

The report of the
Legal Resources Trust
for the Year ended
31 March 1980

The report of the
Legal Resources Trust
for the Year ended
31 March 1981

The report of the
Legal Resources Trust
for the Year ended
31 March 1982

The report of the
Legal Resources Trust
for the Year ended
31 March 1983

The report of the
Legal Resources Trust
for the Year ended
31 March 1984

The report of the
Legal Resources Trust
for the Year ended
31 March 1985

ANNUAL REPORT 2009 - 2010

The report of the
Legal Resources Trust
for the Year ended
31 March 1986

The report of the
Legal Resources Trust
for the Year ended
31 March 1987

The report of the
Legal Resources Trust
for the Year ended
31 March 1988

Legal Resources Trust
and
Legal Resources Centre

ANNUAL REPORT
March 31, 1989

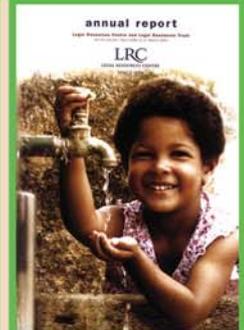
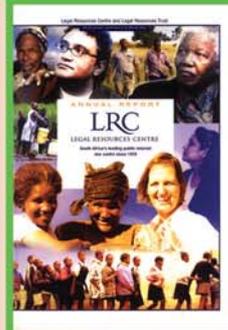
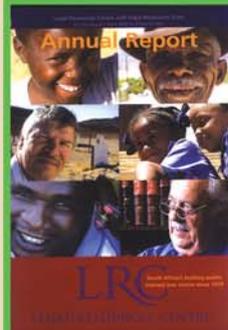
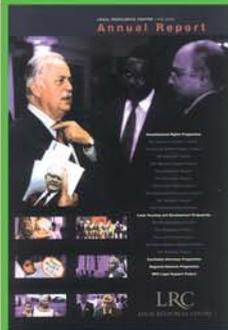
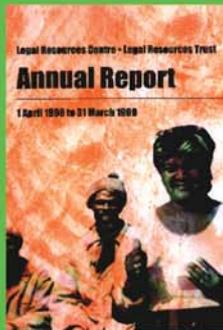
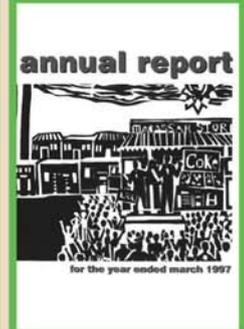
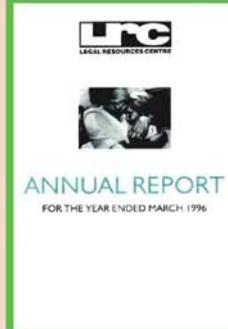
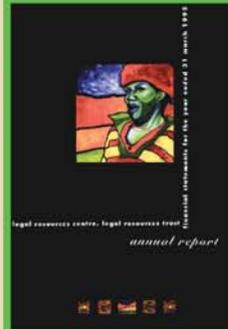
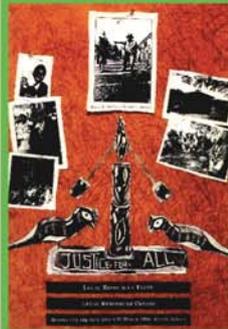
of the
Legal Resources Trust
and the
Legal Resources Centre
South Africa
for the year ended
31 March 1990

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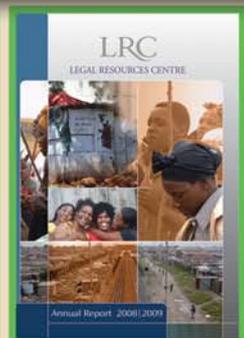
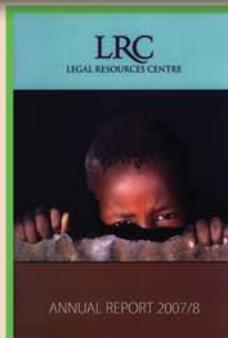
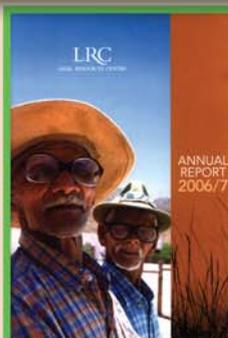
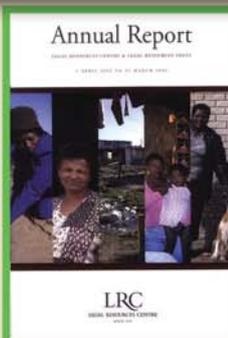
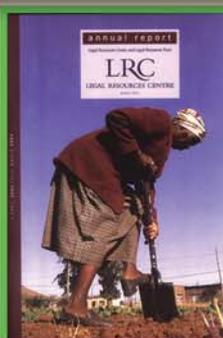
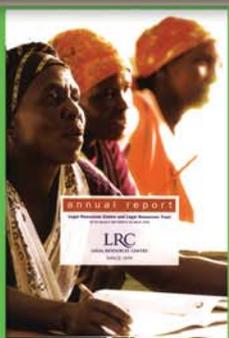
LRC

LEGAL RESOURCES CENTRE

30TH ANNIVERSARY ISSUE

1979 - 2009

Celebrating 30 years
of advancing human rights



This Annual Report is dedicated in memory of

KOBUS PIENAAR

We have lost a much loved and respected friend and colleague,
a brilliant legal mind, and a committed voice for the constitutional rights of people
and communities who would have been marginalised.



We will always remember you Kobus.

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The Legal Resources Centre's Vision and Mission

VISION

Inspired by our history, the Constitution and international human rights standards, the LRC is committed to a fully democratic society based on the principle of substantive equality and to ensure that

the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected and fulfilled.

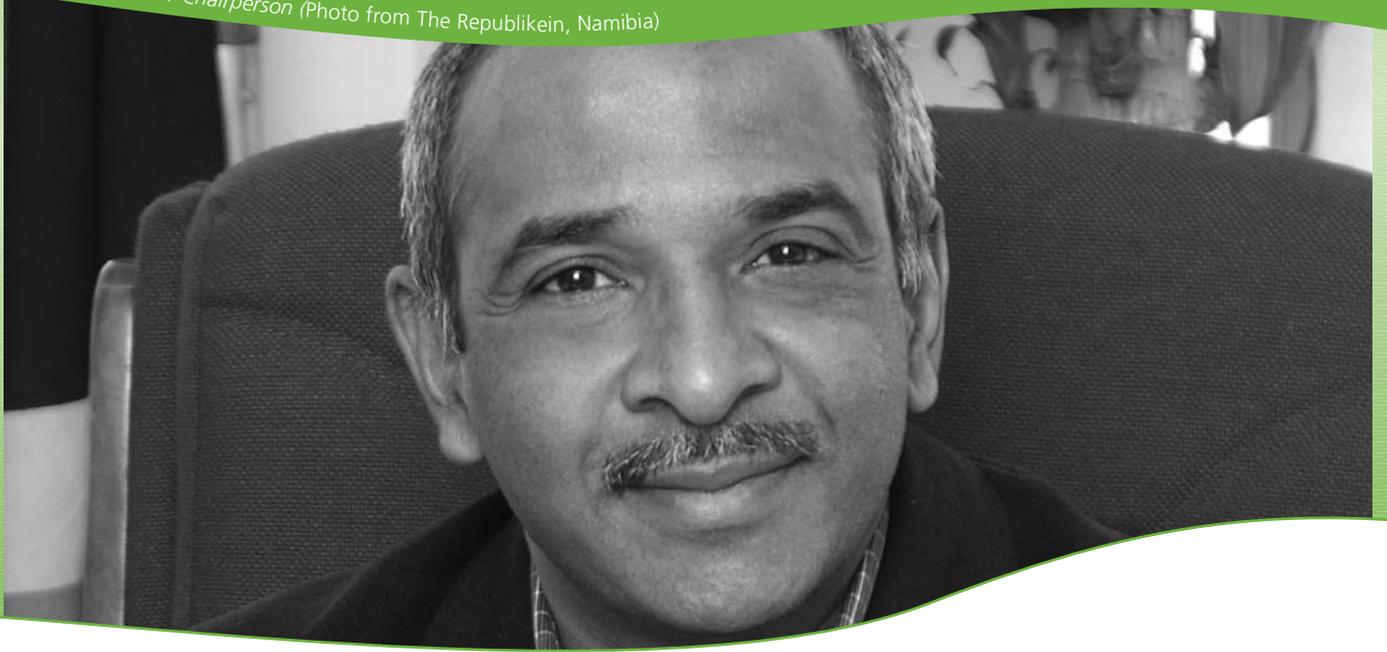
MISSION

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

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

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

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



Chairperson's Message

It is with immense pride that the LRC presents the 30th Anniversary issue of its Annual Report.

This year has been very eventful at both the international and national level. We were filled with excitement, patriotism and hope during the FIFA World Cup, but we could not help but notice the contradictions in our society because we found ourselves surrounded by poverty and desolation even as we embraced the splendour of the most important sporting event the world knows. The debate around the cost of hosting this event against the other pressing needs of our society will continue. If anything, however, it succeeded in bringing South Africans together and showcasing our country to the world.

The LRC was established 31 years ago and it has continued to distinguish itself both nationally and internationally as a foremost public interest litigation organisation. Over the years, it has kept pace with the changes in our country and has continued to remain relevant in a dynamic social context.

South Africa has been characterised as the most unequal society in the world despite having an egalitarian, progressive and transformative Constitution. Even as we negotiate the formidable obstacles to achieving social justice, and even as we navigate the rough waters of change, it has become evident that the Constitution can only be effective if the will to embrace its values and imperatives exists. The creation and the sustainability of a constitutional culture requires that citizens are able to see the Constitution working in practice to advance a better life and to protect the hard-won freedoms that came with democracy. Achieving this requires vigilance, a mobilised citizenry and a common purpose.

Much of the work of the LRC has been orientated towards advancing these objectives. We have succeeded in creatively using a variety of strategies including litigation, law reform, advocacy and public education in seeking to transform the promise of the Constitution into reality. The successes captured in this report attest to an organisation that demonstrates vibrancy, professionalism and a deep and abiding commitment to make a difference.

The work of civil society organisations such as ours has become increasingly difficult over the years. The decline in resources, the challenge of attracting and retaining staff, and the strategic choices we must make in relation to the issues we will focus on require strong and visionary leadership.

As trustees, we remain confident that the leadership of the LRC is well placed to play those roles with distinction and in doing so, will continue to remain an important role-player as our young democracy progresses.

The work we do would not be possible without the continued support of our friends, our donor community, both in and outside of South Africa, and our partners, the South Africa Legal Services Foundation in the United States, and the Legal Assistance Trust in the United Kingdom.

Lastly, I have stepped down as the Trust's Chairperson and Thandi Orleyn has succeeded me. It has been a pleasure to serve as Chairperson and I will still be active as a Trustee for the Legal Resources Trust.

I would like to thank my fellow trustees for their support and dedication to the work we do, as well as all the staff of the LRC led ably by the National Director, Janet Love - for their continued commitment to the work and the cause it serves.

Jody Kollapen

Chairperson

Legal Resources Trust

National Director, Janet Love

Message from the National Director

Over the period April 2009 to March 2010, optimism and pessimism played tag with each other in the international political arena. Barely a month after the hopeful Copenhagen Climate Summit in December 2009, the world was shaken by the earthquake in Haiti that killed over 100,000 people. By April 2009, South Africa had joined the list of countries in recession. Our economy contracted and manufacturing shrunk, while construction was boosted as a result of the 2010 World Cup, which resulted in some temporary growth.

Overall statistics hide the fact that the impact is absorbed most by the poorest, and with devastating consequences. Increased energy costs and the drop in employment combine to generate a bleak outlook. It was not surprising that we saw a number of service delivery protests and heightened anxiety about income prospects after the soccer final in July.

In May 2009, the fourth President of the democratic South Africa, Jacob Zuma, took office. He brought with him a Cabinet that offered new hope, particularly in areas such as health, industrial policy, immigration and education. Real prospects for the resolution of questions that have surrounded the structure, management and administration of the legal sector are evident. Yet uncertainties remain in many areas. With little time to put realignment measures in place and to accelerate delivery to meet the increasing needs of poor people, there is a renewed sense of fragility about the progress we have made. There were also some clearly negative developments. For example, the new military ranks in the police, coupled with the 'shoot to kill' slogan resounding in the public ear, strike at the core of our democratic progress.

There can be no doubt that many of the current challenges emanate

from the legacy of decades of colonialism and apartheid. These include the structural unemployment that is tied to skills shortages. Yet many of the current problems arise from programmes and policies that have been devised and implemented since 1994. While much of this can be understood under the broad headings of 'unintended consequences' and 'first-time, genuine mistakes', any absence of transparency, honest reflection and, most importantly, correction, will cause anger to grow, corruption to fester and gains to be eroded.

As a young democracy, South Africa is faced with the complex challenges of nation-building, economic growth and the urgent need to achieve social and economic equity. It is vital that in the process of meeting these challenges we do not allow the defining, aspirational vision of our transition to fade - the vision that links us all: that of dignity and social justice.

It is against this background that we are mindful of our 'activism through and in the law'. Central to our determination of what work we do, must be an assessment of what impetus this work can provide to the broader campaign for social justice. Are we doing something every day that enables poor people to take control of their own lives? Our Constitution - through the breadth and depth of its wording - is one of few Constitutions the world over that clearly requires its application in the interests of the poor and in pursuit of the transformation agenda.

While there are times when the absence of public awareness of the contribution made by the LRC limits our possibility to garner further financial support, it is entirely appropriate that it is our clients' identities that will and should predominate in the public mind and the media. Our clients often have to march a very long and uncertain road and must have faith in a legal system which rarely brings forth results in the short term. Still, our clients persist in taking up many issues, and given that the state is the primary duty bearer, this can result in tremendous pressure being brought on the state. We salute our clients' courage and fortitude in persisting. It is the key to what spurs us on and makes our work feel worthwhile.

There are a number of other issues besides those I have mentioned that underpin not only our work but the lens through which we view our democracy: defending the rule of law; upholding administrative justice; holding to account those with power and ensuring the transparency of those in authority. There are times when the emphasis that we place on such over-arching issues fails to resonate with our client base whose patience with the delays, ambiguities and inaccessibility of justice has worn thin. It is hard to engage with any level of abstraction if one is hungry and without secure shelter. However, it is important that we do not lose sight of safeguarding such principles that are central to a constitutional democracy like ours.

South Africa's struggle for democracy encouraged intellectual activism and this legacy is also something we should maintain. Within the LRC, we need to find additional ways to enable peer review of our work and collaboration with others working in the same areas. As part of this, we will forge closer links with tertiary and research institutions to enhance our information resources and provide opportunities for young and new ideas to emerge.

