistance and removes the provincial legislatures as buffers between the allocation of money to social assistance and the needs of beneficiaries. It will be less feasible for the national Parliament to under-allocate money to social grants in the future.

A critical aspect of the social assistance system, is the social relief of distress which is a temporary emergency grant for people facing crisis or in desperate need. Regulation 26(3) under the Social Assistance Act provides for people who are in exceptional hardship. Starving and malnourished people qualify under this head, and it provides a general remedy for a right to food. Social relief of distress is also provided in more routine cases, such as where an application or an appeal is pending. Facing Treasury opposition, the state was unable to agree to working definitions to the right, or to prescribe the implementation of a national

programme under regulation 26(3).

The LRC conducted surveys throughout the North West, Mpumalanga, Gauteng, Free State and Limpopo provinces. The surveys revealed that not only was regulation 26(3) not being implemented, but in fact no social relief of distress whatsoever was being provided in Mpumalanga, North West and Limpopo – even in non-exceptional cases. This matter resulted in a case to compel those provinces to provide social relief of distress to the categories envisaged by regulation 26(1) as well as the exceptional relief envisaged by regulation 26(3).

In the interim, the Government announced an emergency food scheme that was designed to distribute R 230 million within three months to geographic nodes that were identified as the most poverty stricken. This was introduced following political pressure and well-publicised deaths from hunger as well as general pressure from the media, but also in response to LRC's contributions in Government workshops on the failure to provide for people in desperate need and the constitutional imperative of developing social relief of distress under threat of litigation. Subsequently, Limpopo and Mpumalanga agreed to implement social relief of distress.

The North West Province however failed to do so, and the *Kutumela* case was launched.

Kutumela and others v the MEC for Social Security, Arts, Culture and Sport in the North West, and the Minister of Social Development was brought on behalf of people who had been denied the temporary relief to which they were entitled. Mr Kutumela has lost his one hand, is permanently disabled and had been trying to get his grant restored for months. The other applicants were awaiting child support grants or had appealed against the stoppages of their disability grants. Mr Kutumela's family had disintegrated due to his poverty. He and his wife only had food to eat every second or third day. The other applicants were in similar circumstances. They brought the case for the class of people who qualified for grants but had not received them, or who had appealed against the stoppages of their grants.

The Minister and the MEC agreed to comprehensive structural injunctions orders declaring that crisis and desperate need categories of relief are necessary parts of their constitutional programme and directing that social relief of distress be implemented and that the emergency category referred to in regulation 26(3) of

the Regulations be defined and implemented by April next year. This has brought an end to any question about the State's failure to implement social relief of distress in exceptional circumstances to people in desperate need as of right.

Another case which has also compelled a state review of procedures providing for social assistance is that of *Mokhonto Motau*. Mr Motau is an illiterate, disabled farm-worker who lost an arm in a tractor accident, but who was refused a disability grant because the state believed he could still work. This misapplication of the test for disability arose because the state relied solely on a medical test, and failed to properly weight and consider Mr Motau's age, literacy, place of residence and similar factors. An application was made to court to set aside the test for disability applied by Mpumalanga, and also for social relief of distress pending the application. Although the state opposed the application for urgent relief, it was granted and the application for a disability grant duly approved. The state also instituted a national survey of the test for disability in order to improve its assessment tool. The case is continuing insofar as negotiations on the appropriate test for disability are ongoing.



Finally honouring Learners' Right to Education



Establishing the new Fairleigh Primary School in Camperdown, KwaZulu Natal, is a veritable triumph for the community – something of a phoenix tale! In our 1999 – 2000 annual report, we reported that the MEC for Education in KwaZulu Natal had finally allocated a sum of R300 000 to pay for a new school, classrooms, toilets and a staff room. Children had been attending school in a church and under trees outside. It would transpire, however, that the school would only be officially opened 3 years later in 2003.

The principal and governing body acted on behalf of all present and future learners to ensure that their constitutional right to basic education was fully realised. Despite the many stumbling blocks along the way, the Department of Education finally enshrined this right by providing the appropriate infrastructure and affording learners the opportunity to learn, to grow, and to dream in a safe and secure environment.

Fairleigh Primary School was once situated on a farm in the Camperdown area, but when the farm was sold, it was forced to move. The school relocated to a

neighbouring farm where many of the parents were employed. In 1997 Fairleigh Primary was nothing more than 2 run-down sheds housing 152 children. There was no running water, no toilets and no electricity. This was the stage for principal Ruth Dlamini's court battle with the KwaZulu Natal MEC for Education and the Minister of Education.

Ms Dlamini made numerous appeals to the KwaZulu Natal Department of Education to build a formal school for the learners. While the Department indicated they were working on the case, nothing had been accomplished by 2002. Dlamini and the School Governing Body turned to the LRC's Durban office for assistance.

