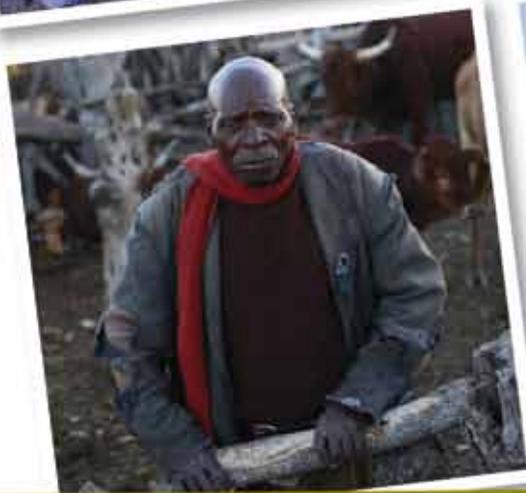
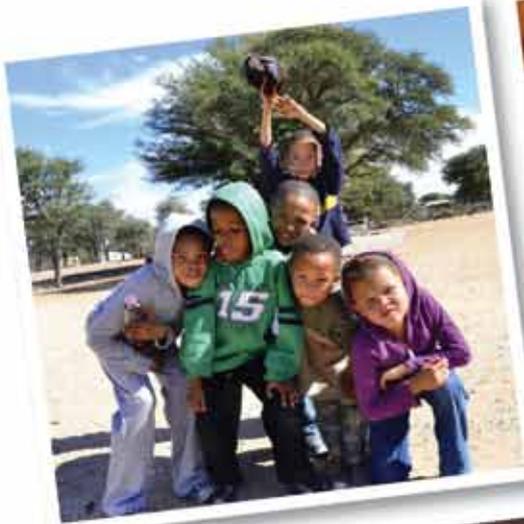


LRC

LEGAL RESOURCES CENTRE



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The Legal Resources Centre's Vision and Mission

Vision

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



Mission

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

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

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

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

Chairperson's Report

Every year that passes demonstrates the growing strength and commitment of the LRC to the pursuit of justice in South Africa. I am greatly honoured to be the Chairperson of such a highly regarded organisation. The LRC holds a unique position in the legal community due to its independence and unfaltering commitment to constitutional principles. It is continually challenged by the social and political processes occurring within South Africa. While we had hoped that our democracy and rule of law would be entrenched at this stage of our nation's development, the relevance and need for an organisation like the LRC has not dissipated.

Our organisation has continued on a path of sustainability and we are proud of the work we do, both nationally and internationally, in the human rights sector. The extensive nature of the work, which includes working for women's and children's rights, access to social security, land reform, secure housing, environmental justice and good local governance, is supported by our Constitution; still the most precious document underlying our democracy and a beacon of morality and humanity. Through the Bill of Rights, we are able to pursue cases which reflect the needs of our society, such as working toward realising the right of access to basic education, which has been the focus of the Grahamstown office this past year.

The work of the LRC is not without its challenges but, as an organisation, we face these with determination. The task seems never-ending and, at times, frustrating. Nonetheless, every year the commitment and professionalism shown by the staff of the LRC allows for extremely important and meaningful work to be undertaken and I want to thank them for their exceptional



Thandi Orleyn: Chairperson of the Legal Resources Trust

efforts. No case is too big or too small and no client is turned away without assistance.

While we foresee the challenges we face growing in magnitude, the LRC is committed to being at the forefront of public interest litigation in South Africa. Our global reach will be expanding in the near future through our regional and international engagements; particularly in the African Commission for Human and Peoples' Rights. Together with our partners and friends, we will continue to focus on providing legal services to the vulnerable and indigent members of our society. We want to thank them for their continued co-operation and support and we look forward to the expansion of these valuable partnerships into the future.

Like any organisation, we require commitments from different sectors. Our relationships with the legal community is one of mutual respect and admiration, our partnerships with various organisation have improved the reach and impact of our work and the support shown by the general public keeps us enthusiastic and committed to our work. I thank the Board of Trustees for the unstinting passion and invaluable advice, and for their support of my leadership.

Lastly, we continue to enjoy the loyalty and support of numerous donors and funders. They recognise the value of our contribution to the legal community, to social justice and to human rights. This acknowledgement is immensely important to us. We work closely with a number of partner organisations such as South Africa Legal Services Foundation in the United States, and the Canon Collins Education and Legal Assistance Trust in the United Kingdom, who often go out of their way to ensure that the LRC is supported. Our continuing development as an organisation would not be possible without their invaluable support. Most importantly, we recognise the role of Janet Love, the National Director, who has taken on this difficult task with a deep passion and determination, and who continues to remain undivided in her focus on securing a just society for all.