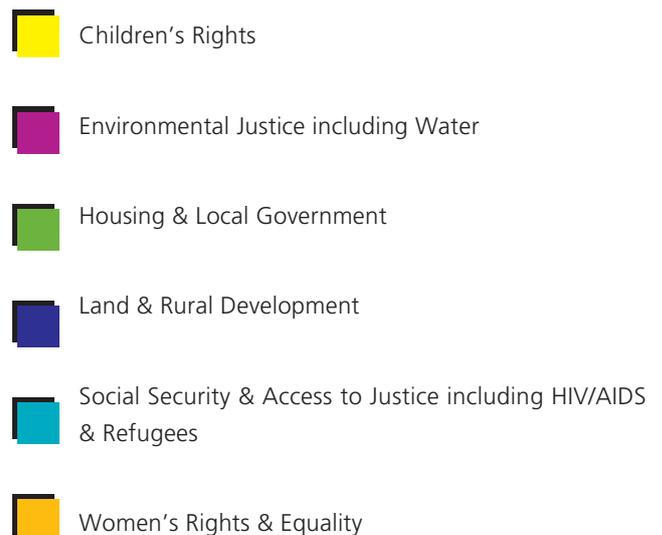
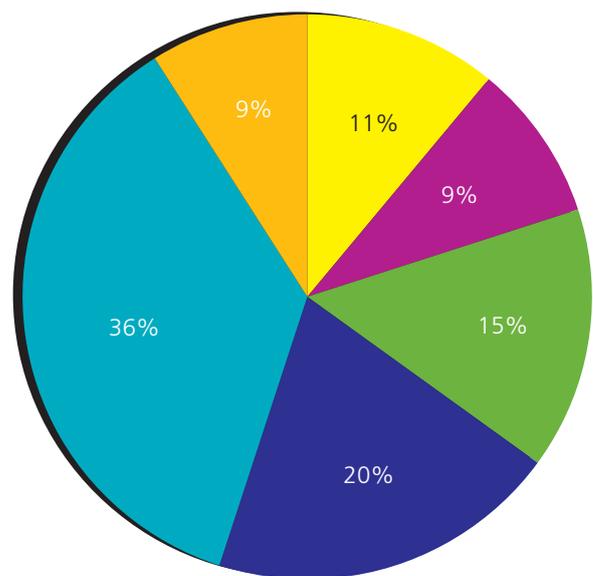
Broadening participation in decision-making, especially within the context of the developmental state with its accumulated power, is always going to be challenging. However, we need to look for ways to open up space and pave the road to ensure accountability of the state to the people. This is fundamentally political rather than legal; we use the law to open the space for political engagement.

Corruption poses a huge threat to our democracy. Transparency needs to be safeguarded in law as it is a key to enabling activism by civil society and ensuring accountability to the public. But corruption itself is very difficult to deal with through the legal process. We need to always be aware of the importance of civil society activism and voice - something so vital to complement the work we do.

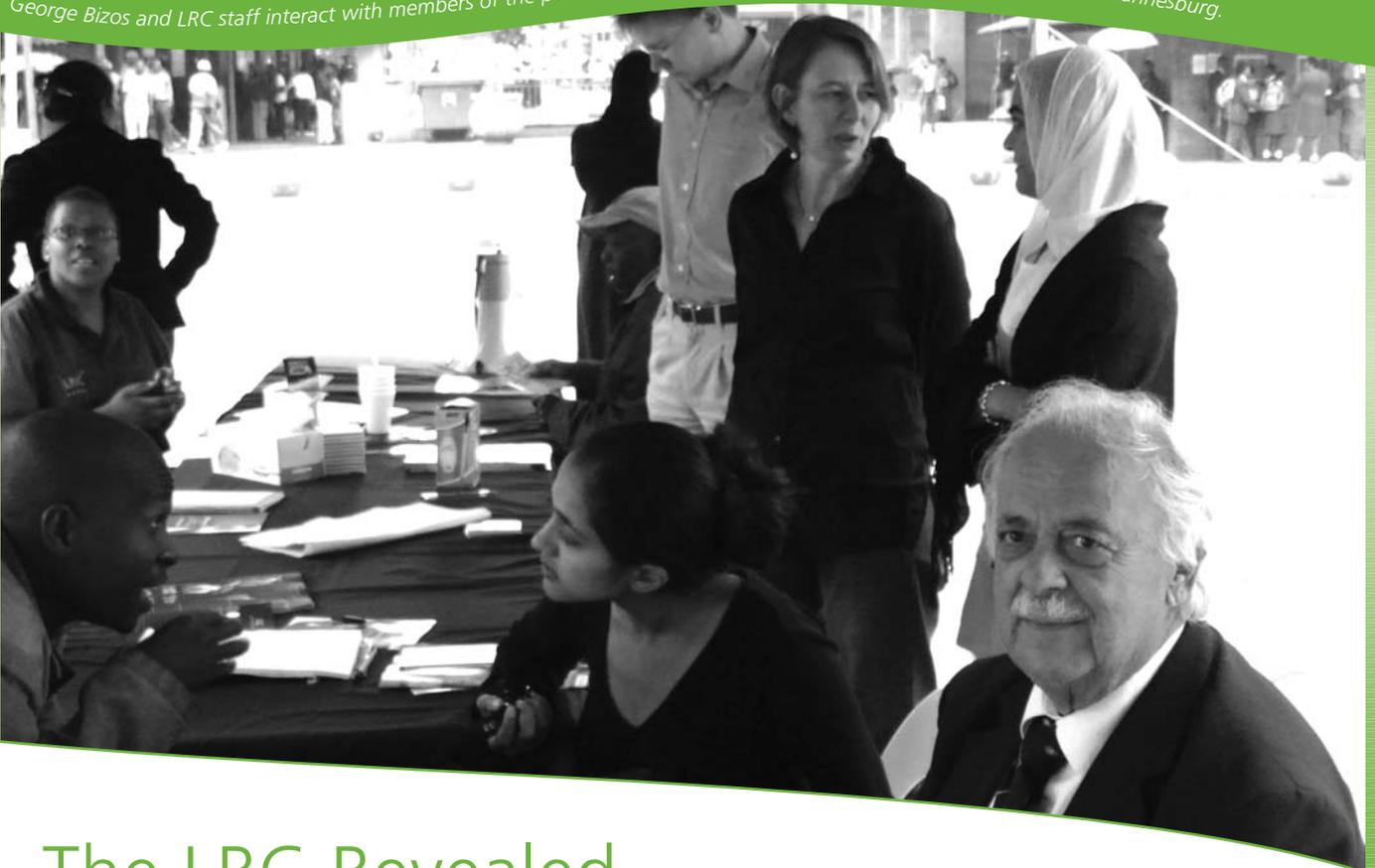
The gaps that the legal process can expose - between the abstraction and the reality - are glaring. This is particularly so when, given our limited resources, we craft cases to maximise impact on principled issues often difficult to communicate. It is not surprising that some potential donors we approach for support do not immediately recognise what seems so obvious to us: namely, that **without the rights of each person being secured, South Africa's development and democracy will flounder**. The case for the continued existence and work of the LRC is very clear.

Janet Love
National Director

Number of Hours Worked by Focus Area in 2009/2010



George Bizos and LRC staff interact with members of the public during a Human Rights Day event at Gandhi Square, Johannesburg.



The LRC Revealed

The LRC was established as an entity to engage in free impact litigation for poor, marginalised communities who faced discrimination. While the mission has remained unchanged for over three decades, the processes and partnerships through which the LRC operates have evolved to deal with new challenges.

The first office opened in Johannesburg in 1979 after extensive consultation with the network of advice offices staffed by community activists in the then Transvaal. To identify and litigate cases with maximum impact, a system was organised whereby the advice offices would screen would-be clients and only refer those with appropriate cases to the LRC.

Although the Durban, Cape Town and Port Elizabeth offices did not have as well organised an advice office network to rely on, many NGOs and trade unions, as well as individual advice offices, would identify appropriate cases for those regional offices to take to court.

It is a tribute to the LRC that over the years judges have also referred matters to us. One such reported example is the case of *In re Duma* 1983 (4) SA 466 (N), which dealt with the pernicious section 29 of the Blacks (Urban Areas) Consolidation Act of 1945 where Africans could be sentenced to labour colonies upon an official's determining them to be "idle and undesirable".

Similarly, Government departments themselves have been a source of clients. In certain cases this has been a strategy by an official to postpone the decision-making process. However many cases are

also referred out of a genuine desire for justice to be done.

Over recent years, the LRC has focused a lot of its attention on processing 'walk-ins', individuals who walk into an LRC office seeking help without prior consultation. In most offices the receptionists and paralegals are the first members of staff to deal with the public. Candidate attorneys serving their 2 or 3 years of clerkship before admittance as an attorney may also screen would be clients.

Paralegals have the primary responsibility of explaining to potential clients the role of the LRC and the basis on which we take on matters. Where a case is not appropriate for the LRC they refer the person to an entity that may be able to help, such as another NGO, a law firm, a university Law Clinic, the CCMA, the Department of Labour, or a Chapter 9 institution such as the Human Rights Commission.

The establishment of Pro Bono Units in many large commercial law firms over the past few years has also enabled the LRC to refer many cases to them and also to participate with such law firms in very significant cases. One such recent case was the constitutional challenge to the Communal Land Rights Act in which the LRC successfully collaborated with the Pro Bono Unit of Webber Wentzel and the Law, Race & Gender Project at the University of Cape Town to have the legislation declared unconstitutional.

Where a paralegal is unable to resolve a client's matter through a phone call, letter or referral to another organisation, the matter will

either be referred to one of our attorneys or raised directly at a Litigation Committee meeting for assessment as to whether the case should be taken on and what strategy should be used to try to take the matter to a successful conclusion.

This may lead to the involvement of the Constitutional Litigation Unit (CLU) consisting at present of five advocates and one attorney. The CLU is situated in the Johannesburg office and was established in 1996 with support from the Canadian Bar Association and the Canadian International Development Agency to provide an expert resource specifically for significant constitutional litigation. *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) and *National Coalition for Gay & Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC), among numerous other examples, all owe an enormous amount to the CLU's input.

Amongst the criteria used by the various offices to assess whether a case should be taken on is the SNIFFI test (S-Skills; N-Need; I-Impact; F-Funding; F-Focus; I-Integration). However, effectively helping the poor and marginalised means that non-impact individual cases are central to the LRC's mission as well - access to justice through the LRC should be available to as many people as possible within the LRC mandate. In addition, proper collation and monitoring of individual cases lead to patterns of exploitation and abuse being detected and challenged.

Looking to the future, the LRC will continue to strengthen its *modus operandi* to fulfil its mission. Owing to funding constraints in more recent years and the consequent reduction in both professional and administrative staff, some potential cases have not been embarked on because of a lack of capacity. In light of these constraints, it is all the more important for the LRC to use and expand its *pro bono* connections with large law firms able to provide both lawyers and resources in time and money consuming matters. The establishment of ProBono.org is therefore welcome. The first director of ProBono.org is Odette Geldenhuys, a former attorney and deputy national director of the LRC. We are confident that such connections and our strong staff, counsel, partners and clients will carry the LRC forward.

STATISTICS

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...organisations the LRC actively co-operated with in its HIV and Aids project:

- Aids Law Project
- Amnesty International
- Black Sash
- Cape Town Mental Health
- Cape Town Refugee Centre
- Centre for Applied Legal Studies (CALS)
- Children First
- Community Law Centre
- Consortium for Refugees and Migrants in South Africa
- Lawyers for Human Rights
- Lesbian and Gay Equality Project
- Medecins Sans Frontieres
- Operation Bobbi Bear
- People against Suffering, Suppression, Oppression and Poverty
- People Opposed to Women Abuse
- Resources Aimed at the Prevention of Child Abuse & Neglect
- Scalabrini Centre
- South African Human Rights Commission
- South African National Aids Council
- Southern African Legal Assistance Network
- Sex Workers Education and Advocacy Taskforce
- Treatment Action Campaign
- Tshwaranang Legal Advisory Centre
- University of Cape Town Law Clinic

Education is one of the many pressing needs of children in South Africa.



OVERVIEW

Children's Rights

The 2009-2010 financial year saw the LRC work on various children's rights issues that were anticipated to have lasting impact in terms of the protection and promotion of children's rights under South African law. There are many pressing needs related to children in South Africa today - education, social grants, violence, inheritance rights - and the LRC aims to choose cases that will benefit large groups of children and have an impact of national scale.

In early March 2010 the Minister of Basic Education, Angie Motshekga estimated that there was a backlog of R140 billion in school infrastructure, acknowledging learners spend the years crucial for early development in environments inhospitable to learning and leave the "foundation phase of education without basic literacy and numeracy skills required to succeed later on." Within this problematic reality where the government is acknowledging its own shortcomings, the LRC is working to make sure these issues are addressed. The LRC continues to tackle issues such as insufficient transportation to school, eviction orders for inner-city schools, wholly inadequate infrastructure and the failure of the Department of Education to provide consistent and accurate quintile rankings on which the no-fee school policy subsidies are based. This year the LRC has assisted schools such as Grahamstown Amasango Career School and those in the Eastern Cape's Libode District (in the former Transkei) in launching litigation aimed to obtain court orders to compel the Department of Education to build proper schools within given time frames and to report to the court on their progress. These cases have the potential to help define the right to education guaranteed in the Constitution.

The LRC also continued to act on behalf of schools incorrectly identified as not needing government funding, such as the Phoenix Heights and Highstone Primary schools in Durban. Appeals against the quintile rankings of these schools were lodged in March 2007, but the state only offered compensation in 2009. The LRC has demanded that the government back pay for the nearly three years

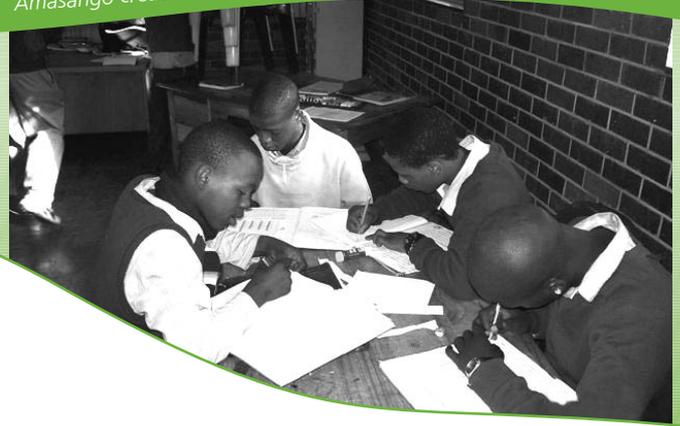
that passed with less funding than these schools should have received. Cases such as these have the potential to force the government to re-evaluate the entire quintile ranking system. This system was implemented in early 2007 and serves as a national funding policy through which to identify and support the poorest of South Africa's public schools. The provision and size of government subsidies are given based on the schools' quintile rankings. Many believe the system is misidentifying the schools most in need. The Phoenix Heights and Highstone Primary school cases highlight the inaccuracies of the quintile ranking system and its consequences.

Additionally, the LRC has taken on several cases on behalf of children who have suffered violence at the hands of family members. For example, the LRC pressured the police to arrest a man charged with raping his step-daughter. The man had several warrants issued against him, but had not been arrested. The LRC has also used its involvement in case-specific work to research the possibility of a much larger case against the government for the unreasonable delays in prosecuting criminal matters that involve violence against children.

Additionally, the LRC has assisted homosexual parents who encountered problems registering their children as legitimate when conceived from artificial insemination. After having had success with individual cases in this area, the LRC aims to encourage the Department of Home Affairs to formulate clear legislation on children of homosexual couples, legislation that is noticeably missing today.

The LRC was involved in the reform of two important laws relating to children's rights during this financial year. The first was the Sexual Offences Act, the implementation of which is being challenged in 2010 by the Durban office and the second was the Children's Act, in which LRC has sought to ensure that guardianship of orphans is decided in the orphans' best interests.

The LRC has continued to form working relationships with civil society organisations including Umthombo Street Children, an organisation aiming, through education, to change the way society perceives and treats "street children." By expanding relationships with similar-minded groups, and continuing their work on important cases, the LRC will continue to be successful in the struggle to guarantee constitutional rights to all children.



Amasango Demands an Adequate School

The Grahamstown Amasango Career School (Amasango) provides education for impoverished street children marginalised by extreme socio-economic deprivation.

Most of the learners at Amasango have been abandoned by one or both of their parents and spend their days attempting to make a living on the streets. All of them have dropped out of traditional school because they face extrinsic barriers to learning that cannot be adequately addressed in a traditional classroom setting as they require high levels of psychological and social support. In 2003 the Eastern Cape Department of Education (DOE) registered Amasango as a "public school for learners with special education needs".