In an affidavit signed in July 2002, a desperate Dlamini stated: *I am appalled at the inaction and insensitivity of the KwaZulu Natal Education Department; as no tangible step has ever been taken towards improvement of the school, I have been compelled to resort to litigation.*

Ruth Dlamini's persistence has paid dividends. On Sunday, 7th September 2003, Fairleigh Primary School was officially opened. The KwaZulu Natal Department of Education secured land for the school to be built upon and now, instead of overcrowded and dilapidated buildings, learners have a newly built school that will cater for all their learning needs. The school is a neat, secure complex – a hive of activity where one finds happy children running around under the watchful eye of their educators.



The school of Presidents and Carpenters

Tigerkloof Educational Institution is fondly known to the surrounding communities as the school of presidents and carpenters. Former pupils

include veteran anti-apartheid activist and Mayor of Vryburg, Ruth Mompoti; both the former presidents of Botswana, the late Sir Seretse Khama and Sir Ketumile Masire; Archbishop Desmond Tutu's mother Aletta Matlane, and Dr Gaositwe Chiepe, Botswana's first female cabinet officer and the first woman in independent Africa to serve as a foreign minister. Others include former Botswana cabinet minister Lemme Makgekgenenehe, and Judge of the South African Land Claims Court, Justice Moloto who matriculated at Tigerkloof High School in 1963.

In 1904, the London Missionary Society developed the school which became a well known institution incorporating a primary and secondary school, as well as a teacher-training college, an artisans' training centre

and a Bible school. It became the primary education centre for the Tswana people. The school was situated 14km south of the rural town of Vryburg in the Free State.

When the apartheid government passed the Bantu Education Act, the Tigerkloof area was declared a "black spot" and fell victim to the Group Areas Act. Rather than bow to the laws of the apartheid government, the London Missionary Society closed the school, and allowed it to degenerate into a dilapidated ruin. The government of the day expropriated the land. The London Missionary Society opened another school in Botswana.

Archbishop Desmond Tutu re-opened the school in 1995 when part of the land that was lost, was purchased with donations from the Independent Development Trust. In 1994, the Tigerkloof Educational Institution lodged a land claim in terms of the Restitution of Land Rights Act. The Legal Resources Centre assisted Tigerkloof in successfully negotiating the settlement of

the claim. The LRC referred the claim to the Minister of Land Affairs with a view to settlement in terms of section 42D of the Restitution Act (No 22 of 1994).

Former president of Botswana' Sir Ketumile Masire, said in 1999 that the leadership of southern African countries was a product of schools established by missionaries such as those who founded Tigerkloof.

In 2004 the school not only celebrated its centenary, but on the 12th September 2004, during the celebrations, the Government handed over the original Tigerkloof properties. In her address, Naledi Pandor, Minister of Education, said of Tigerkloof:

Educational institutions such as Tigerkloof illustrate the kind of educational response our country and continent need. The early history of Tigerkloof points to a historic contribution to the development of South Africa and African intellectuals.



A home to call your own

The lack of housing remains one of the greatest challenges facing South Africa today. The LRC's Housing Project aims to provide legal services to poor and vulnerable people to enable them to access and retain affordable housing in South Africa's cities and towns.

An evaluation by an independent team of consultants, Debbie Newton and Jacqui Boulle, found that between February 2001 and January 2004 the LRC supported 83 376 clients and developed and supported 137 more substantive housing cases. Four amicus cases in defense of housing rights were undertaken which further affected 60 000 people.

The LRC has successfully fended off both legal and illegal eviction where there was no clear plan for alternative accommodation. The Rudolph and 49 others matter broadened the role of the judiciary through a supervisory order by ordering the City of Cape Town to present a policy making provision for those in desperate need within 4 months.

In the case of the City of Cape Town versus Ruldoph and 49 others, 2003, Judge Selikowitz rejected the city's application to evict the squatters. Those threatened with eviction brought a counter application arguing that the City was still in breach of the Grootboom judgement. In other words, the City still, despite the Grootboom judgment, did not yet have a policy making provision for those in desperate need. Judge Selikowitz ordered the City to present a policy to the Court within 4 months. This supervisory order is rare in South African law and the first in the field of land and housing. This marks a

key shift in the role of the Judiciary in relation to giving direction to the state regarding socio-economic rights.

The State of the Cities Report 2004 shows high and increasing levels of poverty and unemployment in South Africa's cities. According to the report just over one quarter or some 1.2 million households in the nine cities continue to live in informal dwellings in 2001 and around one fifth of all households in these areas live in only one room. Over one million people still have inadequate access to toilet facilities. Since 1994 the net number of backyard dwellings has declined by around half a million. Many have moved to informal settlements located on the outskirts of the city for employment opportunities. The percentage of people living in informal settlements remained constant between 1996 and 2001 although there was a net increase of around three-quarters of a million new informal dwellings in the nine cities by 2001 as more people set up their own homes rather than sharing.

The majority of the LRC housing project clients are from these informal settlements, living in abject poverty.