National Director's Report

Much has happened within the LRC over the 2011-2012 year to build it into a stronger organisation and to enable it to respond to the challenges that surround us. In particular, the process of internal reflection we engaged in led to the identification of values that have begun to permeate into the way we function: **Teamwork**; **Employee recognition and fulfillment**; **Accountability**; **Communication**; and **Human Rights advancement**.

Looking at our work, and the challenges that have arisen during the course of the last year, it is clear that there has been a remarkable amount accomplished by a relatively small number of dedicated, passionate, committed and hugely creative people. It is evident that the **key objectives**, to which the LRC is committed, have been pursued with energy and have realised significant gains for our client base.

Law and courts will never replace politics and governance: this is something we continue to be clear about and goes to the heart of the way we work with communities and clients. Knowing this, and working the way we do, should lay an important foundation for us to generate new and innovative additional steps. As we reflect on what directly helps our clients, we need to identify, particularly in the face of poor governance, what additional activities ought to be pursued.

We can see that existing collaboration is the most effective response to poor governance, to corporate disregard in the use of its power and other threats to democracy. Sharing best practices, effective advocacy and outreach, both domestically and internationally, continues to be essential. Our work with regard to the Traditional Courts Bill is an important example of what we are doing and what can be achieved.

The issues we confront are global. The world is changing: economically ever-more integrated and without a single dominant locus of power. A great deal of energy the world over is being expended on consolidation and economic survival. The establishment and pursuit of new alliances is rapidly unfolding. This has implications for us that go beyond financial support for our work.

The 'free trade' mantras have given way to the undisguised, revived appetite for direct investment in commodities. The extractive industry is prone to ride roughshod over the needs of sustainable natural resource management requirements and community rights. We need to work both within South Africa, and internationally, to build a more cohesive and collective understanding of the global threats to people living in poverty. In doing so, we must seek to assert issues that are most immediate to some of the most vulnerable communities.

As part of the LRC's commitment to organisational renewal, its ability to impact nationally and to serve its clients, and its commitment to sustainability, the LRC has dedicated itself to:

- Increase its participation in the Global South discourse on socio-economic rights.
- Make its experiences and knowledge more available to others engaged in human rights.
- Increase its understanding of and engagement with international human rights for



Janet Love: National Director of the Legal Resources Centre

a stronger role in monitoring and influencing activities there.

- Facilitate greater participation from South African communities in working for the rights of the vulnerable and the poor globally.
- Engage with thought leaders from other countries.

The rights of poor people are generally dependent on the efforts of non-state actors who seek to ensure that states and international corporations are obliged to respect the law, agreements and undertakings that defend human rights. In the past ten years, the means of organising around critical social issues has changed substantially. The emergence of social movements has coincided with an acceleration of social media networks and tools, which has transformed the way in which people can communicate with each other.

Poverty and desperation will undermine the rule of law. Anger is inflamed by corrupt indifference. We have our work cut out for us.

It remains a privilege to serve as National Director of the LRC.

Our key objectives are:

- 1. To protect and promote the rule of law in the face of threats to democratic processes and civil liberties.**
- 2. To protect natural resources and ensure just and equitable access to them.**
 - 2.1. To oblige that mine-related activities on the land only occur if the necessary mining and environmental authorizations are obtained.
 - 2.2. To support communities and advise them in their negotiations and engagements with mining companies, government and other parties including better capacitation to participate in government licensing, environmental assessment and other decision-making processes.
 - 2.3. To challenge government to fulfil its constitutional responsibilities and implement a statutory framework that ensures natural resource management and an integrated environmental governance system that will sustain resources and protect livelihoods and health of vulnerable groups.
 - 2.4. To enhance good governance, democracy and participation in rural areas.
 - 2.5. To support land reform initiatives.
 - 2.6. To assist communities to secure the rights to land and natural resources such as water, minerals and biodiversity.
 - 2.7. To confront elements of customary law that conflict with gender equality.
 - 2.8. To secure and enhance sustainable livelihoods and rights for rural people.
- 3. To support disadvantaged communities and civil society organisations (CSOs) to participate in governance processes.**
 - 3.1. To support communities to engage in law reform and policy developments and in their negotiations with private companies and government.
 - 3.2. To promote greater awareness of the problems in the management of natural resources, and their social, economic and cultural impact on communities.
 - 3.3. Where necessary to litigate against government and/or private sector to set precedents that establish, as well as promote, constitutional rights for all people in South Africa.
- 3.4. To increase good governance, especially at the local level, and related community participation and corporate responsibility.
- 3.5. Where appropriate, to assist clients in the formation of associations/co-operatives to participate in the negotiations with/make representation to authorities to promote self-efficacy and active citizenship in resolving community's problems.
- 4. To defend the rights of vulnerable urban slum dwellers to access adequate and safe housing, municipal services, affordable development and to be able to earn a livelihood.**
 - 4.1. To contribute to the development of pro-poor housing rights, legislation and policies in a manner that supports participation by vulnerable people and communities.
 - 4.2. To partner with CSOs, lawyers from other agencies including Legal Aid SA to increase capacity to intervene on behalf of poor and vulnerable clients and communities, in relation to evictions and the protection of poor people's rights to access adequate housing and services.
 - 4.3. To assist communities and individuals to increase their security of tenure and to advise and support them in their interactions with landlords.
 - 4.4. To assist informal traders to have the necessary state support and/or regulatory environment to sustain their livelihoods.
 - 4.5. To challenge incidences where administrative injustice hinders delivery of services to poor and marginalised individuals and groups of people.
 - 4.6. To challenge inadequate service delivery by state agencies which impact on the poor.
- 5. To ensure increased fulfilment of health, sexual and reproductive rights including access to more responsive services and greater awareness of obligations to those most vulnerable.**
 - 5.1. To support CSOs involved in providing protection and services to women to improve women's access to justice, reduce secondary trauma, and access post rape health care services to assist with improving conviction rates, identifying systemic flaws, raising awareness and holding the State accountable.

Our key objectives are:

- 5.2. To protect the rights of sex workers.
- 5.3. To defend the constitutional principle that protects sexual orientation and promotes the rights of LGBTI.
- 5.4. To address HIV/AIDS as a Human Rights issue and to hold government to its commitments in this regard, particularly around the related social assistance responsibilities of the state.
- 5.5. To use the law to enforce the state's constitutional obligation to support those who are unable to support themselves and their dependents.

6. To advance the rights of children.

- 6.1. To encourage and, if necessary, compel the state to improve safe access to quality education for children, particularly for vulnerable children such as orphans and those from poor communities or living with disabilities.
- 6.2. To increase understanding and awareness of violence against children and contribute towards the implementation of protective measures that ensure that a child's health and best interests are given priority in all state institutions, particularly in the criminal justice system, and in the conduct of traditional leaders and private business.
- 6.3. To encourage and, if necessary, compel the state to improve the implementation and administration of social assistance grants related to children and to enable other CSOs to contribute to the fulfilment of the state's obligations for the social welfare of refugee children.

7. To protect, promote and secure the rights of refugees, asylum seekers and undocumented migrants in South Africa.

- 7.1. To work towards the integration of refugees and foreign nationals into the community, challenging xenophobic attitudes.
- 7.2. To compel the state to provide adequate services in terms of law and international obligation in the manner in which it deals with refugees, asylum seekers and displaced people.

8. To increase litigation, and ultimately African Jurisprudence in order to contribute to the strengthening of global human rights.

- 8.1. To trigger and stimulate discourse that undermines

the relegation of customary law to a separate and 'invisible' system of law.

- 8.2. To engage with communities to pick up trends of abuse due to the parallel nature of the customary law systems for future activism and litigation.
- 8.3. To engage with lawyers of other African countries to see how the experiences we have had locally and the skills picked up here can translate to their jurisdictions.
- 8.4. To take the discourse to the ACHPR, its Special Rapporteurs and Working Groups and other NGOs operating at that level to frame this discourse within the context of the African Charter in order to have customary law recognised as a source of law.
- 8.5. To increase litigation, and ultimately African jurisprudence, on the recognition of customary rights to land, minerals, marine resources etc. Such litigation will include broader related issues, such as establishing the principle of Free, Prior, Informed Consent (FPIC) as a right of affected communities; undermining the post-independence laws of Southern African countries that entrench colonial distortions of customary forms of governance; and corruption.
- 8.6. To increase awareness of customary law as a source of law and of the rights of customary communities over resources amongst rural communities themselves and the legal and human rights community who defend them.
- 8.7. To increase engagement around customary communities' access to resources at the African Commission and SADC, including working conversations with key players with regards to reinstating the SADC Tribunal.