Amasango helps children get off the streets and into the classroom so they can receive an education and develop skills to enable them to become productive members of society. Without the intervention of Amasango, most of these children would have no educational prospects. The intervention has helped many learners re-enter the mainstream educational system after Grade 7.

Although Principal Jane Bradshaw and the staff attempt to make Amasango a place of refuge, the facilities are dilapidated and overcrowded. The environment is not suitable for an educational facility, particularly one meant to accommodate the special needs of Amasango's learners. There are insufficient toilets and no library facilities, sick bay, staff room, or additional rooms for counselling and the playground consists of a very small cement quad. It is a challenge to teach and learn in these conditions, and Amasango's children are unfairly being left behind in their pursuit for an education.

Since 2001, Amasango has operated out of three old railway buildings near Grahamstown's city centre. In 2006, the DOE placed Amasango on a priority list of planned school construction projects. According to the DOE's Budget Statement for 2007/08, construction was scheduled to begin on 1 April 2006 and finish on 31 March 2009.

However in March 2007, Amasango learned from the Department of Public Works that the school had been removed from the DOE's priority list. Furthermore, Amasango was not even listed amongst the schools earmarked for new construction or rehabilitation in the DOE's Budget Statements for 2008/09 or 2009/10.

In response to the removal from the list and to the continued failure of the DOE and its officials to provide adequate facilities for learners, Amasango's School Governing Body resolved to pursue legal action with the LRC's assistance. On 22 October 2009, the LRC issued an application against DOE officials, the Minister of Basic Education

and officials of the Eastern Cape Department of Social Development (the Respondents).

On 11 March 2010, a settlement agreement drafted at the Respondents' request was made an order of the court. Part of the court order required the Respondents to provide initial relief to Amasango, including the provision of six prefabricated classrooms, four toilets, a library, and an office. The court order also required the Respondents to file an answering affidavit by 25 March 2010 setting out their plan to commence construction of a new school for Amasango by May 2011.

No affidavit was filed on 25 March 2010, and instead the Respondents declared that the court did not comply with their requirements. Soon after, they successfully sought an amendment to the order, further causing frustration and delay for Amasango.

The affidavit, which was eventually submitted to the court on 11 May 2010, claimed that the DOE had never removed Amasango from the priority list and never conveyed such a decision to Amasango. Relying on claims of budget and human resource deficiencies to account for its failings to date, DOE asserted that funds had now been allocated to build a new school. However, there was no timeline or plan of action for completing the school.

The LRC submitted a replying affidavit, together with a supporting affidavit from the Head of the Public Service Accountability Monitor Jay Kruuse, countering these claims and calling for: (1) a declaration that the Respondents' failure to provide either appropriate facilities for Amasango or a plan for appropriate facilities is unconstitutional and unlawful; (2) an order setting aside the DOE's decision to remove Amasango from the priority list for new construction; and (3) an order directing the Respondents to provide appropriate and suitable new facilities for Amasango.

Nothing has been done thus far. Although the court order to provide immediate relief to Amasango still stands, the DOE has not complied with its commitment to provide temporary facilities to Amasango.

The Amasango matter, like other education litigation such as *Emvilo Junior Secondary School Infrastructure Crisis Committee v MEC for Education and others*, is aimed at upholding the right of each child to basic education, guaranteed by section 29(1)(a) of the Constitution and enforced by the government's statutory obligations under the South African Schools Act, No. 84 of 1996.

Adequate structures and amenities are essential to the provision of basic education and must be provided on an equal basis to all South Africans, regardless of a child's socio-economic position.



VOICES OF OUR CLIENTS

When You Stand Up, There is Hope

My name is Leon Ngeju and I became acting chairperson of Amasango's School Governing Board because I have seen what the school can do for children. I am a parent of two children who have attended Amasango. One has since graduated and is currently in high school. I saw the wonderful work my children were doing and I wanted to help and be involved.

The school's mission is to give an education to children from broken homes. That is our dream. There are many children out there that find it difficult to go to school because of circumstances at home. Our mission is to help those children keep up with the children that do not have such barriers.

Children who attend Amasango need more attention than other school-aged children because of their backgrounds. Some have parents that do not care, or who have passed away. When we see a child not doing well in class, we often find out the problem comes from home.

My own life is an example. I used to have trouble supporting my children and they were not able to go to school because they did not have the uniform or books they needed. They saw other children being taught and they wanted the same opportunity. So they attended Amasango.

I am inspired by my children, but there is another child here who illustrates what the school can accomplish. He is a very good young man. He was in prison for three years but now talks to the other children about how he was able to change his life. He talks in front of the class and inspires other children. He is excelling in all his subjects, but especially enjoys working with computers and software. The change in this child is remarkable, from when he began here

to when he decided to accept what he has been offered at the school. He takes his education seriously, and makes the best of it. He now has a future.

But the school's facilities are in a terrible state. We do not have enough classes. The principals and administrators crowd into the same office and find it very hard to do their work. They can hear the noise from the surrounding classrooms, and the principal has to knock on the door and ask them to lower their voices so she can make her calls and do her work as well.

The building has no playground and the children can get hurt at any time playing outside. The kitchen is also in one of the classrooms, so when people must go get a drink of water, they have to interrupt the class. This is not a nice place for the children to concentrate, or even for the teachers to do their best.

Just past our building there is a road where people walk to work. My son tells me these people are demeaning and call them "street children". With Amasango getting this school, they will recognise these children are the same as any other children.

Amasango was put on a priority list by the government. But the Department of Public Works told the principal the Department of Education (DOE) won't build the school anymore. We had many meetings with the DOE to explain how dire our situation is but nothing came out of them. We were told many stories, and told the DOE did not have the money to build. We went to the Legal Resources Centre because we were tired of playing games.

The LRC has been very helpful because today I can say we have hope. Our next step is to make sure we do get this school. With a new building, the future will be bright for these children.

We are not the only ones with this infrastructure problem. There are cases like Transkei, where their children are learning under trees. Now is the time for these schools to stand up and find the means to get these buildings erected. There is money allocated to build the schools. As the President said during the World Cup: - "One goal is to get each and every child to school." So let's begin. We cannot just sit down and wait for something that will never come. When you stand up, there is hope.



OVERVIEW

Environmental Justice

The struggle over ownership and use of South Africa's abundant natural resources has created competition between local communities and large industrial companies. The poorly regulated and illegal industrial use of resources, such as water, disproportionately hurts South Africa's poorest communities, those least able to protect and defend themselves. The health, livelihoods and way of life of these vulnerable groups are at risk. Failing to protect our environment from degradation and pollution has disastrous results not only for the communities living in various rural, urban and peri-urban areas today, but also for future generations. Improper treatment of the environment usually results in irreversible damage. Mines pose the risk of immediate and enduring contamination of surrounding air, water and land resources. Other industries such as agriculture and fuel refineries, also threaten permanent impact and pollution of the environment.

South Africa's water supply is severely limited, and it ranks as one of the 30 driest countries in the world. Despite the looming water crisis, the mining industry continues to obstruct communities' access to water and contaminate the clean sources that remain. Entire communities are placed at risk, as their local agriculture industry is damaged and they are forced to use contaminated water for household and personal use. Wider goals of improving socio-economic development are undermined by the creation of these unproductive, unhealthy and dangerous environments.

The LRC is currently involved in a number of notable cases at the site of the environmental struggle described above. In Groblersdal, children in particular have had their health threatened by the widespread use of chlorpyrifos. This neurotoxin causes adverse impacts on the foetus and developing child and is the cause of the highest number of childhood pesticide poisonings in South Africa. Having advocated for a total ban on domestic use and severe restrictions for agricultural use, the LRC was in May 2010, successful in having the use of chlorpyrifos as an active ingredient prohibited in households, home, garden and domestic remedies.

The LRC has assisted clients in drafting objections and appeals to the various mining companies that have obtained water-use licenses without meaningful public participation, impact and sustainability studies, and NEMA authorisations. The LRC has also brought attention to mining companies' illegally operating and utilising water resources without valid water-use licenses.

In mid-2009 the LRC acted for Escarpment Environment Protection Group in the Belfast area, which had found approximately 16 coal mines operating without authorisation for mining and water use. For example the Klippan coal mine was operating without a valid environmental management plan (EMP). After several letters exchanged between the LRC, the mine and the Department of Mineral Resources (DME), it was agreed that the mine would stop operations until such time as the EMP has been approved by DME and they had engaged in adequate public participation. The LRC has brought other mines illegally operating in the Belfast area to the Water Tribunal to adjudicate the matter. The mines have been forced to cease all operations until the Water Tribunal issues a decision.

The LRC has assisted clients in challenging the lawfulness of the authorisation process for the Pebble Bed Modular Reactor (PBMR), a plan to build a nuclear reactor in the Koeberg area. The PBMR would have been a semi-permanent environmental hazard, creating long-term problems for the decommissioning of the reactor and the disposal of waste. The LRC represented clients opposed to the building of the demonstration model nuclear reactor on the basis that it posed a safety and economic risk to local communities and society at large. Moreover, there had been inadequate disclosure of relevant information in the decision-making process. Towards the end of 2009, funding for the PBMR was stopped by government, and on 17 September 2010 the South African Minister of Public Enterprises announced the closure of the PBMR.

The LRC promotes public participation and community input into the planning, building, and evaluating of large industrial activities and believes such involvement is necessary to measure accurately the potential impact of these projects. South Africa must involve its citizens in the decision-making process. The LRC continues to fight for the realisation of rural and urban communities' constitutional right to an environment that is not harmful to their health and well-being, and against limits on their access to clean and unpolluted water, air and land.

The banning of the use of chlorpyrifos in domestic and agricultural pesticides will help limit its negative impact on the health of children and farm workers.

(Photo from organicfertilizersources.com)



Dangerous Substance Banned

The LRC has advocated banning the use of chlorpyrifos, a dangerous substance, which should assist in limiting the adverse health impacts of certain agricultural and domestic pesticides on children and farm workers.

South Africa has been slow to introduce restrictions on toxic chemicals, many of which have been banned in other countries. Research conducted by the University of Cape Town's School of Public Health and Family Medicine has highlighted the dangers posed for childhood development and the health of farm workers from exposure to organophosphate pesticides, in particular chlorpyrifos. Their research emphasises that socio-economic conditions such as poverty increase children's vulnerability to pesticide poisoning. The Association of Veterinary and Crop Associations of South Africa blames chlorpyrifos for the majority of childhood pesticide poisonings. Pre-natal and early life exposure to the pesticide has been associated with attention deficit disorder and autism.

In addition to its impacts on the developing foetus, chlorpyrifos has a wide range of adverse health impacts. The symptoms of chlorpyrifos poisoning include headaches, dizziness, nausea, vomiting, diarrhoea, shortness of breath and chest wheezing, blurred vision, excessive salivation, convulsions, and muscle spasms that may lead to muscle paralysis and in extreme cases, death by suffocation. Exposure to chlorpyrifos can occur from dietary habits, residential housing, or workplace materials. By placing a ban on chlorpyrifos for domestic use, South Africa's regulatory approaches towards pesticides would align with those adopted in the United States, Canada and the European Union.

In August 2009 the Department of Agriculture proposed limited restrictions on agricultural remedies containing chlorpyrifos for household, home, garden and domestic use. However a number of experts, non-governmental organisations and medical practitioners believed the proposal should have been more restrictive.

In August 2009 the LRC made a submission to the Registrar (the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies

Act 36 of 1947) calling for a ban on chlorpyrifos for domestic use and the imposition of severe restrictions on its agricultural use. In its submission, the LRC argued that the partial banning of this substance was unlawful and that only the total banning of its use as a domestic pesticide remedy would be legal.

The LRC also submitted a summary of up-to-date medical information on the neurotoxicity of chlorpyrifos to the developing foetus and young children to the Registrar, as the Registrar's decision appeared uninformed by these scientific findings. This submission argued that in making its regulatory decisions, the Registrar was obliged to take into account all relevant information. A failure to do so would render the Registrar's decision reviewable under the Promotion of Administrative Justice Act.

The LRC's submission argued that the State has a constitutional duty to respect, protect, promote and fulfil all provisions in the Bill of Rights, including the right to life and the right to an environment not harmful to health and well-being. The State also has an obligation to protect the environment from pollution and ecological degradation through unsound practices using reasonable legislative measures. In this case, the State did not uphold its obligation by allowing chlorpyrifos to be registered as an agricultural remedy.

The LRC's submission threatened legal action if chlorpyrifos was not banned for domestic use. However, further legal action was not required as on 14 May 2010 the Department of Agriculture, Forestry and Fisheries published a notice prohibiting the use of chlorpyrifos as an active ingredient in households, home, garden and domestic remedies. The LRC was successful in securing environmental justice, protecting South African citizens from the use of a dangerous pesticide.

The Merebank community, especially the children, have suffered over the years from extreme environmental contamination.



VOICES OF OUR CLIENTS

South Durban Community Environmental Alliance

My name is Desmond D'sa and I am the Coordinator and Spokesperson of the South Durban Community Environmental Alliance (SDCEA). I have been involved with SDCEA since 1995, when it was first set up as the only multi-racial community organisation dealing with environmental justice issues in South Africa.

Before my work with SDCEA, I was in the textile and chemical industry for twenty-four years so I know it well, inside and out. I worked with major multinationals in their process areas and health and safety matters.

I now derive much satisfaction from working with SDCEA as we have taken on many of the multinational corporations and forced them to clean up their mess. SDCEA provides the evidence needed to persuade the government to introduce new environmental legislation. It's extremely rewarding seeing the impact of our campaigns.

A hard moment for me, a moment which broke my heart, was meeting a seven-year old girl in the Merebank community who had leukaemia.

The Merebank community, especially the children, have suffered over the years from extreme contamination. The rate of leukemia in Merebank is unusually high, according to the analysis of a public health specialist at the University of Natal's Nelson Mandela Medical School. For children under the age of 10, it is at least 24 times higher than the national average. The rate of all other cancers in this age group is more than four times higher than the national average. The local fuel refineries and other south Durban industrial companies contribute to the high air and water pollution rate. Toxic spills into

the community's canals and diesel fumes from production have made the area unsafe.

The seven-year old girl I met was forced to leave the Durban area. Her parents had to sell their home because they could not find treatment for her disease in Durban. They had to leave everything behind so she could be taken care of at the Red Cross Hospital in Cape Town.

But she was very sick. I understood then that even if they had all the money in the world, they would still be unable to cure her leukaemia. At seven-years old, this girl was sentenced to death.

The oil industry must be held responsible for all the deaths that resulted from air pollution; all the leukaemia cases and asthma patients over all these years. These oil companies, not the government, must provide a free asthma clinic and free medical care.

All the evidence of air pollution and its consequences is here. We are seeking the LRC to take the oil industry to court.

Adapted from an interview.

LRC and Environmental Justice

The LRC helps civil society to participate effectively in environmental governance in order to protect the environmental rights enshrined in the Constitution. This is done by providing legal representation and technical support for environmental organisations as well as marginalised and vulnerable communities.

Over the last decade, the LRC's environmental work has resulted in, amongst other achievements; closure of illegal mines, rehabilitation of abandoned mines, judicial review of mine permits granted with very lenient measures for environment protection and negotiating a reduction in lead and sulphur levels in fuel.

The forced relocation of the Joe Slovo informal settlement in Langa, Cape Town, was a case fought over many years which saw its conclusion this year.



OVERVIEW

Housing and Local Government

The LRC has represented many poor and vulnerable clients, ensuring greater security of tenure for them, better protection against illegal evictions and loss of ownership of their homes, and better opportunities to participate in the development of regulations for housing and service provision. LRC interventions have also ensured our clients have access to services such as water, electricity, refuse-removal and public transport, as well as to social services such as health and education facilities and better employment opportunities.