The nine cities in South Africa are committed to the roll out of services. The success of service delivery however varies across the country. Where there are no services in informal settlements, this often results in dreadful squalor. People make informal plans and arrangements, where shacks are near existing houses illegal electricity connections run like a spider web above ones head or below ones feet. On the South African Rail Commuter Corporation land, in Khayelitsha, the illegal lines wrap around the railway

pylons. Water provision is also particularly scarce with water being bought from neighboring houses at R20 for 25 litres. In most of these informal settlements there are no toilets and once again it is neighboring houses that 'sell' toilet facilities or people use the bushes where this is feasible. The provision of services in the informal settlement areas varies from 5 taps for 480 households to 8 toilets for 800 people.

It should be noted, that the legacy of apartheid in the inadequate provision of housing and services to poor black people is very much with us today, making it extremely difficult for the vast majority of people to live normal lives without access to adequate shelter, water, sanitation, health services, education and employment.

The LRC's focussed impact litigation work has forced authorities and landlords to confront the fact that human dignity must be respected. The LRC has undertaken a series of cases, which made it difficult as possible to evict people where they have nowhere else to go. Secondly, it has attempted to give clarity on what it is that government has to do and for government to do it.

Prior to the Constitution a landowner had far reaching powers in terms of eviction. The Constitution established that eviction had to be ordered by a Court.

Much of the LRC's casework is therefore focussed on creating an interpretation of PIE that maximizes protection for the poorest and most vulnerable in our society. PIE became one of the most contested areas of litigation and the legal battleground between landlords and occupiers. The LRC has made unfair

evictions through court processes almost impossible either by demonstrating a lack of procedural compliance or through substantive issues such as a consideration of all relevant circumstances. It has built on this effectiveness in Court by pursuing a strategy that pressurizes landowners and the state not to evict but to deal with the actual problem at hand: land and housing security.

In the Ndlovu matter, 2003 the Supreme Court of Appeal found that the protection of PIE applied not only to squatters but also to a person who is threatened with eviction after defaulting on mortgage bond repayments or rental payments.

In the SA Rail Commuter matter, in 2003 a parastatal who is attempting to evict illegal occupiers, the government called a halt to proceedings to enable the appropriate departments in the three relevant spheres of government to draw up a plan and propose alternative settlement for those facing eviction.

The decisions in these cases brought by the LRC provides protection for tens of thousands of people and opens the way to compel local authorities to establish housing policies and practices, which comply with the constitutional requirements of Grootboom. PIE makes provision for the local or provincial authorities to intervene in legal proceedings and to require the parties to participate in mediation.



Please let us Pikitup

She drags the makeshift cart across the streets, hurrying to get to the waste dump on time. She is tired and the work tedious, but it is the only way she can earn a living to support her family.

And such is the tale of the many “reclaimers” who work on the various dumps in South Africa. They eke out an existence by recycling the various materials they find and depend on the income to support their families.

Maria Motale and 138 other reclaimers work on the waste mine at the Marie Louise Landfill Site in Dobsonville, Soweto. They recover waste material such as paper, plastic, glass, materials, tin and cardboard for resale. They are all unemployed and were reclaiming recyclable waste material from the dumpsite with the permission of Waste Tech and the Greater Johannesburg Metropolitan Council (GJTMC), the predecessor in law of the City of Johannesburg.

When Waste Tech became PIKITUP, the latter brought an application to evict all the reclaimers from the waste dump. PIKITUP unilaterally cancelled the verbal agreement that the reclaimers had with Waste Tech and then outsourced the

reclaiming of waste material to one of its own employees who in turn offered to buy waste material from our clients at a reduced rate per day. The rate offered was far less than what our clients had been earning from the resale of recyclable waste material per day.

Initially our clients were forcibly removed from the Marie Louise Landfill Site and stopped from reclaiming recyclable waste material without a court order. We then brought a spoliation order against PIKITUP and City of Johannesburg. Advocate George Bizos SC, argued the matter in the High Court. PIKITUP then brought another application to interdict our clients from reclaiming waste material from the dumpsite. We opposed the application and were successful.

The City of Johannesburg and PIKITUP were prevented from unilaterally evicting our clients from the waste dump and ordered to pay the cost of both applications, totalling R26 000,00. In their pleadings, the City of Johannesburg and PIKITUP referred to our clients as scavengers, a fact noted by the presiding judge.

Our clients continue to recycle material from the waste dump.



Ancient battle over cattle

The injustice of the draconian pounds ordinance in Kwa-Zulu Natal had extremely harsh effects on farm dwellers and labour tenants over the years.

53 years old Xolisile Zondi inherited 28 head of cattle and 18 goats from her late husband, a labourer who had worked on Thornview Farm in northern Kwa-Zulu Natal for 25 years at the time of his death. Xolisile relies solely for her and her grandchildren's upkeep on her livestock which was conservatively valued at R44 600. The livestock provides her with a modest income from the sale of the calves and is also a source of nourishment. She had lived on the farm for 25 years, but has no land

of her own.

The landowner informed Xolisile by letter that she had to remove her livestock or arrangements would be made for their removal. He claimed that the livestock was trespassing and that he could therefore have the livestock impounded and sold. Xolisile in returned claimed that the livestock had been on the farm for their entire natural life and could therefore not be trespassing.