The forced relocation of the Joe Slovo informal settlement in Langa, Cape Town, the largest eviction since the advent of the Constitution, was a case fought over many years and saw its conclusion this year. In 2007, the 20 000 residents of Joe Slovo faced an urgent eviction application launched by the Minister of Housing. In March 2008, the first judgment ruled against the community, and immediately the LRC made an application for leave to appeal in the Constitutional Court. In June 2009, the Constitutional Court issued its decision supporting a relocation of the community. Although the Court did not find in favour of the residents, it did set new standards that provided the evictees with alternative housing and services. The LRC team and the other lawyers on the case were successful in stipulating that relocation could only take place if the temporary relocation areas met certain minimum standards. The new standards set led government to re-evaluate the decision to relocate and the Court has subsequently unilaterally suspended the eviction order.

LRC interventions and negotiated settlements have enabled our clients to secure their right to housing and, in several cases, also extend that right to cover basic services. The housing right in the Constitution not only includes a right of access to adequate housing but also requires legislative and policy provisions to enforce it. Evictions are only constitutionally possible if approved by a court after considering all relevant circumstances. These provisions have

been subject to considerable judicial comment - much of it in cases where the LRC has represented the evicted party.

Beneficiaries of these cases include foreigners, people living with HIV and AIDS, the disabled and the elderly. For example, before and during the 2008 xenophobic violence, the Central Methodist Church opened its doors to foreigners who had been attacked or no longer felt safe in their host communities. However, the Church faced harassment, and its residents lived under the constant threat of eviction and police intimidation. LRC intervention resulted in a stay of eviction and the court appointment of a guardian, Dr. Ann Skelton, to look after the Church's child residents. The LRC also continues to cooperate with NGOs such as Médecins Sans Frontières to ensure the residents receive general medical, HIV and Aids and counselling services.

The LRC has been involved with the Centre for Applied Legal Studies (CALS), the Community Law Centre and Centre on Housing Rights and Evictions disputing the legality of the KwaZulu-Natal Slums Bill, which would have allowed for mass evictions without the provision of suitable alternative accommodation. The Bill, once enacted, consequently would have violated the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the Constitution. CALS instituted an application for the clients arguing that the bill was unconstitutional. The application was dismissed by the High Court in KwaZulu-Natal, but CALS, acting for the shack dweller's movement Abahlali baseMjondolo took the matter on appeal to the Constitutional Court where it was ruled to be unconstitutional. Although the LRC was not directly involved in the court case, it played a role in developing the legal strategy.

Another case of significant note was the LRC's involvement with the Early Morning Market in Durban's Warwick Triangle. In March 2009, the eThekweni Municipality unilaterally terminated the traders' leases in order to build a modern shopping centre on the site. The LRC was successful in obtaining an interdict in June 2009 to prevent the relocation and prepared papers to challenge the constitutionality of the municipality's by-laws and its procedural irregularities.

The LRC continues to work towards developing the progressive laws and policies to meet the housing and local government needs of the poorest and most vulnerable people in South African society.

The Early Morning Market in Durban has been in existence since 1910.



Early Morning Market: Livelihoods in the Balance

eThekweni Municipality revealed plans to build a large shopping mall with a regional taxi rank complex in Warwick Junction, the primary transport node in Durban. The area is currently the busiest in the city with more than 300 buses and 1 550 mini bus taxis departing from the junction daily. The site for the proposed R300 million complex is the Early Morning Market (EMM). The EMM was established in 1910 and has since supported the livelihoods of diverse communities in Durban.

The Municipality violated a number of legislative and procedural requirements in its decision allowing the mall to be built. Some of these violations included: calls for expressions of interest were not made when the land was released; there was no public tendering process for the proposed development; the Municipality did not consult with the traders concerned; and the Municipality did not conduct the required environmental impact assessments. Those with the most to lose, the traders (who do not support plans to demolish the market and build the mall in its place), were not incorporated into the negotiations process.

Phillip Sithole, head of the Municipality's Business Support and Markets division cited the primary reason behind destroying the market, a place that has supported the community for the last 100 years, as being concern for the public's safety. In mid-2009 he said, "heritage and history is very important but in our view it is not as important as public safety. Five hundred thousand people pass through the Warwick precinct everyday. The area is very congested with people and cars competing for space." Ironically, the destruction of the EMM will place the lives of more than 8 000 street and market vendors, as well as independent service providers such as barrow operators, in immediate jeopardy, removing their source of household income. The new development will allow for only 270 legal street traders.

The EMM sustains the livelihoods of many, including produce-sellers and barrow operators who supply their carriage services to the traders. It is also an important site for the bovine head sellers who trade outside the market. Some of the traders are third and fourth generation descendants of the EMM's founders. For them, being

evicted from the market will not only cut them off from their livelihoods, but also from their family and community's history.

The EMM is the site of the city's main transport node, which means that the market serves not only traders throughout the city but also many of the 460 000 commuters that pass through the area on a daily basis. A June 2009 study revealed the reliance of these commuters on the EMM. On average, products bought from the EMM precinct cost 76 percent less than similar products bought at formal retail outlets. If the Municipality's plan is successful, poor communities will be hit the hardest, as formerly low-priced goods become unaffordable.

Many have condemned the Municipality's plan to demolish this historic site. Amafa/Heritage KwaZulu-Natal, the provincial heritage conservation agency for KwaZulu-Natal, has opposed the Municipality's plan and has refused to offer permission to it to demolish the site.

As representatives of the bovine head and chicken sellers in the adjoining area, the LRC has been involved in various interdicts and proceedings from the beginning. On 19 March 2009, the Municipality passed a resolution to terminate the leases of the traders and approved moving forward with the development. Subsequent meetings with the traders were not consultative in that questions and concerns were not recorded or answered. Along with the resolution the Municipality moved forward with plans to provide traders with "temporary" accommodations on Alice Street, in a structure under a tarpaulin. Considering the large amounts of fresh produce sold, this alternative would pose serious health and safety problems. Further, the new site is out of the way with no facilities and insufficient space to accommodate all the traders. It is also not near a transport node, which will affect trade significantly as trade depends mostly on 'passing feet' of commuters.

Other problems have included intimidation, harassment by police, and illegal closures. On 3 July 2009, the barrow operators were informed by the Municipality that they would henceforth require permits in order to provide their services to the EMM traders. On

Million Phehlukwayo has been trading at the Early Morning Market since 1992.



VOICES OF OUR CLIENTS

How I Provide for My Family

9 July 2009 the City's Metro police refused to allow barrow pullers pulling trolleys filled with produce entry into the EMM, and guarded the entrance with rifles to impose this approach. The bylaws which regulate the EMM do not provide the Municipality with authority to require such permits as they only relate to traders operating inside the market. The barrow pullers are independent service providers outside of the market, servicing the traders. In the first victory for the traders against the city, the LRC obtained an interim order preventing the Market Master from interfering with the barrow operators' right to trade. Consequently, they were not forced to comply with the permit requirement.

Other forms of persecution began soon after this victory. The traders began to be harassed for not being at their store at all times, even when they left to go to the toilet. While away from their stalls for mere minutes, goods were confiscated and only later released upon the payment of fines. Additionally, traders were required to present themselves at 05h00 every morning for a verification process and to remove their goods from the premises each day at closing time. The LRC successfully brought an urgent application to halt this conduct.

At the eleventh hour before a celebration to mark 100 years of EMM's existence, the Municipality indicated that it would not grant the traders permission to hold the historic event. On 18 May 2010, the day before the event, the LRC obtained an urgent declaratory order, allowing the celebration to go ahead—bringing hope in an on-going battle to keep the market alive.

My name is Million Phehlukwayo. I was born in a village near Port Shepstone, south of Durban.

I first came to Durban in 1976 to help my father who had a vegetable store in the Early Morning Market. My father would save income generated from selling fruit and vegetables so that we could afford to buy food back home and go to school.

The products that he sold were mostly sourced from my village. My family and community members were fully involved in growing *amadumbe* [potato-like indigenous tubers], *bhatata* [sweet potatoes], maize, beans, and other agricultural produce.

During the harvest season, my family and community would send their goods to my father for him to sell.

This system provided essential income, not just for our family but also for our neighbours, to alleviate the poverty caused by unemployment in my village.

When I completed my matric in 1980, I decided to come to Durban on a full-time basis and look for work so that I could help my father with the burden of taking care of the family.

It wasn't long before I decided to sell fruits and vegetables like my father. I was able to buy a bakkie with the money that I had been saving from short-term employment.

In 1992, I secured a store in the Early Morning Market and, since then, I have never looked back. I now employ four people who are able to support their families as well.

The Market has been instrumental in helping me to get my children into and through school. They have even completed tertiary level education.

If anything happened to the Market, I would be too old to look for alternative employment. Selling fruits and vegetables in the Early Morning Market is how I make my living and provide for my family.



OVERVIEW

Land and Rural Development

The LRC was significantly involved in the advancement of national issues dealing with land and rural development during the 2009-2010 financial year, such as bringing the Constitutional Court case arguing against the constitutionality of the Communal Land Rights Act (CLRA) to a close. Through its participation in the national debate over these issues, the LRC has demonstrated the impact of rights-based development and local engagement with the community in the struggle to empower the poor with a path to a better life.

Despite submissions pointing out its severe shortcomings, the government went ahead and promulgated the CLRA in June 2004 (but suspended its operation pending the formulation of plans for its implementation). The promulgation gave rise to four communities, represented by the LRC together with Webber Wentzel Attorneys, launching a High Court application in 2006 to challenge the CLRA. On 3 December 2009, the Gauteng High Court ruled the Act unconstitutional, and the Constitutional Court confirmed this ruling on 11 May 2010. Despite the challenges encountered in the process, the LRC remains committed to working with its client communities and the government to formulate new legislation.

The LRC has been advocating land tenure reform and state regulatory and administrative support for poor people's rights since its inception. During the 1980s we litigated on these issues, while during the 1990s we actively participated in law reform related to land. Considerable progress in promulgation of law reform legislation has been made. However, legislation to provide for legally secure tenure for persons or communities whose tenure is insecure as a result of past racially discriminatory laws or practices, as promised in the new Constitution, remains inadequate.

In addition to its work on the CLRA case, the LRC continued in 2009-2010 to engage with relevant stakeholders and NGOs to promote

a rights-based approach to determining and securing the rights of individuals and communities to land. For example, the LRC supported research initiatives and community involvement to resist the promulgation of the impending Traditional Courts Bill. Our concern is that in its current form, this Bill will strengthen the power of unelected chiefs in an undemocratic and unconstitutional fashion, including their power of taxation.

The LRC's research initiatives included the Rural Women's Action Research project, a collaborative effort between the LRC, the University of Cape Town's Law Race and Gender Unit (LRG) and Community Agency for Social Enquiry. Part of the action research project surveys selected local communities to gather data on the power and property relations experienced by rural women living under customary law. This research will strengthen our understanding of the potential implication on rural women of legislation such as CLRA, the Traditional Governance and Leadership Act and the Traditional Courts Bill.

Public hearings on the Traditional Courts Bill were expected to be scheduled for the second half of 2010. To ensure rural voices are heard at the upcoming hearings, the LRC and LRG, in collaboration with Trust for Community Outreach and Education (TCOE), South African Human Rights Commission, Congress of South African Trade Unions and Women's Legal Centre, hosted a national conference on the content of the Bill and the lawmaking process in November 2009. The conference was attended by 95 community and civil society representatives.

Our work is also aimed at ensuring that the State and mining companies agree that mining and prospecting may not take place on community-owned land unless the free and prior informed consent of the community is secured. Since African communities could not be owners of their land and minerals under apartheid, the Minerals Petroleum Resources Development Act (MPRDA) impacts inequitably on African communities whose land may be mined, by treating them as if they were equal to white owners who benefited in the past under the old order minerals regime. Our policy and litigation efforts are aimed at establishing and advancing the rights of communities on communal and other land that have been extinguished by the MPRDA. We have accordingly embarked on test case litigation in the Sekuruwe matter. The Sekuruwe community lost much of their land to an international mining company when the Minister of Rural

Development and Land Reform, Lulama Xingwana, responsible for communal trust land, leased the valuable agricultural land with the approval of the distant leadership of the larger tribe, but without properly consulting with the community itself.

Other initiatives include a partnership, supported by Germany's Evangelischer Entwicklungsdienst (EED) and Netherlands' Interchurch Organisation for Development Co-operation (ICCO) for ten NGOs. Activities include participation in civil society workshops, such as the ones held on 13 and 14 October 2009 which were part of a consultative process on the Government's new Comprehensive Rural Development Programme organised by the Department of Rural Development and Land Reform (the Department). The Comprehensive Rural Development Programme would place land reform and rural development into one national department and separate agriculture into another department. The LRC believes this would further dissipate the already limited departmental capacity to implement land reform.

These steps are taken at a time when the Minister of Rural Development and Land Reform is reported to have stated that:

*"We have not talked about the revenue that the state has lost because farms totalling 5.9 million hectares, which were active and accruing revenue for the state, were handed over to people. And more than 90% of those farms are now not functional. They are not productive, and the state loses revenue. We cannot afford to go on like that."*¹

A key focus of LRC will be on advocating and working with the Department to ensure that legislative and other measures are taken to improve the management of an estimated 4 000 redistribution and restitution land reform projects.

The LRC also continues to work on municipal commonage, a "new" policy instrument which it assisted in formulating during the mid 1990s. On 10 November 2009 the LRC organised a seminar which was attended by TCOE, Surplus Peoples Project (SPP), Women on Farms Project, Southern Cape Land Committee, University of Western Cape's Community Law Centre, the Embassy of Finland, and the

Department. The seminar focused on defining best practices in relation to commonages, steps to protect commonage workers, the role of municipalities and how to deal with the commonage land rights administration. The LRC and the SPP used the seminar's resolutions in completing their booklet on municipal commonages, published in 2010. The booklet is aimed at further educating the public on the rights of individual commonage users and their interaction with the municipalities.

Land and rural development continues to shape and be shaped by power relations, including race and gender. The LRC will continue to work to empower communities and help them manage the land reform process.

2010 STATISTICS

17

...legal submissions made on legislation

29

...workshops / trainings given

¹ Brendan Boyle, SA Times, 2 March 2010.

CLRA Declared Unconstitutional

At long last the Communal Land Rights Act (CLRA) case has concluded. After seven years of court battles, the Act was declared unconstitutional by the Constitutional Court in May 2010. This case has far reaching implications for power relations and the status of the land rights of more than 21 million people living on communal lands. It is arguably one of the biggest impact cases to have been mounted in the LRC's history.

The CLRA and the Traditional Leadership and Governance Framework Act (TLGFA) apply to the 30% of the country's population who live on 13% of the land. These are among the poorest people in South Africa and their most valuable asset is the land they live on - in the so-called former homeland areas. Enforcement of the CLRA would have increased these people's vulnerability by transferring land titles from the state to traditional councils and denying communities the ability to participate in its administration. By vesting ownership and control at the level of traditional councils, CLRA undermined land rights at other levels of society. It weakened local control and accountability by taking an individualised approach to tenure rights and ignoring the layered rights that are already vested in communities.

In 2003 and 2004, while CLRA was being drafted, the LRC made submissions in Parliament setting out concerns about the drafting procedure. CLRA's drafting did not follow constitutional procedure, and did not allow for community participation. As a bill that affected the provinces and related to the intersection of national and provincial legislative powers, it fell under procedures described in section 76 of the Constitution, which requires public involvement before the bill is sent before Parliament. However, the then Minister of Agriculture and Land Affairs Thoko Didiza, requested that Parliament follow the less cumbersome section 75 procedure. This procedure applies to bills that do not affect the provinces, and are generally related to the areas of national legislative powers, such as foreign affairs, defense and justice.

In 2004, after CLRA bypassed public feedback through this unconstitutional shortcut, it was signed into law by then President Thabo Mbeki. Much of the success of the subsequent litigation depended on the detailed submissions and follow ups made during this initial process. In August 2008 the LRC co-published a book, "Land, Power and Custom", edited by Aninka Claassens and Ben Cousins. The book contains case-study chapters based on LRC

investigations concerning "living customary law" in the applicant communities and chapters written by various expert witnesses involved in the litigation.

The case challenging the CLRA and sections of the TLGFA was initially argued in the Pretoria High Court on 13 - 16 October 2008. The LRC and the Webber Wentzel Pro Bono Unit represented four rural communities with which the LRC has had long-term relationships: Kalkfontein and Dixie (Mpumalanga province), Makuleke (Limpopo province) and Makgobistad (North West province). The court challenge involved fourteen respondents, including two Ministers (Land Affairs, Provincial and Local Government), nine Premiers, the Speaker of Parliament and the National House of Traditional Leaders. The communities argued that CLRA was unconstitutional because the Act undermined rather than secured their land and tenure relationships and contravened section 25(6)¹ of the Constitution; discriminated on the basis of race and gender; created an unconstitutional fourth sphere of government; and was adopted by Parliament in terms of the wrong procedure without participation by the provinces. Section 25(6) obligates the State to improve security of tenure in communities who have been deprived of or never enjoyed security of tenure because of past injustices.

The two days of hearings were attended by community leaders and representatives of the four applicant communities. Their voices were finally heard after years of anticipation. In this sense the court case and the legal challenge already had significant impact on social and power relations in these communities. The community leaders say that the litigation gave them confidence in their cause and strengthened their resolve to protect their individual and communal land rights.

The matter was expected to be decided within three months. After more than double that time had passed, the LRC wrote to the Deputy Judge President of the North Gauteng High Court urging the court to deliver the judgment.

1 Section 25(6) states that: A person or community whose tenure of land is illegally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

The Constitutional Court hearing on the CLRA was well attended by our client communities.



On 31 October 2009, more than a year after the initial argument and almost six years after CLRA's passage, the LRC, Webber Wentzel and the South African people secured a victory in the North Gauteng High Court. The judgment declared invalid fifteen key provisions of CLRA including the transfer and registration of communal land to unrepresentative leaders, the determination of rights by the Minister, and the establishment of undemocratic land administration committees.

The state then appealed. In February 2010, the new Land Affairs Minister withdrew his opposition to the LRC application to confirm the declaration of the law as being unconstitutional and said he would work to have it substantially changed. However he did not concede that the law was unconstitutional and the LRC urged the court to pass judgment on the substantive merits of the case.

The Constitutional Court appeal hearing took place on 2 March 2010 and was attended by 80 representatives from our client communities. The judgment was handed down on 11 May 2010. Chief Justice Ngcobo delivered the judgment and concluded that the provisions of CLRA affected indigenous law and traditional leadership. He found CLRA replaced the living indigenous law regime, its institutions and rules, in regulating the occupation, use and administration of communal land. Because there would be substantial impact on the provinces, the Court concluded that Parliament followed incorrect procedures when enacting CLRA. In delivering judgment, Chief Justice Ngcobo emphasised that Parliament should urgently enact constitutionally envisaged legislation that will ensure there is security of tenure for the people and communities who were dispossessed of their land during the apartheid era.

At the heart of the litigation were complex questions concerning the nature, status and content of customary law and, in particular, the legal content of customary entitlements to land, and the scope of chiefly power over land. The LRC believes the government must act soon to ensure there is legislative support for democratic decision-making, accountability, and transparency in land administration. Measures must be taken to ensure that land reform includes tenure security for communities.

2010 STATISTICS

1,480,000

...youth reached through LRC's

'Know your Rights' radio campaign

7,446

...queries attended to as a result of

drop-in visitors to LRC



VOICES OF OUR CLIENTS

Too Many Drops of My Sweat on This Land

My name is Hermanus Booysen* and I am one of 13 black small farmers who have been able to gain access to a 65-hectare portion of the greater Stellenbosch municipal commonage. Each farmer in our group individually farms, for their own account, a five hectare allotment.

When I was young, my father and mother struggled and I had to help out on the land so that my brothers and sisters could be educated. I always loved the land. That is why I am a farmer today. The land grew on me from my childhood days and I grew on the land. Nowadays, when I get home in the evenings, it seems as if the night is too long. I want to be on the land again. When someone telephones me during the day, my wife always says, 'No, the mole is under the soil.'

Many farmers have come and left. Farming is not simply 'I am going to make money'. Farming means you have to spend money, to begin with. There were people here who were just waiting for the State and that is not a good thing. I had a friend in the Police who once told me not to expect handouts, but to turn my hand around and see what my fingers were capable of. And do you know, it's the truth, if you turn your hand around and see what your fingers can do with the soil, you can prosper.

When I first arrived here in 2003, I started with R1,000 and worked my way up from there. At first I planted some onions from the road

up to here. After planting the onions, I planted the other portions with beans - on my own. I planted strawberries, green beans, the same as here, but on a smaller scale and I had more control over it. The boys were at school, my wife at work, but I went on and persevered. After the first crop I employed a woman to help out here and then we started cultivating the whole place. I met up with a friend of mine from Jamestown [a township near Hermanus's home] and I told him I wanted access to the Epping Market, my produce is too much for the house. We continued farming like this until I had 25 people working for me last year at harvest time. Up until this day I am still at the Epping Market and agents even come and fetch produce here to sell.

I know what it feels like going from 'boy' to boss. I know what I went through and where I am heading. It is my vision to one day see the land here filled with chillies. I want to see twenty or thirty people picking chillies - not just one person like now. I believe that with help from the Municipality or the State and the determination of the farmers, we can do this.

LRC has now been trying to help us persuade the municipality to agree to conclude lease agreements directly with each allotment holder, and to administer the leases.

Adapted from "Farming with Faith" by Willemien Brummer as published in die By, supplement to Die Burger on 7 August 2010. For the full article see: <http://www.dieburger.com/By/Nuus/Ons-boer-met-geloof-20100806-2>

Background

The greater Stellenbosch Municipal Commonage consists of 1700 hectares. This land was granted to the Municipality by the State free of charge during the mid-1800s for the benefit of its residents. Due to discriminatory laws, only white residents benefitted from the commonage. This situation has continued to date because white commercial farmers renewed their leases for 50 year periods shortly prior to 1994.

One of these farmers is Spier Estate. But unlike others, Spier Estate (and not the Municipality) made a 65 hectare portion of the commonage that it was leasing available to the 13 small farmers. For a period of five years, Spier paid the water charges and rental for this portion. During this time the LRC started assisting the group to establish a trust and secure the lease in their name and in 2008, the trust secured a significant reduction in rental.

During 2010 the Municipality formally resolved to take over the administration of the allotments and to apply for a Municipal Commonage Infrastructure grant from the Department of Rural

Development and Land Reform (DRD&LR). Subject to approval, the grant will fund the upgrade of irrigation infrastructure, installation of irrigation meters for each allotment, increase the irrigation water allocation and redeem the capital repayment on the water rights to make water costs affordable.

However one of the main problems with most redistribution and restitution land reform projects (an estimate 4000 projects on 6 million hectares of land) has been that the rights of individual land users within these projects have not been secured and supported. In the run-of-the-mill land reform projects there is gross inequity in access and no security of rights of individuals within groups.

The main aim of this project is to create a model in conjunction with the DRD&LR where the municipality as a public body will, as a result of the improved infrastructure, administer allotment tenancy agreements to secure the tenure and access of small farmers.

Social assistance such as old age pensions, disability and child support grants are necessary in ensuring a minimum quality of life for the poorest members of society.

OVERVIEW

Social Security and Access to Justice



The LRC is tackling systemic problems experienced by vulnerable groups in enforcing and accessing the basic human rights guaranteed to them by the South African Constitution, such as freedom from violence and access to social welfare and health care services. Many people who are already vulnerable have become victims of further neglect, incompetence, discrimination or abuse from the very institutions which were designed to serve and protect them.

Section 33 of the Constitution guarantees the right to just administrative action, yet inefficient administrative functioning and delayed judgements have prevented many of the defenceless from claiming their legal and constitutional rights. Identity documents, birth certificates, and permits for refugees provide people with the necessary foundation for becoming productive members of society, yet the slow processing time means that people are unable to obtain the documentation essential to securing work, accessing social assistance, gaining an education, obtaining a bank account or accessing health care. Social assistance such as the old age pension, disability and child support grants are necessary in ensuring a minimum quality of life for the poorest, yet time taken to process appeals on grants if an application is initially rejected is a significant issue, with many people, including the disabled, waiting months or even a year to hear back with no alternative source of income.

To improve access to social security, the LRC has pursued individual and large group cases to hold the Government accountable and to encourage its departments to fulfil their obligations to improve the systems and tools for delivering social welfare. Approximately 13 million people receive social assistance today in South Africa and for many families the ability to access these grants plays a vital role in their struggle against poverty. Social grants are often the only income keeping them from sinking deeper into deprivation.

Paralegal staff and the LRC's front desks in each regional office spend much time providing poor and vulnerable people with immediate advice on these issues. These individuals may otherwise be left without any recourse, but through LRC education and advice, they come to know their rights and are supported in their efforts to assert them, for example, in negotiations with authorities.

While the persistence of civil society, including the LRC's and its clients', in this focus area has resulted in a significantly improved

processing time for initial applications for social assistance grants and a wider age-range of children being eligible for child support grants, significant problems remain with the government systems used to provide social welfare. The LRC has encountered unreasonable and unjust time delays in Government's processing of applications. If the initial application for disability assistance is rejected, an appeal often takes a year or two to process. The LRC is currently representing the Black Sash, and has taken this issue to court to improve the speed and efficiency of the appeals process. The case has the potential to impact 45,000 people waiting to hear the outcome of their appeals.

Over the last year, the LRC also represented the Western Cape Forum for Intellectual Disability in a case before the High Court. This case deals with the lack of funding for the education of severely or profoundly disabled children. If successful, this case will ensure better educational facilities for disabled children and will enable them to develop their intellectual ability and potential to the fullest extent.

Refugees continue to pose a challenge for our government. The 1998 Refugee Act makes provision for an asylum claim to be processed within 180 days of receipt, but there are huge backlogs in the system. Over the past two years, South Africa has seen an unprecedented influx of refugees as a result of the crisis in Zimbabwe. Hardships including civil war, political persecution and food insecurity are some of the reasons pushing people to leave the familiarity of and ties to their home countries.

Sadly South Africa has demonstrated a high level of intolerance towards "other" Africans and refugees and migrants have been exposed to abuses and horrific violence, as seen in the May 2008 xenophobic attacks. The LRC, along with other human rights organisations, gathered statements from victims of the attacks and advocated for the availability of better legal and social services. The LRC has opposed the unlawful eviction of refugees and asylum seekers in the aftermath of the attacks.

The LRC continues to conduct research on the lack of social grants for refugees and refugee children. It has been involved in casework supporting safe facilities for migrant communities and pushing for governmental measures to prevent rape, abuse, xenophobia and genocidal activities.



Mine Challenged on Lung Disease

Since 2004, LRC lawyers, with funding from Legal Aid South Africa, have been representing a group of ex-goldminers from the Free State's President Steyn Gold Mine. These clients, residing in Welkom, Lesotho and the Eastern Cape, contracted silicosis, a lung disease that cannot be treated once contracted. Silicosis is caused by exposure to respirable silica dust. It is a disease which takes many years to manifest, sometimes up to 30 years after exposure, and therefore has little impact on an affected miner's ability to work during its early stages. Once it progresses, however, the disease is debilitating and is often life-threatening as it causes inflammation and scarring in the form of nodular lesions in the upper lobes of the lungs.

Approximately 25% of former long-service gold miners have contracted silicosis, and this has left them susceptible to numerous other diseases. Silicosis predisposes the individual to tuberculosis (TB) infection. If an HIV-positive miner develops silicosis, that miner has an even greater risk of contracting and dying from TB. There is a high prevalence of both TB and HIV in South African mines. These high infection rates mean that miners with silicosis are placed in the most dangerous of environments for their health. Miners are also susceptible to TB when they return to rural areas on retirement as the infection often goes undetected and untreated without access to proper health care services. The mining industry has made no provision for TB monitoring of ex-miners.

This case illustrates the vestiges of apartheid that still linger in our country. Treatment received by black miners during apartheid was inadequate in comparison to that received by white miners. In medical examinations, black miners underwent mini x-ray tests that were difficult to read and did not effectively detect silicosis. White miners, on the other hand, had full size x-ray tests. Black miners also did the dustiest jobs and unlike white miners, they did not have access to on-site showers or changing rooms in which to remove the dust from their bodies. As a result, a higher rate of contraction

of silicosis continues to exist amongst black miners.

The LRC is representing 18 clients who contracted silicosis from working on the Gold Mine from the 1970s to 1998. The clients' legal action is part of a larger group of test cases that will establish whether technical advisers for gold mines are legally responsible to individuals who contracted silicosis as a result of their mining employment. In this case, the technical adviser and defendant is Anglo American South Africa.

The litigation procedure is extensive and complex. The LRC's legal team consists of eleven lawyers together with numerous experts. Richard Meeran from Leigh Day & Co, one of the world's leading class action public interest law firms in the United Kingdom, is one of the lawyers acting as the LRC's consultant on the matter.

The LRC instituted action in August 2004 in the South Gauteng High Court against Anglo American South Africa Ltd, which was responsible, in terms of service contracts, for giving technical advice to the mine on various matters including health, safety, and technical issues. During the clients' period of employment at the Gold Mine, the defendant, in its capacity as technical adviser to the Gold Mine, negligently and wrongfully advised the mine in relation to silica dust and silicosis. This wrongful and negligent advice led to the contraction of the clients' silicosis. This case has the potential to hold technical advisers legally responsible for the thousands whose health and lives have been compromised by exposure to mine dust.

The LRC is arguing that dust level in the mines exceeded acceptable levels and posed a foreseeable risk of silicosis. Due to the number of silicosis cases diagnosed annually, Anglo American would have known they were subjecting miners to these dangerous conditions and dust levels.

To date, insufficient attention has been given to preventing diseases like silicosis, in part because of the late onset. This case could change the mining industry's approach to its employees. If the case is successful, the industry will need to provide miners with a healthy work environment, one which does not permanently compromise their health because of exposure to harmful dust. Once miners retire and return to their communities, the industry will need to still take an interest in their well-being.

Litigation has been delayed as a result of the addition of more claimants and procedural objections raised by Anglo American. Anglo has disclosed hundreds of thousands of pages of documents and the teams are in the discovery process. The LRC is hoping for a trial date by the end of 2011 or beginning of 2012.

Human Rights Obligations in Investment Treaties

On 17 July 2009, the LRC filed a petition for limited participation as a non-disputing party on behalf of the Centre for Applied Legal Studies and two international NGOs, the Center for International Environmental Law and the International Centre for the Legal Protection of Human Rights in *Piero Foresti & Others v Republic of South Africa*, a ground-breaking international expropriation case against the South African government. This coalition sought to assist the International Centre for the Settlement of Investment Disputes (ICSID), a World Bank arbitration forum in interpreting relevant South African mining legislation and protect the interests of the millions of people left marginalised by apartheid-era policies.

Since 1994 the South African government has followed the example of many other nations and has entered into a number of bilateral investment treaties (BITs) with foreign countries.

This particular case began in 2007 when the claimants, a group of Italian investors and the Luxembourg holding company of two international companies which own granite mines in South Africa, claimed the enactment of the Minerals and Petroleum Resources Development Act (MPRDA) in 2004 effectively "extinguished" their mineral rights without providing adequate compensation. The scheme of the MPRDA requires holders of mineral rights to apply for the conversion of their "old order" rights into "new order" rights. One requirement of the conversion is meeting the Broad Based Black Economic Empowerment (BEE) requirements contained in the Mining Charter. The two foreign companies contended that, as foreign entities, they were unable to meet the BEE requirements and therefore unable to convert their rights. They argued that this is in breach of provisions of BITs concluded between South Africa and Italy, and between South Africa and the Benelux countries. The applicants sued the South African government for an amount of Euro 266 million (R2,7 billion) by lodging a claim with the ICSID.