I am greatly dependent upon my livestock. Their loss will cause me immense hardship. Besides losing these valuable assets, I will be deprived of an avenue to access cash as and when I need it, she said.

The LRC brought an interdict restraining the farm owner and the pound keepers from impounding the cattle and goats. We

also sought an order declaring nine provisions of the Natal Pounds Ordinance No 33 of 1947 to be inconsistent with the Constitution. These sections of the Ordinance gave land owners far-reaching, uncontested powers of self-help that intrude seriously and profoundly on the normal, equitable and fundamental rights of owners of livestock. Despite its reach and effect, the Ordinance fails to provide even the most elementary control of security.

The landowner is the sole arbiter to determine whether a trespass had occurred or not: a critical jurisdictional fact. This section authorized the land owner to resort to self-help in violation of the right of access to court contained in section 34 of the Constitution. In addition sections 33 and 34 provide for the sale of livestock without

the court scrutinizing the execution.

We also argued that other sections are invalid as they fail to provide for administrative action that is lawful, reasonable and procedurally fair. Insofar as various provisions of the Ordinance make provision for summary seizure and impoundment of livestock, we argued that these provisions ought to be struck down as violating the right in section 25 of the Constitution not to be arbitrarily deprived of property.

The High Court found that the impugned sections of the Ordinance do indeed violate the right of access to the Courts as guaranteed in section 34 of the Constitution and also held that these provisions violate the right to administrative justice, permit arbitrary deprivation of property and that section 29(1) discriminates on the basis of race and landlessness. The High Court order was referred to the Constitutional Court for confirmation.

The case was argued in the Constitutional Court in March 2003. In an unanimous judgment the court held

that certain sections in the Ordinance put in place an orchestrated scheme for seizure of trespassing animals and their impoundment, a process of assessment of damages from which landless black people were excluded and the sale of impounded animals if the owners are unable to pay the pound fees. Such impounding schemes violate both the right of access to the court and the right to equality contained in the Constitution. The provisions of the Ordinance establishing the impounding scheme were accordingly declared to be inconsistent with the Constitution and invalid.

In his judgment, Justice Sandile Ngcobo stated that:

The impounding of livestock occurs in a complex setting of historical deprivation of land to black South African people, the struggle for land and the need to protect farms against trespassing livestock. This setting is a consequence of our history. The Ordinance was enacted under the old legal order, which was premised on the apartheid policy.

The court also held that the impounding scheme established by the Ordinance denies the livestock owner the protection of the judicial process and supervision exercised by a court. The effect was to effectively remove from the arena of the courts one of the sharpest and most divisive conflicts of our society and that this kind of scheme manifestly limits the right of access to courts guaranteed in the Constitution. The court went on to hold that section 29 of the Ordinance, which only permits white land owners to assess damages in terms of the Ordinance, was manifestly and fundamentally racist in both its purpose and effect and must be struck down with immediate effect.

This landmark judgment will affect thousands of farm dweller in the Kwa-Zulu Natal province whose rights to keep livestock are routinely infringed by landowners.



At last women can inherit

Charlotte's only sin was that she was born black and a female. One of two children, Charlotte lost her brother when he was tragically murdered approximately 9 years ago. Neither ever married and Charlotte was therefore the closest living relative as neither the parent were still alive.

Mr Shibi died intestate and as prescribed by customary law, the inheritance had to go to the nearest male descendent – in this case his cousin.

Approximately 9 years ago the LRC took the case to the Magistrate's court where it was agreed to wait for finalisation until a similar case was pronounced on. In the interim period, Charlotte's cousin finalised the estate without informing her or the LRC despite having been informed that the case was pending. The LRC subsequently issued summon in High Court for damages.

In a judgment handed down in 2004, Langa DCJ holds that construed in the light of its history and context, section 23 of the

Black Administration Act is an anachronistic piece of legislation which ossifies official customary law and caused egregious violations of the rights of black African persons. The section created a parallel system of succession for black Africans, without sensitivity for their wishes and circumstances.

Langa DCJ then considers the African customary law rule of male primogeniture in the form that it has come to be applied in relation to the inheritance of property and holds that it discriminates unfairly against women and illegitimate children. The judgment declared the succession rule of customary law which exclude women from inheriting, invalid and unconstitutional and referred it to the Constitutional Court for confirmation.

The Constitutional Court in a judgment handed down on ----- confirmed the findings of the High Court. The importance of the Shibi judgment is that it is retrospective to 27 April 2004

and thus in all estates where the property in question has not been transferred, women will be able to ask that the property must be transferred to them.

This high impact judgment affects hundreds of thousands of black women who in the past could only helplessly stand by while their inheritance was distributed to the male members of the family no matter how far removed.

In future these previously vulnerable women, notably only black females, are secured access to the assets collected during their marriage be it customary or legal. Women in general now have the same rights to inherit from family members as their male counterparts. The benefits to girl-children will reverberate through the years as we see them inheriting from parents, spouses and other family members, securing their future in a world that no longer ensures the protection of the weaker sex.



Southern African Legal Development Project

Southern African Legal Development Project (SALAN)

Common to all the countries in the Southern African region is the issue of poverty and the need for greater social protection of people. These needs have been greatly exacerbated by the high levels of HIV/AIDS in this region.

Through its Southern African Regional Development Project the LRC establishes legal precedents through litigation, increases awareness of human rights, and advocates conformity with human rights and the rule of law in Southern Africa. Regionally, the LRC works in close co-operation with the Southern African Regional Assistance Network (SALAN).

Internships

Hosting interns from partner countries allows young African lawyers the opportunity to gain first hand experience of the human rights work done by the LRC. Five interns from Zambia, Zimbabwe

and Tanzania joined the LRC whilst a LRC lawyer undertook an internship with the Legal and Human Rights Centre in Dar Es Salaam, Tanzania.

Workshops

The capacity building workshop on African Human Rights Instruments held as part of the 19th SALAN Conference held in Johannesburg, heard Mr Ahmed Motala of the Human Rights Institute of South Africa (HURISA) give a lively presentation on the African system of human rights' protection. He emphasised the responsibility of non-governmental organisations (NGOs) in Africa to challenge the process and activities of the African Union.

An Advocacy workshop based on the Provincial Parliamentary Programmes "Advocacy and Lobbying" manual, was held in Maseru, Lesotho as part of the 20th SALAN Conference. Representatives from SALAN member organisations in Zimbabwe, Zambia, Malawi, Tanzania and Lesotho participated at this valuable workshop which

required each participant to practically design an advocacy programme. Reports from participants reflect an appreciation of the "practical aspect" of the workshop and the invaluable opportunity it provided for the sharing of experiences.

Website

The LRC created and supports the SALAN website which provides up to date information on human rights activities and developments in the region, and is a window to member organisations and the work they do. The LRC's Southern African Regional Development Project undertook a major revamp of the site and the results can be viewed on the site at www.salan.org.

HIV/AIDS:

LRC funding allowed the Black Sash to conduct research to establish the impact of HIV/AIDS in the region, the availability of state security for disability, and social security to address the needs of child



headed households in South Africa. The report has a strong South African bias, but does include a comparative Southern African section, based on a questionnaire completed by SALAN members.

On-the-ground information collected provided a comprehensive overview of the work South African organisations have done in the field of HIV/AIDS. HIV/AIDS & Social Assistance in South Africa, was distributed to SALAN members, regional NGOs and government bodies in July 2003.

Refugee and Asylum Seekers:

The LRC, The Legal Resources Foundation (LRF) Zambia and The Zambia Civic Education Association (ZCEA) documented national and international legal obligations to protect refugees and asylum seekers' rights, analysing states' compliance with such obligations as well as informing officials, refugees and the community at large about their rights and obligations under international and domestic statutes.

The manual entitled A Refugee Guide to Refugee Law and Issues in Southern Africa was launched at the SALAN conference in May 2003 and distributed by SALAN members within their own countries.

Website exposure ensured that it reached a wide audience in Africa and across the world.

Women's Rights Under African Customary Law in Southern Africa:

In 2001 the LRC's Southern African Regional Development Project held its annual workshop in Windhoek, Namibia from which it was abundantly clear that most SALAN member-countries were struggling with the discriminatory aspects of customary law. A common view was that South Africa was more advanced in terms of its constitutional law and codifying customary law. In an attempt to develop customary law consistently on the continent, the LRC and the Community Legal Resources and Advice Centre in Lesotho collaborated to look at similarities and differences in the Lesotho and South African customary law systems, prioritise the areas of law to be targeted and identify strategies to ensure that customary law is practised in a non-discriminatory manner.

The Women's Rights in African Customary Law handbook was printed and launched at the SALAN conference

held in Johannesburg in June 2004. It provided an overview of customary law in the sub-region and the country specific work in Lesotho and South Africa.

Three SALAN member organisations, The Legal Assistance Centre in Namibia, Legal Resources Foundation and Civic Education Association in Zambia were drawn in as partners.

The work continues. It is hoped that in the next 3-5 years, the most pressing legal issues for women living under customary law in the sub-region, will have been identified and that a common strategy to free women from various discriminatory customary law practices will have been formulated.

Partnerships like these impact positively on the region and creates an ethos of sharing. It goes a long way towards advancing human rights in the region and on the continent as a whole.

Subscript: Funding and support for this project have been provided by the Canadian International Development Agency and the Canadian Bar Association.

Fundraising Report

1 April 2003 – 31 March 2004

Total cash donations received

The period under review demonstrated a relative decline in cash donations compared to the previous year. Income has declined from R----- in the previous fiscal year to R----- in 2003/2004.

There is more than one scenario that exacerbated the decline in the cash donations. Firstly, the appreciation of the South African Rand has resulted in grants received in foreign currency being converted to Rands at a lower rate with a resultant decline in income.

Secondly, the lack of capacity in the development department limited the number of proposals submitted during the period under review.