The MPRDA is intended to boost the participation of the historically disadvantaged black population in the mining sector, and forms part of a wider effort to advance equality, including with respect to the nation's natural resources wealth. Under the MPRDA, private ownership of mineral rights was replaced with a system of licenses

from the government. To convert mineral rights held into "new order" rights, a company must fulfil criteria that include an environmental protection plan and the achievement of certain BEE targets under the Mining Charter. The LRC sought to intervene as a non-disputing party in the ICSID to assert that the BITs in issue must be interpreted consistently with sections 9 (equality) and 25 (property, expropriation) of the Constitution, and with international human rights law norms relating to affirmative action.

During the course of 2007 and 2008 the LRC conducted research and held seminars to discuss various grounds for involvement in the case with organisations such as the Mandela Institute at the University of Witwatersrand.

As a non-litigious objective, the LRC hoped to engage with the government regarding its policy regarding BITs, international investment and human rights. Senior officials from the Department of Trade and Industry (DTI) contacted LRC's National Director Janet Love to discuss the possibility of LRC involvement in the department's review of its BIT policy. The LRC assisted with putting together a workshop in August 2009 for a second, external phase of consultation for the DTI's new policy document.

In October 2009 an order was obtained granting the LRC coalition leave to participate as a non-disputing party in the international arbitral tribunal. The order also provided for access to key documents. This is the first time ever that an ICSID tribunal has granted non-disputing party access to the parties' documents despite the objections of a party. By granting this access, the tribunal committed itself to engage with the contentious issue of non-disputing party participation on a level never before seen.

After obtaining this order, the ICSID proceedings stalled, and the matter appeared to be withdrawn. Initial assumptions were that the matter had been settled in discussions between the claimants and the government. An "offset agreement" between the parties was reached and the claimants filed a notice of discontinuance in late 2009, after which the government applied for a default award in its favour.

Increased press publicity followed when in November 2009, a complaint was lodged by British barrister Toby Landau against the state Senior Counsel in the matter, South African advocate Seth Nthai SC. In January 2010 it was reported by the media that Nthai, vice-chairman of the General Council of the Bar of South Africa, met with Italian investor Mario Marcenaro of the mining consortium and allegedly discussed a possible settlement of the case with a possible reward of R5 million. Nthai resigned from the Pretoria and Johannesburg Bar councils on 25 March 2010 just before the misconduct inquiry was underway into allegations that he tried to extort a bribe.

The *Piero Foresti* case has been finalised, and a cost hearing was held from 12-14 April 2010 at the Permanent Court of Arbitration in The Hague and attended by the parties to the arbitration. One tenth of the filed costs and fees were reimbursed by the claimants, the Italian investors and the Luxembourg holding company, to the South African government.

The LRC has since been admitted as *amicus* in the *Agri SA* matter in the North Gauteng High Court. This is a domestic matter dealing with expropriation in the context of mineral rights in terms of the MPRDA, in which issues relating to BITs are also raised. The trial will run in March 2011. These cases continue to explore the extent to which the South African government is bound to international investment adjudication regimes when the decisions of such regimes can negatively impact the rights contained in the South African Constitution.

2010 STATISTICS

17,500

...hours donated to LRC by volunteers

R1,487,557

...savings to LRC as a result of
discounted rates from advocates

A Somali refugee with her baby. Many Somalis live in fear of xenophobic attacks.



VOICES OF OUR CLIENTS

We Want Our Lives Back

My name is Fatima* and we fled Somalia over five years ago. We fled because of the civil war.

We did not have a lot of money when we arrived in Cape Town, but we had enough to start a small business. We rented a house and operated a little spaza shop. We learned English. Our family business grew over the years. We increased the amount of goods we sold and we expanded to three shops.

In May 2008 the xenophobic attacks broke out and spread to Cape Town. We were chased from the township where we were living. One of my sisters was lost during the chaos of that evening. The rest of the family was taken by the police to the Soetwater Safety Site and later to the Blue Waters Camp, a 'safety site' set up by the City.

In October 2008 the City said the Blue Waters Camp was closed and that we must go back to the community we had fled. We left everything behind when we fled our home and lost all our belongings. My family's shops were destroyed. We could not go back.

However, they started to force us out of the camp.

In November 2008 the electricity and food was stopped and only sanitation services continued. In March 2009 our family and over 300 others were given eviction papers. At first we did not understand, but the LRC came to Blue Waters and explained to us. Only after that did we understand that we had the right to legal representation and to oppose the eviction application if we choose. The City

continued to say that we were safe to return to the communities that we had fled, but there were still reports of violence against Somalis in the area. We could not safely reintegrate into our old community, and the officials kept saying they could not guarantee our safety.

Life in the camp was not easy. There was often tension between camp residents and people would fight. Women were also treated badly during the xenophobic attacks and some were sexually assaulted and raped. These women had to be tested for HIV and AIDS and received counselling. This was arranged by the LRC and others. There was also a number of women such as myself who were pregnant. We could not receive treatment at the local hospital as we did not have documents. The LRC helped us receive basic treatment from the local clinic.

In the beginning of 2009, the United Nations High Commissioner for Refugees and the City reached agreement for some of the people to be moved to Delft and I was among them. Then in February 2010 the court ordered the remaining residents to vacate the camp by the end of March.

Since the attacks in May 2008 there has been more violence against foreigners. Somalis living in townships are vulnerable to attacks and are often killed. We remain living in fear for our lives.

Our new site in Delft has seen problems with electricity, water and sanitation. The LRC continues to follow up with the City, but many of us are scared we won't get back on our feet.

Life has become very difficult for us. Before we were working hard but now we are unable to earn a living. We did not come to South Africa to depend on the South African government. We want to work and we want our lives back. But we need help starting again. No one addressed the root problem of xenophobia. We are worried that we will be safe for a month or two, but soon we will again become victims.

* Not her real name. Adapted from a real interview with a group of Somali women in Blue Waters Camp.



OVERVIEW

Women's Rights and Gender Equality

Entrenched gender inequality within South African society is at the heart of many problems women experience on a daily basis. To a large extent, South African women remain second-class citizens economically, socially and legally despite significant changes since the first democratic elections. Women continue to be subject to widespread violence and discrimination that prevent them from enjoying the rights and privileges guaranteed by the Constitution.

The South African Constitution and international and regional instruments all provide direction for the elimination of gender-based inequality, but their effectiveness depends on a vigilant civil society and the will of Government, activists, and other stakeholders. The LRC continues to try to ensure that women's voices will be heard in different fora. Through litigation, parliamentary advocacy and community education, the LRC is working to remedy gender inequalities. We are strengthening legislation around women's legal rights and providing support to community-based entities that service local women.

The LRC has worked to help women in domestic abuse situations through assisting in individual cases, training seminars, and requesting further government action. LRC lawyers have assisted women in obtaining protection orders against their abusive partners and ensuring due process in criminal prosecutions. In October 2009 the LRC made submissions on the Domestic Violence Act and the Maintenance Act to the Portfolio Committee on Women, Youth and People with Disabilities to raise awareness of the Government's repeated failure to budget for the legislation's implementation. LRC lawyers and staff also continue to train community residents on gender-sensitive legislation in impoverished communities where gender-based violence has occurred.

Survivors of gender violence continue to face a criminal justice system that routinely denies them redress. The LRC has been working with survivors of rape and partnering with women's organisations that provide psychosocial support. This is done to ensure that survivors receive accurate police reporting and prompt health services in order to prevent secondary victimisation.

The LRC has also taken on cases that promote land tenure security for women. Despite women's roles in the acquisition and use of their family's land and housing, they still come up against outdated

policies and practices. These include the failing to record women's names on title deeds. We have also seen an increased number of unlawful evictions by family members abusing the legal process by obtaining protection orders issued in terms of the Domestic Violence Act to evict women. The LRC continues to defend women against such discriminatory practices.

South African society is made up of a range of cultures, religions and customary practices. For many women the lack of legal recognition given to their religious or customary practices strips them of their autonomy and access to their rights. The LRC fights to help women assert their rights in the face of government regulations that are ignorant of religious customs or customary law. For example, the LRC assists women married in terms of Shari'a who do not have their marriages legally recognised where such a situation is abused by their spouses. The legal system tends to discriminate against these women as they cannot rely on the enforcement of their religious entitlements. Through the LRC's intervention, Hindu widows are also now able to obtain benefits under the Unemployment Insurance Fund.

The failure of the 1998 Recognition of Customary Marriages Act (RCMA) to give adequate protection to women's proprietary rights has been a central component of the LRC's work. The RCMA aimed to ensure that even marriages that were customary and unregistered would be granted the same matrimonial property rights as those that were registered. However, this Act proved insufficient, as it only applied to customary marriages entered into after 2000. Women married prior to this date were unable to access their property rights, leaving many women with nothing upon divorce and no inheritance following the death of their spouse. In 2009, the Department of Home Affairs amended the RCMA to encompass all customary marriages, including those prior to 2000. This amendment resulted from judgment handed down in December 2008 in the *Elizabeth Gumede (born Shanga) v President of the Republic of South Africa and Others* case. There, LRC, on behalf of Mrs Gumede, argued that the RCMA would perpetuate discriminatory consequences in relation to matrimonial property in customary marriages concluded before its commencement and would therefore be inconsistent with the Constitution. While this change was important, weaknesses in the RCMA still exist. The LRC made written submissions in June 2009 to the Department of Home Affairs to advocate for a registration process that is easier and more secure for women.

All accused and arrested persons, including sex workers, must be treated with dignity by the police. (Photo from SWEAT website)



Sex Workers Fight Back

Sex workers are a uniquely vulnerable group who often report being subjected to systematic abuse, including unlawful arrest and detention by members of the South African and Metropolitan Police Services.

In 2007 the Sex Worker and Advocacy Taskforce (SWEAT), an advocacy NGO seeking to promote the health and human rights of sex workers, asked the LRC for assistance in addressing these systemic abuses. SWEAT brought an application to the High Court in Cape Town for a declaratory order and a prohibitory interdict against the Minister of Safety & Security, National and Provincial Commissioners of Police and Police Station Commanders in Cape Town aimed at preventing the continued unlawful and wrongful arrest of sex workers by members of these police forces. The application included affidavits from thirteen current and former sex workers, detailing the behaviour of the South Africa Police Service (SAPS) and city police.

SWEAT relied on two distinct causes of action: the unlawful arrests of sex workers violate the principle of legality, and the SAPS and city police abused the powers conferred by the Criminal Act 51 of 1977 when they arrested sex workers for purposes other than to have them prosecuted. Sex workers were often unlawfully arrested as the arrests were made on the basis of non-existent statutory provisions or made in circumstances where the statutory provisions relied upon did not authorise such arrests. As such, the conduct of SAPS and city police violated the principle of legality. The principle of legality is expressly recognised in Section 1 of the Constitution, which describes the supremacy of the Constitution and the rule of law as part of the foundational values that underpin the Constitutional dispensation of South Africa. Section 33(1) of the Constitution guarantees "the right to administrative action that is lawful, reasonable and procedurally fair".

Further, the applicants noted that sex workers are repeatedly arrested, held overnight or for the weekend in police cells, and then sometimes held in the magistrate's holding cells before being released. Section 12(1) of the Constitution guarantees everyone the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause. The absence of justification for arresting sex workers by SAPS and city police

constitutes a deprivation of the liberty and security of sex workers. Section 10 of the Constitution guarantees the right to dignity that is respected and protected. The Constitutional Court upheld this right in the *S v Jordan* decision of 2002, in which SWEAT appeared as *amicus curiae*. All accused and arrested persons, including sex workers, must be treated with dignity by the police.

The matter was heard on 5 March 2009 and judgment in favour of SWEAT and the LRC was handed down on 20 April 2009, interdicting the police from arresting sex workers unless it was with intent to prosecute. Cape High Court Judge Fourie stated that the purpose of an arrest was to bring someone before a court, and if police were making arrests knowing "with a high degree of probability that no prosecution would follow", they were acting unlawfully. An affidavit before the court from the former station commissioner of Claremont police station recorded that between January and December 2006 there were 106 arrests of sex workers, with only one resulting in prosecution. And while further documents indicated a much larger number of arrests, there were no relevant police dockets. In one affidavit before court, a sex worker claimed to have been arrested 200 times in the past six years, without a single arrest leading to a prosecution.

Based on the evidence presented, Judge Fourie stated that police appeared to be implementing social control over sex work and not targetting its illegality. He ruled this infringed on the sex worker's Constitutional right to dignity and freedom. Judge Fourie also ordered the respondents to pay the costs of the application.

SAPS and others appealed the ruling, but after subsequent meetings decided to withdraw. Unfortunately, however, the interdict has not bettered the situation. The City of Cape Town has established a special unit to focus on conducting arrests of sex workers. They have raised fines for arrests, doubling and tripling them for those arrested more than once. While prostitution is prohibited by South Africa's 1957 Sexual Offences Act, the police are denying sex workers proper access to justice. On a daily basis, sex workers are still being harassed and their constitutional rights are being ignored.

Gladys Mbutho, not willing to lose her house.



VOICES OF OUR CLIENTS

Not Willing to Lose This House

My name is Gladys Mbutho and I am a 78 year old woman. I suffer from polyarthritis and as a result am permanently confined to a wheelchair. I married my late husband in community of property in 1970. In 1979, after we applied for low-cost housing from the municipality, my husband and I were allocated a house in Umlazi Township, south of Durban in KwaZulu-Natal. When we tried to register the property, the housing officials told us that the house could only be registered in my late husband's name. However, in reality, we were joint owners of the property.

As time passed, my late husband and I had some problems in our marriage. In the early 1980's my late husband was in prison for a short period. He was released during 1982 but did not return to our home and went to live with another woman.

In 1985, my late husband secured a loan in the amount of R4000 with the Small Business Development Corporation (SBDC). He used our house as security to receive the loan. I did not know about this until my late husband defaulted on his loan repayments and an advertisement that my house was for sale appeared in a local newspaper. In order to avoid losing my home, I personally repaid the loan despite the fact that I am poor, that I did not benefit from the loan received by my late husband and had not previously known about the transaction. I was earning R120 per week at that time and I paid the SBDC R85 per month. It took me seven and a half years to repay the loan. I had to sacrifice more than 70% of my weekly wage for all those years in order to ensure that I could keep my home. On completion of the payment, SBDC issued a clearance

letter that confirmed the house was paid off and I could keep my home.

After having spent many years living with his girlfriend, my husband returned to stay with me in May 2006. He stayed with me for a few months but left again in January 2007. In March 2007 a man who identified himself as Mr Khumalo approached me at my home and claimed that he was the new owner of the house. He said that my late husband had sold him the house during the period when he was living with me.

I was shocked to discover that my late husband had sold my house. Mr Khumalo attempted to evict me from my house. I asked the LRC in Durban to help, and they opposed the eviction on my behalf because I did not consent to the sale of my house to Mr Khumalo and I asked the court for the reversal of the sale.

I am the sole breadwinner in my house and I rely on my social grant because I am now old and disabled. I also support my young niece and nephew who are both students. I have struggled to support myself and to maintain my home with no assistance from my late husband. He never compensated me, even though I struggled for a long time to repay his debt. My disability counted against me and made it even easier for my late husband to sell my house without my knowledge.

After all the difficulties I have overcome, I am not willing to lose the house that I have lived in for over 30 years because of the actions of my late husband. This house is my property and I should not have to lose it simply because I am a woman. Many women, particularly poor women in townships and rural areas, face similar battles as I am facing and may lose their properties because their husbands contract without their knowledge or consent.

However, with the help of the LRC, I hope to reclaim my house and to leave it to my family after I am gone.