Cash donations from foreign sources

The Legal Resources Trust and the Legal Resources Centre continue to receive generous support from foreign funding sources. The bulk of our work is sustained by donations and grants from many different sources over the world. During the financial period under review R21,353,593.22 has been donated, compared to R23,626, 210.56 received in the last fiscal year.

Cash donations from local sources

The LRT and LRC received R1,082,387.68 from local funding sources compared to R 238,831.44 received in the last fiscal year. This represents a growth from ---% to ----% of total income. It is vitally important that the LRT and LRC strengthen their support from local funding sources in the immediate future in order to reduce its dependency on international sources that are

vulnerable to exchange rate fluctuations and the changing focus areas of international donors.

Contributions to the LRC by country

During the year under review, several institutional donors made commitments to sustain the LRC work. These donation came from countries including: • Belgium • Canada • Denmark • Germany • Sweden • Switzerland • Norway • Luxemburg • USA • The United Kingdom

The Legal Assistant Trust in the UK continues to support the LRC by raising funds in the United Kingdom specifically.

The LRT & LRC Banquet

The LRC's Annual Banquet took place on the 22nd April 2003. Much to our delight Dr Mampela Rampela agreed to speak at the event. The Drum Café provided excellent entertainment during which the normally very proper members of the legal fraternity participated enthusiastically in a drumming session.

Conclusion

As the LRC enters its 25th year of its existence, it has to focus its fundraising strategy on addressing the changes in the funding environment. Foreign government funding has increasingly been directed at bi-lateral state funding agreements. International funding has therefore become more difficult to access and the LRC must redirect its focus towards strengthening funding from local sources; including individuals and corporate donors



Legal Resources Trust Annual Financial Statements

for the year ended 31 March 2004

Trustees' approval of the financial statements

The trustees are responsible for monitoring the preparation and the integrity of the financial statements and related information included in the annual report.

The financial statements are prepared in accordance with the stated accounting policies and incorporate responsible disclosure in line with the accounting philosophy of the Legal Resource Trust. The financial statements are based on appropriate stated accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The trustees believe that the Legal Resources Trust will be a going concern in the year ahead. For this reason they continue to adopt the going concern basis in preparing the financial statements.

NB – What follows is an abridged version of the audited financial statements. A full copy is available upon request from the LRC National Office

Report of the independent auditors

To the trustees of Legal Resources Trust

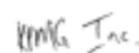
We have audited the financial statements of Legal Resources Trust for the year ended 31 March 2004. These financial statements are the responsibility of the trustees. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope We conducted our audit in accordance with statements of South African Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

We believe that our audit provides a reasonable basis for our opinion.

Audit opinion In our opinion, the financial statements fairly present, in all material respects, the financial position of the Legal Resources Trust at 31 March 2004 and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice.



KPMG Inc.
Registered Accountants and Auditors
Chartered Accountants (SA)

Per I Kramer
Director
20 August 2004

1. Accounting policies

for the year ended 31 March 2004

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

1.1 Income

Income comprises donations, investment income and other non-operating income. Donations are brought to account as and when received and banked.

1.2 Land and buildings

Land and buildings are stated at valuation, and are revalued by sworn appraisers at least once every three years using the open market value basis in continuation of existing use for land and buildings.

Any surplus on valuation, in excess of net book value, is transferred to a revaluation reserve. Surpluses on revaluation are recognised as income to the extent that they reverse revaluation decreases of the same assets recognised as expenses in previous periods. Deficits on revaluation are charged directly against the revaluation reserve only to the extent that the decreases does not exceed the amount held in the revaluation reserve in respect of that same asset. Other deficits are recognised as expenses.

Depreciation is not provided on land. Depreciation is provided on buildings at 4% per annum.

1.3 Financial instruments

Measurement

Financial instruments are initially measured at cost, which includes transaction costs. Subsequent to initial recognition these instruments are measured as set out below.

Investments

Listed investments classified as available-for-sale financial assets are carried at market value, which is calculated by reference to stock exchange quoted selling prices at the close of business on the balance sheet date. Unlisted investments are shown at fair value, unless their fair value cannot be reliably determined, in which case they are shown at cost less accumulated impairment losses.

Dividends are accounted for on the last day of registration in respect of listed investment and when declared in respect of unlisted investments. On disposal of an investment the difference between the net disposal proceeds and the carrying amount is charged or credited to the income statement.