Financial Report on AFS 2009/10

Legal Resources Trust (LRT)

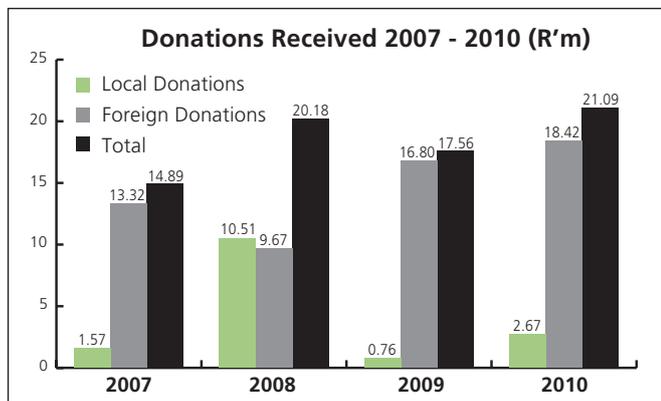
During the period under review, the LRT experienced the recovery of the slow, uneven domestic and global economy.

This impact is reflected in the positive increases of our Grant Income as well as our Reserves.

General Reserves increased from R13,594,390 to R15,409,495 (R22,779,922 to R 13,594,390 in the previous period). This movement can be matched with the increase in Investments from R14,447,997 to R17,644,522 (R23,504,029 to R14,447,997 in the previous period).

Total Assets increased from R17,160,403 to R19,803,592 (R26,590,492 to R17,160,403 in the previous period).

The movements on Grants and Donations (see graph below) has increased by 20% as compared to the previous period. A significant increase in Local Source donations from R764,434 to R2,668,860 and an increase in Foreign Source donations of 9.7%.



Legal Resources Centre (LRC)

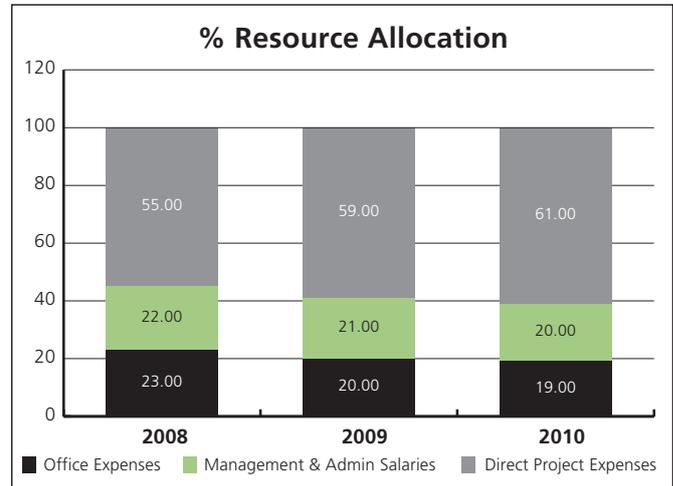
Resource Allocation

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

In keeping with the nature of the work of the LRC, and with prudent cost management, resources were utilised as follows:

- Direct Project Expenses 61%
- Salaries for Support Staff 20%
- Office Expenses 19% *

* The Leasing Cost of Premises remains the biggest expenditure item under Office Expenses for the LRC (45%). Even with this expense, we have managed to contain the increase in Office Expenses by only 1%.



Systems and Policies

The enhancement of the Case Cost Management System has greatly benefitted our costing and reporting models and will continue to do so.

The Grants Management System is now operational and we are investigating the implementation of an Individual Giving programme as part of the overall strategy to broaden the revenue base of the LRC.

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

The upgrading of the IT architecture continued in this period ensuing in a stable and efficient operating platform. ADSL connectivity proved to be a more cost effective connection to the internet. An improvement in mail management was also achieved by outsourcing this component.

Conclusion

For the financial period under review, the LRT needed to generate R24.74 million in donor income, and only realised R21.09 million. The shortfall of R3.6 million was funded from reserves of the Legal Resources Trust.

It still remains a challenge to ensure that the funds needed are raised to provide the services and attract the calibre of staff that the LRC needs. The LRC continues to explore and develop models that can be an additional source of funding for its operations and less reliant on donor funding.

We remain committed to ensure cost effective financial systems and policies which will enable the organisation to fulfil its mission of protecting Human Rights and ensuring our National Constitution is respected, promoted, protected and fulfilled.

K De V Reinecke
Financial Director

Report of the Independent Auditors

To the Executive Committee

LEGAL RESOURCES CENTRE

Report of the financial statements

We have audited the accompanying financial statements of the Legal Resources Centre, which comprise, the balance sheet as at 31 March 2010, and the income statement, statement of changes in equity for the year then ended, and a summary of significant accounting policies and other explanatory notes set out on pages 3 to 5.

Executive committee's responsibility for the financial statements

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

Auditor's responsibility

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

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The

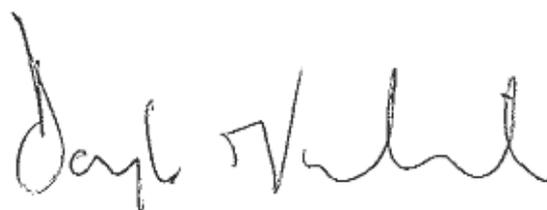
procedures selected depend on the auditor's judgment, including the assessment of the risk of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation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

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

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

Unqualified Opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of the Legal Resources Centre as at 31 March 2010, and of its financial performance for the year then ended in accordance with its accounting policies.



Douglas & Velcich

Chartered Accountants (S.A.)

Registered Accountants and Auditors

Johannesburg

29 October 2010

Legal Resources Centre

Balance Sheet

as at 31 March 2010 (abridged)

ASSETS

Non-current Assets

Tangible assets

761,358

761,358

616,902

616,902

467,657

467,657

Current Assets

Trade and other receivables
Accrued income - cost recovery
Amount due from - Legal Resources Trust
Cash and cash equivalents
Client trust bank accounts

1,186,866

514,666

-

-

40,473

631,727

2,445,069

763,074

-

631,319

377,040

673,636

2,455,834

1,193,411

-

340,811

252,163

669,449

TOTAL ASSETS

1,948,224

3,061,971

2,923,491

LIABILITIES

Non-current Liabilities

Accumulated funds

(1,079,488)

(1,079,488)

-

-

-

-

Current Liabilities

Trade and other payables
Provisions
Client trust funds
Amount due to - Legal Resources Trust

3,027,712

1,658,795

697,868

631,726

39,323

3,061,971

1,937,387

443,701

673,636

7,247

2,923,491

1,541,699

712,343

669,449

-

TOTAL RESERVES AND LIABILITIES

1,948,224

3,061,971

2,923,491

Income Statement

for the year ended 31 March 2010

INCOME

Cost recovery
Distribution from Legal Resources Trust
Sundry Income
Interest received

27,721,341

2,445,786

24,744,861

528,477

2,217

27,162,588

3,620,857

23,214,732

326,999

-

23,961,691

2,061,071

21,668,562

231,063

995

OPERATING EXPENDITURE

Salaries and contributions
Office expenses
Administrative costs
Books and periodicals
Computer expenses
Depreciation
Lease rentals on operating lease
Printing and stationery
Temporary staff
Telephone and fax
Travel - local

28,800,829

5,867,121

5,504,601

866,528

328,945

456,935

252,055

2,457,969

203,871

-

610,203

328,095

27,162,588

5,604,563

5,462,798

1,295,572

352,669

420,740

275,292

1,925,972

176,496

-

592,462

423,595

23,961,691

5,174,767

5,537,313

799,361

438,815

340,480

505,709

1,849,063

215,448

116,691

462,116

809,630

Project expenses

17,429,107

16,095,227

13,249,611

DEFICIT FOR THE YEAR

(1,079,488)

-

-

Legal Resources Trust

Balance Sheet

as at 31 March 2010 (abridged)

| | 2010 | 2009 | 2008 |
|--|-------------------|-------------------|-------------------|
| | R | R | R |
| ASSETS | 19,803,592 | 17,160,403 | 26,590,492 |
| Non-current Assets | 18,792,837 | 15,656,207 | 24,772,134 |
| Tangible assets | 1,148,315 | 1,208,210 | 1,268,105 |
| Investments | 17,644,522 | 14,447,997 | 23,504,029 |
| Current Assets | 1,010,755 | 1,504,196 | 1,818,358 |
| Accrued grant income | - | 130,000 | 380,000 |
| Amount due from Legal Resources Centre | - | - | - |
| Cash and cash equivalents | 1,010,755 | 1,374,196 | 1,438,358 |
| TOTAL ASSETS | 19,803,592 | 17,160,403 | 26,590,492 |
| RESERVES AND LIABILITIES | 19,803,592 | 17,160,403 | 26,590,492 |
| Equity and Reserves | 17,026,239 | 15,268,101 | 24,160,481 |
| Initial trust capital | 250 | 250 | 250 |
| Revaluation reserve | 1,026,777 | 1,083,744 | 1,140,711 |
| FNK Scholarship reserve | 589,717 | 589,717 | 239,598 |
| General reserve | 15,409,495 | 13,594,390 | 22,779,922 |
| Current Liabilities | 2,777,353 | 1,892,302 | 2,430,011 |
| Deferred grant income | 2,777,353 | 1,260,983 | 1,845,644 |
| Amount due to Legal Resources Centre | - | 631,319 | 340,811 |
| LEAP creditor | - | - | 243,556 |
| TOTAL RESERVES AND LIABILITIES | 19,803,592 | 17,160,403 | 26,590,492 |

Income Statement

for the year ended 31 March 2010

| | 2010 | 2009 | 2008 |
|---|---------------------|---------------------|---------------------|
| | R | R | R |
| Income | 27,009,827 | 19,221,751 | 21,402,726 |
| Grants and donations | 21,090,958 | 17,560,608 | 20,175,583 |
| Dividend revenue | 251,388 | 674,860 | 502,377 |
| Fair value adjustment on investments | 5,231,794 | - | - |
| Interest received | 435,687 | 641,265 | 724,766 |
| Gains on disposal of investments | - | 345,018 | - |
| Expenditure | 506,828 | 5,249,518 | 1,728,814 |
| Investment managing fees (Investec) | 107,514 | 118,547 | 165,436 |
| Audit fees | 61,954 | 88,383 | 56,058 |
| - Current year | 61,954 | 88,383 | 56,058 |
| Bank charges | 3,815 | 3,676 | 35,778 |
| Loss on disposal of investments | 101,415 | - | 1,344,974 |
| Loss on fair value adjustment on investments | - | 4,780,568 | - |
| Depreciation | 59,895 | 59,895 | 59,895 |
| Exchange loss | - | 167,012 | 66,673 |
| Travelling and accomodation - trustees | 172,235 | 31,437 | - |
| Net income for the year | 26,502,999 | 13,972,233 | 19,673,912 |
| Distribution to the Legal Resources Centre | (24,744,861) | (23,214,732) | (21,668,562) |
| (Deficit) for the year | 1,758,138 | (9,242,499) | (1,994,650) |
| Net transfer from reserves | 56,967 | 56,967 | 56,967 |
| Balance at beginning of the year | 13,594,390 | 22,779,922 | 24,717,605 |
| | 15,409,495 | 13,594,390 | 22,779,922 |

Legal Resources Trust

Detailed Schedule of Grant and Donation Income

| for the year ended 31 March 2010 | 2010 R | 2009 R | 2008 R |
|--|-------------------|-------------------|-------------------|
| Foreign funders | 18,422,098 | 16,796,174 | 9,666,490 |
| The Atlantic Philanthropies | 6,316,280 | 5,000,000 | 2,067,073 |
| Allan and Nesta Ferguson Trust | 104,000 | - | - |
| Belgium Embassy | 722,177 | - | - |
| British High Commission | - | - | 704,578 |
| Comic Relief | 2,530,486 | 1,715,546 | 1,451,217 |
| CS Mott Foundation | 291,476 | 858,400 | - |
| Centre on Housing Rights | - | 58,804 | - |
| DANCED / Danida - Environmental Justice Project | - | - | (176,817) |
| Evangelische Entwicklungsdienst | 3,033,377 | 5,604,036 | 2,046,977 |
| Embassy of Finland | 1,060,000 | 1,200,000 | 930,000 |
| The ELMA Foundation | 1,000,000 | 1,000,000 | - |
| Farm Africa | - | 16,883 | 101,887 |
| The Ford Foundation | 160,057 | - | 303,254 |
| Hilden Foundation | 56,000 | - | 67,363 |
| Kaiser Foundation | - | - | 63,800 |
| Mallinicks Inc. Trust | - | - | 500,000 |
| Norwegian Centre for Human Rights (NCHR) | 1,161,000 | 655,200 | 231,000 |
| Open Society Foundation for Southern Africa | 500,000 | - | 410,301 |
| Rockefeller Brothers | 829,920 | 500,673 | 101,961 |
| Save the Children - Sweden | - | 131,250 | 268,750 |
| Sigrid Rausing Trust | 657,325 | 55,382 | 595,146 |
| Local funders | 2,668,860 | 764,434 | 10,509,093 |
| Foundation for Human Rights | (130,000) | - | - |
| S A Bar Council | 15,000 | - | - |
| Justice A Chaskalson | 18,104 | - | 16,313 |
| National Lotteries Distribution Trust Fund | 1,500,000 | - | - |
| Claude Leon Foundation | 225,000 | - | - |
| Michael Mones Trust | 120,000 | - | - |
| N D Orleyn | 30,000 | - | - |
| ABSA Foundation (Batho Bonke Scheme) | - | - | 990,897 |
| Donation of share portfolio - Estate late Barker | 41,191 | 198,802 | 3,572,187 |
| Batho Bonke Scheme (Mvelaphanda Group) | - | - | 5,366,823 |
| Edward Nathan Sonnenbergs | - | 200,000 | 140,000 |
| Goldfields Foundation | - | - | 75,000 |
| Legal Aid Board | 695,500 | - | - |
| The Frank Robb Charitable Trust | 110,000 | 110,000 | 100,000 |
| The RAITH Foundation | - | 146,761 | 104,829 |
| Webber Wentzel | - | - | 20,839 |
| Other Local Donors | 44,065 | 108,871 | 122,205 |
| TOTAL | 21,090,958 | 17,560,608 | 20,175,583 |

Individual Donors

- Penelope Andrews
- HJ Barker
- Lee Bozalek
- Arthur Chaskalson
- Hugh Corder
- Alec Freund
- Henry Gilfillan
- Moray Hathorn
- Joel Joffe
- Michael Katz
- Johan Kriegler
- Yves Laurin
- Janet Love
- Moleshiwe Magana
- Judith Mason
- Nthato Motlana
- Mahomed Navsa
- AJ Nelson
- Thandi Orleyn
- Peter Pauw
- BP Rabinowitz
- Mohale Ralebitso
- Annette Reed
- Melanie Samson
- M S Stegman

In-kind Donors

- Bateleurs
- Tori Stowe
- Debbie Budlender
- Jay Van Deventer
- Lorraine Chaskalson
- Melanie Jenkins
- Richard Moultrie



A Moment with Dr. Ann Skelton Director, Centre for Child Law

Please tell us about the Centre for Child Law.

The Centre for Child Law was originally established in 1998 to gain recognition for child law as a field of study in its own right. In the past child law was not seen as a separate area of law but as a subset of family law, whereas in reality it spans many areas of both public and private law. So the Centre initially concentrated on research, publishing textbooks and articles to raise lawyers' awareness that child law is a serious endeavour. There was also much work done on ensuring the passage of new child-related legislation through parliament.

In 2003 the Centre added its litigation project as an additional dynamic tool in promoting children's rights.

Now our terrain for litigation is ensuring that the new laws are properly implemented and we step in to hold duty-bearers accountable where the practices do not match the promises. We are also still working to remove the remaining unconstitutional rules from the statute books, and from common law. Additionally, we monitor new laws introduced by the government and their impact on children. It is necessary to be vigilant because even new laws can be unconstitutional - this has proved to be particularly true in the criminal justice sphere.