Balance Sheet

at 31 March 2004

	Notes	2004 R	2003 R
ASSETS			
Non-current assets			
Land and buildings	2	489 619	521 675
Investments	3	30 456 374	26 271 157
Current assets			
Bank and cash		2 728 295	6 751 010
Total assets		33 674 288	33 543 842
EQUITY AND LIABILITIES			
Capital and reserves			
Trust capital	4	250	250
Revaluation reserve	5	2 468 608	618 359
Special endowment reserves	6	1 521 973	1 709 294
General reserve	7	29 501 616	31 082 789
Current liabilities			
Accounts payable		181 841	133 150
Total equity and liabilities		33 674 288	33 543 842

Income Statement

for the year ended 31 March 2004

	Note	2004 R	2003 R
Income			
Operating expenses	8	25 280 396	26 524 476
Surplus from operations	9	863 488	346 443
Transfer to Legal Resources Centre		(26 218 700)	(26 341 266)
Deficit for the year		(1 801 792)	(163 233)

Legal Resources Centre Annual Financial Statements

for the year ended 31 March 2004

Local Donations

April 2003 to March 2004

Advocate A J Nelson	R1,200.00
Dr N H Motlana	R18,000.00
S & F Management Services	R3,300.00
Johnson & Johnson	R50,000.00
Anglo American Chairman's Fund	R150,000.00
Nedcor Foundation	R15,000.00
First Rand Foundation	R150,000.00
CWCI Fund	R14,675.25
Frank Robb Charitable Trust	R100,000.00
Kurt & Joey Strauss Foundation	R13,000.00
A E Andrews	R1,466.93
Adv Paul Kennedy	R2,000.00
Foschini Group	R4,000.00
E G Woods	R4,000.00
B Chai, G Tshuma Death FS	R3,000.00
Medi-Cross	R1,000.00
A M Breitenbach	R1,200.00
Bongani Majola	R1,000.00
I W Swartzman	R1,000.00
Judge C T Howie	R1,000.00
Clicks	R1,000.00
Nedbank Retail Division	R2,000.00
J Joffe	R54,265.50
Arthur & Yvonne Galombic	R1,000.00
Investec	R10,000.00
Foundation for Human Rights	R200,000.00
National Lotteries	R250,000.00
Anonomous	R10,000.00
Illovo Sugar	R1,300.00
University of the Western Cape	R7,500.00
Thandi Orleyn	R5,000.00
C M Plasket	R1,000.00
Totals	R1,077,907.68

Foreign Donations

April 2003 to September 2003

Comic Relief - Towns and Cities	R1,407,003.83
BADC	R1,275,435.00
Open Society	R600,000.00
Gatsby	R1,459,654.98
Yves Laurent	R6,671.03
Save the Children	R277,438.00
CBA / CIDA	R3,760,625.55
CS Mott	R555,052.50
EED	R798,015.09
Atlantic Philantropies	R6,804,323.57
Grand Duchy of Luxembourg	R736,860.00
Ford Foundation - 60% Gov / 40% SWP	R293,664.91
ICJ - Sweden	R1,450,721.97
Danida	R1,891,687.39
COHRE	R36,439.40
Totals	R21,353,593.22

LESS THAN R 1000:

Adv J C Krieglger, P C Pauw, B P Rabinowitz,
B R Southwood, M S Stegman, Judge J Goldblatt,
University of Cape Town, Ismael Jamie, P M Sauvenier.

The Executive Committee's approval of the financial statements

The Executive Committee is responsible for monitoring the preparation and the integrity of the financial statements and related information included in the annual report.

The financial statements are prepared in accordance with the stated accounting policies and incorporate responsible disclosure in line with the accounting philosophy of the Legal Resources Centre. The financial statements are based on appropriate stated accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Executive Committee believes that the Legal Resources Centre will be a going concern in the year ahead. For this reason the committee continues to adopt the going concern basis in preparing the financial statements.

The Legal Resources Centre has successfully applied for registration as a non-profit public benefit organisation on 22 November 2002 in terms of the Non-profit Organisations Act, 1997 (Act 71 of 1997).

The financial statements for the year ended 31 March 2004 were approved by the Executive Committee on 20 August 2004 and signed on its behalf by—

SIGNATURE PLEASE??

National Director

NB – What follows is an abridged version of the audited financial statements. A full copy is available upon request from the LRC National Office

Report of the independent auditors

To the Executive Committee of Legal Resources Centre

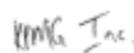
We have audited the financial statements of Legal Resources Centre for the year ended 31 March 2004. These financial statements are the responsibility of the Executive Committee. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope We conducted our audit in accordance with Statements of South African Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

We believe that our audit provides a reasonable basis for our opinion.

Audit opinion In our opinion, the financial statements fairly present, in all material respects, the financial position of the Legal Resources Centre at 31 March 2004 and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice.



KPMG Inc.
Registered Accountants and Auditors
Chartered Accountants (SA)

Per I Kramer
Director
20 August 2004

1. Accounting policies

for the year ended 31 March 2004

1. Accounting policies

The financial statements are prepared on the historical cost basis. The financial statements incorporate the following principal accounting policies, which is consistent with that adopted in the previous financial year.

1.1 Property and equipment

Property and equipment is stated at historical cost less accumulated depreciation, and impairment losses. Depreciation is provided on the straight line basis, over the estimated useful lives of non-current assets. The annual rates used for this purpose are –

Furniture	10%
Leasehold improvements	10%
Motor vehicles	20%
Office equipment	10%
Computer equipment	20%
Library and other	10%

Balance Sheet

at 31 March 2004

	Note	2004 R	2003 R
ASSETS			
Non-current assets			
Property and equipment	2	1 208 346	1 370 637
		2 268 070	4 186 831
Current assets			
Accounts receivable		545 307	1 104 204
Client trust funds	3	845 014	914 209
Bank and cash		877 749	2 168 418
Total assets		3 476 416	5 557 468
EQUITY AND LIABILITIES			
Reserves			
Accumulated funds		1 324 506	3 303 982
		2 151 910	2 253 486
Current liabilities			
Accounts payable		1 136 123	1 295 362
Client trust funds	3	845 014	914 209
Bank overdraft		170 773	43 915
Total equity and liabilities		3 476 416	5 557 468

Income Statement

for the year ended 31 March 2004

	Note	2004 R	2003 R
Income	4	27 671 581	27 319 911
Interest received		91 526	3 773
Gross surplus		27 763 107	27 323 684
Operating expenses		29 742 583	26 037 019
(Deficit)/surplus for the year		(1 979 476)	1 286 665

LRC Directors and Staff

NATIONAL OFFICE

Vincent Saldhana – *National Director*

Makgomo Bashele
Martha Bopape
Cyrenne Christodoulou
Zunaid Dada
Michael Gcwabaza
Moffat Khumalo
Ndi Liphosa
Susan Mazebane
Winnie Mbethe
Keitumetsi Mokhampanyane
Alec Msitshana
Thiloshini Naidoo
Annette Reed
Derric Reid
Peter Thuynsma
Irene Siswili
Esme Wardle

CONSTITUTIONAL LITIGATION UNIT

Geoff Budlender – *Director*

George Bizos
Zanu Ganiel
Refilwe Mathebathe

JOHANNESBURG

Durkje Gilfillan - *Director*

Roewayda Abrahams
Naseema Fakir
Ruzayda Hassan
Emma Lecheko
Topsy Mackenzie
Pinky Madlala
Martha Mahlope
Joseph Mabelane
Teffo Mashala
Nkele Mashiloane
Achmed Mayet
Thami Mbatha
Nicholas Mnguni
Constance Mogorosi
Tumi Mokoka
Josephine Mokwebo
Guguletho Ndenge
Nosipho Nkomo
Patrick Pringle
Neerasha Singh
Cathrine van Themaat

PRETORIA

Charles Pillai - *Director*

Nick de Villiers
Louise du Plessis
Ben Hlapolose
Paula Howell
Esther Khoza
George Mahimbye
Siwe Mthembu
Bethuel Mtshali
Ivan Nkosi
Ellen Nicol
Poppy Nsthabele
Isabella Rangata
Beulah Rollnick
Sabina Segole

Mandla Skosana
Asmita Thakor
Adrian Vorster
Ingrid Wlotzka
Sarah Zimbaya

DURBAN

Mahendra Chetty - *Director*

Sue Clarke
Nonfundo Gobodo
Phumzile Hloshana
Sheldon Magardie
Mzo Mdhladha
Emmanual Mdlalose
Nompumelelo Mkhize
Gugu Mncwabe
Thabisile Mngoma
Asha Moodley
Cathy Mote
Pushpa Naidu
Thanisa Naidu
Mbali Ndawo
Adrian Pole
Ranjit Purshotam
Sharita Samuel

GRAHAMSTOWN

Sarah Sephton - *Director*

Cathy Fullarton
Mzu Maseti
N Mboniswa
Mboniswa Nonqaba
F Nortje
N Somandi
Rufus Poswa
Tabita Qangule
Sarah Sephton

CAPE TOWN

Chantel Fortuin – *Director*

Mushahida Adhikari
Desiree Africa
Pam Allen
Angela Andrews
Anthea Billy
Maggie Carolissen
Maomi Davis
Thandiwe Gebengane
Ncunywisa Hans
Shehaam Johnson
Charlene Josephs
Steve Kahanovitz
Shaista Kazee
William Kerfoot
Stembile Maneli
Farouz Marquard
Bongeka Matshabane
Mhikiza Matshaya
Thami Mbatha
Seydwell Mketsu
Ashraf Mahomed
Soraya Murphy
Noluthando Ntlokwana
Kobus Pienaar
Mirriam Sirkhotte
Henk Smith
Ricardo Wyngaard
Jabulie Zimema
Shamiso Zinzombe

Patrons and Trustees

PATRONS

Sir S Kentridge QC SC
Mr David Sampson
Mr Justice JJ Trengrove
Most Hon Rev D Tutu

TRUSTEES

Adv Lee Bozalek
Prof Harvey Dale
Mr Justice Yusuf Ebrahim
Prof Michael Katz
Lady Felicia Kentridge
Mr Jody Kollapen (*Chairperson*)
Mr Raisaka Masebelanga
Ms Bongzi Mkhabela
Mr Justice Dunstan Mlambo

Mr Justice Lex Mpati
Mr Justice Mohammed Navsa
Mrs Thandi Orleyn
Mr Derric Reid
Mr Richard Rosenthal
Mr Vincent Saldanha (*Ex-officio member*)
Dr Franklin Sonn