In respect to their rights, what major challenges do children face?

A contested terrain in child law is getting the courts to see children as not only subjects of rights but also rights bearers. Most lawmakers and even judges recognise that children need to be protected but

they have not yet recognised children's autonomy. Children may run into difficulties when they try to stand up for their right to decide whether to do something or not.

Do children have a voice in our society?

There are positive developments in listening to children and allowing them to participate in decisions being made about them. The law is not yet perfect on this point but we are beginning to see our legislation reflecting their right to be heard and there are now judgments that reflect their input. We have seen children given more autonomy in medical health decisions and there have been extensions to the idea of children giving consent to their own adoptions. So there are many ways in which the new laws recognise and endorse the importance of children's right to participation.

These positive developments largely arise from the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Both stress that children should be allowed to participate in the courts' decision-making and their views should be seriously considered in final decisions.

Is there recognition of children's rights as human rights in our country?

Yes, there is gradual understanding and recognition of children's rights as humans. The Constitution says the paramount consideration in all matters concerning the child must be the child's best interest. Therefore the courts are very respectful of children's rights as there is a legal imperative to consider the best interest of the child in every case.

We find that by and large, the courts are upholding these statutes as they see the importance of their responsibility as the guardians of children.

What constitutional responsibility does government have for a child's right to basic education?

We are currently involved in a case with the LRC in the Eastern Cape that might ultimately provide some answers on this from the court. The case poses the questions: what is meant by basic

2010 STATISTICS

Of the LRC's six focus areas - Children's Rights; Environmental Justice; Housing & Local Government; Land & Rural Development; Social Security & Access to Justice; Women's Rights & Equality - the following numbers, for just one of these focus areas and a cross-cutting project, offer a glimpse of the volume of our work in the 2009-2010 financial year:

- **In the Housing and Local Government Focus Area:**

70 ...number of active cases

40,000 ...direct beneficiaries; of these:

6,400 clients facing eviction

2,400 informal traders

45 clients facing loss of homes for paltry sums of debt

15 ...NGOs, CBOs, client committees and other CSOs LRC worked with

14 ...candidate attorneys trained in this area of work

- **In the HIV and AIDS Project:**

44,216 ...direct beneficiaries; of these:

6,373 orphaned or vulnerable children

2,525 people living with HIV and AIDS

35,318 people vulnerable to Aids

29,345,700 ...indirect beneficiaries

17 ...NPOs assisted that provide support to people living with HIV and Aids

education, and how do children obtain that right? Is this a direct right, or is it subject to progressive realisation like other socio-economic rights?

The wording of the Constitution does not appear to link the right to basic education and progressive realisation. But the word "basic" has not yet been fully defined. Litigation is very useful in this type of case because you can obtain a definition of these constitutional provisions.

The case is about schools where there are no roofs, toilets, or running water. This is absolutely basic. These requirements are different from asking for transport and school uniforms, which sound quite extravagant when we know there are schools in the country without classrooms. Every year the government maintains that the basic infrastructure is a priority and promises to fix these schools, but every year we hear a reason it has not been done. This has been going on many, many years. The Schools Act was passed 13 years ago.

How do you work together with the LRC?

We have a very positive working relationship with the LRC, particularly working with the office concentrating on children's rights issues in the Eastern Cape. We have been cooperating with one another over a number of years and over a number of cases.

We have joint cases together. In the schools case I described, we are the applicants and LRC is the attorney. Another case from earlier this year was a situation in Molteno in the Eastern Cape where close to 100 children had their foster grants expire and the Social Development Department failed to renew them. In this case as well the LRC was the attorney and we represented the children as the applicants. This case resulted in a settlement in which the children did get their foster care grants reinstated with back-pay to when they had expired.

We also enter as *amici curiae* in each other's cases. We are able to discuss with one another the aspects of the case that should and should not be highlighted and other issues that can add to the case.

In the Words of Stuart Craig

Programme Manager, People Living in Urban Slums, Comic Relief



What are Comic Relief's strategic focus areas?

Comic Relief has set up seven grant-making programmes to support organisations whose work focuses on disadvantaged people. We have a long tradition of working to benefit those facing threats to their livelihoods or their rights.

Comic Relief focuses on not only supporting people's basic needs but their rights and so this aligns well with LRC's approach.

Why does Comic Relief think funding NGOs like the LRC in South Africa is important?

Comic Relief regards LRC as unique. There are a number of law and legal advice clinics but the LRC is unique because it acts on behalf of whole communities and pushes precedents through the court that will affect thousands of people at a time.

Comic Relief is very interested in development work starting at the grass roots and driven by the people affected. We are not interested in solutions imposed from above, because we believe that unless the community members embrace the measures, they will not work. In all projects that Comic Relief funds in South Africa, we have noticed an incredible drive from people themselves to improve their living conditions. South Africans are very aware of their rights and I believe they have a particular energy to do something about their circumstances.

What key characteristics does Comic Relief look for in non-profit organisations?

There are several: the NGO must reflect the needs and wishes of the beneficiaries they intend to serve. They must be efficient and clear about their goals. We are looking for organisations that recognise their own strengths and limitations and will work to increase their own capacity. The bottom line is we want to be sure that the organisation will be able to spend the funding efficiently and effectively.

Why does Comic Relief place emphasis on monitoring and evaluating projects?

We have a responsibility to members of the public who fund our work to keep them apprised of how their funding has been used. We feature stories of the work that we fund on UK television in order to communicate the progress made.

We have begun emphasising monitoring and evaluation more in recent years. We realised there was a huge amount of knowledge generated by grantees as they implement their projects that was not being fully captured. Grants that last 3-4 years generate many useful lessons, and these need to be captured and shared. We can make our grants more effective in the future by passing on this institutional knowledge.

We are introducing a database to capture and analyse all the successes

from our projects. This is underway but it will still take several years to complete.

We have also asked grantees, including the LRC, to increase their sophistication in capturing data. We are encouraging our grantees to take the time and effort to investigate the changes actually made by their work and the reasons for their successes.

What factors played a key role in the decision to increase support for the LRC's work?

Comic Relief knows that an injection of cash into LRC goes a very long way in changing the lives of many people. Funding LRC represents good value for the money.

In a previous grant made to LRC, Comic Relief was not able to provide the full amount requested in the application, and we learned an important lesson. Partially funding the project caused difficulties for the LRC in planning to roll out the programme. We want to avoid repeating that situation, and so for the latest application submitted by the LRC, we decided to fund the full amount in order to support LRC's work more effectively.

What is it like working closely with celebrities and artists using sports and comedy to raise funds?

It is a huge challenge. When we started in 1985 we simply organised a "Red Nose Day" every two years. Then, eight years ago we started a new initiative, "Sport Relief", to happen in the intervening years. Sport Relief started small and has now become huge - last year it raised half of what Red Nose Day raises and it is very popular.

These two campaigns ensure we have a fundraising event every year in March, hosted by the BBC. Red Nose Day is a fun day, on which people are encouraged to do outlandish and wacky things, whether at school or in the workplace. The "comic" part of Comic Relief also comes from the comedy provided by the celebrities hosting the television event in the evening. Each year we adapt popular UK TV shows for the event. The motto for the upcoming Red Nose Day in March 2011 is "Do Something Funny for Money".

Celebrities are very keen to offer their time, but in return we must work hard to provide them with information and inspiration to enable them to become great ambassadors for Comic Relief. Coming up with a new and original theme each year is a challenge and takes a huge investment.

Each campaign has outdone the previous one, and we continue to raise more money each year. We have tried to make donating as easy as possible, for people at a wide range of income levels. Many companies have become involved and collect cash donations from their employees. There is some concern about maintaining this success through the recession, but we hope the success stories, such as those coming from the LRC, will help carry us through.



LRC Candidate Attorneys: Through the eyes of aspirant attorneys

We walked in on our first day at the LRC as candidate attorneys in January 2009, armed with law degrees, enthusiasm and a passion for what we understood human rights to be. What we could not predict was that we would walk in at a time when the country was picking up the pieces of the horrific xenophobic attacks that terrorised foreigners during May 2008.

For us, this meant going out to the Bluewaters refugee camp Saturday after Saturday to take the statements of each of the over 150 adult respondents opposing the City of Cape Town's application to have them evicted. There was no electricity, no chairs, and little of the theory of law that we had studied. This was the reality of the protection of human rights.

Since then, we have also been exposed to other sides: the complexity of constitutional questions argued in the highest court in the country (in *Tongoane v Minister of Rural Development*) or grappling with expert economists to understand the meaning of 'just and equitable compensation' in terms of the Restitution Act (in the *Florence* case). But it was when we visited the communities to assess the impact of the law on their lives, such as the artisanal fishers of the West Coast having their rights to access the marine resource recognised and their livelihoods restored, that we realised the potential impact of the work that we do as human rights lawyers.

As we are about to complete our articles we are concerned to hear suggestions that the country may face yet another wave of xenophobic attacks. We may have grown as lawyers but the fight against the violations of human rights persists.

*By Mandi Mudarikwa and Wilmien Wicomb,
Candidate Attorneys in the Cape Town Office*

2010 STATISTICS

115

...NPOs assisted

87,795

...visitors to our website



An Intern in Name Only

I interned in the LRC's Constitutional Litigation Unit (CLU) during the first half of 2010.

I am an American lawyer, and my internship followed a year spent as a clerk in a federal court in the United States.

Upon arrival at the LRC, my experience and skills were immediately put to use. By the end of my first day, I was performing research in support of a case the CLU had taken up on behalf of a community at risk of losing their land. I also became involved in protecting hundreds of clients against unlawful eviction from their homes.

Throughout my internship, I was asked to take on responsibilities

which tested my abilities, and exposed me to the difficulties faced by our clients. I quickly realised that, even as an intern, I was valued as an integral member of the team.

After six months, I left the LRC not only with many new friends, but with an awareness of the many challenges faced by South Africa in the years ahead.

I am optimistic that, with the help of organisations such as the LRC, these obstacles will be overcome to the benefit of all South Africans.

By Tim Capozzi, USA

Volunteering at LRC's National Office

After a couple of years living in London, my partner and I decided it was time to experience some of the places that the international development organisations we were working for are so focused on helping.

An opportunity came up for my partner in Johannesburg and so I found the volunteering position at the LRC. When I got off the plane at OR Tambo, I had never visited South Africa or even another African country before.

LRC's vision immediately appealed to me and from the day I arrived in the office in October 2009, I was learning a huge amount about South Africa's past and its present from some of the country's leading activists. I also had the opportunity to contribute to an organisation which is playing no small role in shaping its future.

Working in the Development Unit in LRC's National Office I brought my experience of fundraising in the UK and was able to utilise and build on these skills in a completely different context.

With my wonderful colleagues at the LRC, I have witnessed firsthand the devastating poverty that overshadows the lives of so many in South Africa as well as the massive significance of LRC's work which is so hard to convey to current and potential donors.

I valued this experience of volunteering at LRC so much that I decided to apply to stay for longer and I am still working at the LRC now, one year later!

By Polly Arscott, Development Officer

LRC Patrons and Trustees

Patrons

Sir Sydney Kentridge QC, SC
Most Honourable Reverend Desmond Tutu

Trustees

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Allied Organisations

The Legal Assistance Trust

The Legal Assistance Trust (LAT) was established in 1985 in London as a registered charitable trust. By raising funds for free legal services for poor people in countries outside the UK, the LAT aims to relieve

poverty and suffering. The LAT has supported the work of the LRC for over 24 years. Visit www.latforsa.org.uk

SALS Foundation

The Southern Africa Legal Services Foundation, Inc. (SALS) -- a U.S. § 501(c)(3) charitable organisation based in Washington, D.C. -- was created in 1979 by concerned American lawyers to support and raise funds for public-interest legal services and for the development of legal education in southern Africa. SALS has long supported the

LRC with its critical work in the areas of constitutional law, land and housing rights, environmental justice, constitutional obligations regarding the HIV and AIDS epidemic, and women's and children's rights. Visit www.sals.org

LRC Staff & Interns

National Office

| | |
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| Janet Love | <i>National Director</i> |
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| Catrin Verloren van Themaat | |
| Esme Wardle | |
| Delysia Weah | |

Constitutional Litigation Unit (CLU)

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| Susannah Cowen | <i>Counsel</i> |
| Adrian Friedman | <i>Counsel</i> |
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| Constance Mogorosi | |
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| Rufat Yunayev | <i>Intern</i> |
| Mi Zhou | <i>Intern</i> |

Launch of *Lefa la LRC*



The LRC launched **Lefa la LRC**, an individual giving programme, on 28 October 2010 and we would like each and every reader of the annual report to join!

We know each of you, as supporters and alumni, appreciate the role the LRC plays in shaping the human rights landscape of South Africa. **Lefa la LRC** is your opportunity to support the long-term sustainability of our organisation. By donating regularly - either monthly or annually - you will be giving a *Lefa*, a Sotho word meaning "legacy" or "gift", to ensure the continued impact of the LRC in making a difference in the lives of South Africa's most vulnerable. You will become a **Lefa la LRC** member, an integral part of the LRC family. The programme provides an opportunity for you to connect with the LRC, and with other alumni, supporters and friends of the LRC on a regular basis.

As a **Lefa la LRC** member you will receive: an invitation to **Lefa la LRC** annual events to reconnect with friendly faces, quarterly newsletters for updates on the LRC's most current work, and individual recognition in the LRC's Annual Report.

We are grateful for the contributions by our alumni, friends, and supporters which have enabled the LRC to become what it is today. We hope that further past and new supporters will come together and help us grow the LRC's legacy for future generations. **Your support is the LRC's strength** - we invite you to become a **Lefa la LRC** member today.

For more information and to join, call us on: +27 11 838 6601 or email: lefa@lrc.org.za

Acknowledgements

Editorial Board: Debbie Budlender, Lorraine Chaskalson, Richard Moultrie, Janet Love, Hyun-Jung Kim, Khumbulani Mpfu, Stephanie Madison and Thulani Cele

Authors: Angela Andrews, Polly Arscott, Jason Brickhill, Tim Capozzi, Thulani Cele, Sushila Dhever, Willene Holness, Steve Kahanovitz, William Kerfoot, Jody Kollapen, Janet Love, Topsy Mackenzie, Stephanie Madison, Charlene May, Cameron McConnachie, Thobani Mnyandu, Mandi Mudarikwa, Sayi Nindi, Celeste Penn, Kobus Pienaar, Tatum Pritchard, Koop Reinecke, Cerianne Robertson, Sarah Sephton and Wilmiem Wicomb

Other Contributors: Annand Chaytoo, Stuart Craig, Moleshiwe Magana, Asha Moodley, Sizakele Ntoyi, Koop Reinecke, Ann Skelton, Henk Smith, and our clients

Photographs by: The staff and interns of the LRC and others

Design and layout by: Hayley Gray

Produced and printed by: DS Print Media

Printed in March 2011.

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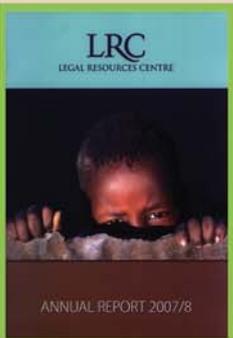
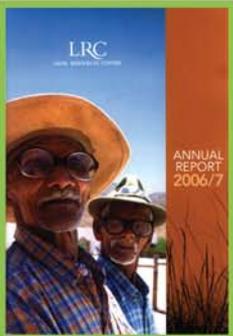
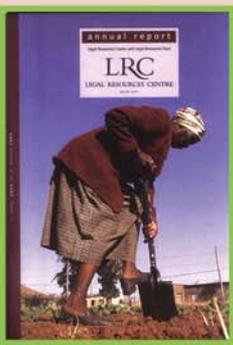
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