9. To build the understanding and capacity to engage with constitutional litigation and human rights law within the legal sector and in various forms of judicial and public service.

- 9.1. To further the interests of law graduates which will result in access to justice to poor and historically disadvantaged communities.

Community in Dwesa-Cwebe seeks recognition of customary practises

On 22 May 2012, crowds of people from villages near Dwesa-Cwebe Nature Reserve in the Eastern Cape gathered outside the Elliotdale Magistrate's Court to hear the court's verdict on whether three men from the village of Hobeni were guilty of trespassing and of 'intention to fish' within a marine reserve. The intense community interest reflected the fact that the people of Dwesa-Cwebe had witnessed the erosion of their rights over the previous decades and sensed that the tide was about to turn.

In the 1970s and 1980s, these communities were systematically removed without compensation from their ancestral lands next to the Mbashe River and the coastline; in part to create the Dwesa-Cwebe Nature Reserve. Their claim for restitution, launched in 1998, was successful and a settlement agreement was signed in 2001. This promised to restore ownership of the reserve to the seven communities who were removed and also promised to make them co-managers of the reserve. However, as was noted in Magistrate's judgment, "this court cannot shy away from the conclusion that little but lip service has been paid to the terms of the Dwesa-Cwebe Settlement Agreement and even less to the Community Management Agreement of the reserve by government agencies". For a short time, however, the communities were allowed to continue utilising the resources in the reserve, through fishing and the small-scale harvesting of the forestry resources, as they had done for generations.

This changed when the coast line adjacent to the reserve was declared a Marine Protected Area (MPA) and began to be enforced as a 'no-take zone' in 2005, making fishing absolutely prohibited. Had the communities been consulted about these decisions, they would have



Fishermen Association at a workshop to discuss the use of their marine resources

indicated that fishing inside the reserve is a major source of their livelihood, as well as an inextricable part of their cultural identity. On both accounts, the absolute closure of the reserve had disastrous consequences for these communities. No effort had been made by the government to address this problem, despite endless calls from the community to the relevant authorities. As a result, they continued to enter the reserve at great risk to themselves. The clash between the environmental authorities and the local communities came to a violent head in 2011 and 2012, when two fishermen were killed on separate occasions when caught with fish inside the reserve.

The three fishermen charged in the Elliotdale Magistrates Court argued that they were not guilty of the charges against them as they were acting lawfully in terms of their customary law system, which regulates their access to the ocean resources. Although this is a system recognised and protected by the Constitution, it was ignored by the Minister when declaring the area protected. Dr Derick Fay from Stanford University, and an expert on the Dwesa-Cwebe community's history and livelihoods, and Jacqueline Sunde from the University of Cape Town, an expert on customary small-scale fishing in South Africa, gave evidence testifying to the community's customary system of law.

The Magistrate found that the community indeed had a customary system of law. The Magistrate added that the constitutionality of the Marine Living Resources Act, 18 of 1998, in denying these customary rights, was 'doubtful to say the least', but that he had no powers to strike the provision down. This judgment has opened the door for the community at large to review the decision to declare a Marine Protected Area without consultation with the affected communities and to test the constitutionality of the legislation. Significantly, the decade of silence from the relevant government authorities has come to an end, as they are finally forced to take the interests of the local communities into account in their efforts to preserve the coastline.

Traditional authorities challenged

This year has seen the Legal Resources Centre involved in a number of cases dealing with the power of chiefs and headmen and, particularly, with the ability of traditional communities to challenge this authority and determine their own futures. These cases have been litigated in an environment where the powers of traditional leaders are being entrenched through draft law such as the Traditional Courts Bill. Our involvement is aimed at ensuring that the exercise of power by traditional authorities does not deprive people from realising their constitutional rights or living according to their own customary laws.

We attended public hearings and made submissions on the Traditional Courts Bill (TCB). The LRC, as part of the Alliance for Rural Democracy, argued that the aim of the TCB is to enhance the power of traditional leaders while eroding customary mechanisms of accountability and, therefore, should be rejected. The Bill was drafted with the consultation of traditional leaders only. It shows a disregard for customary law used on a day-to-day basis, for the power imbalances that affect women in traditional communities and for the need to bring justice to the rural poor. We are also involved in challenging the Traditional Leadership and Governance Framework Act (TLGFA). This act has the potential to prejudice those living under traditional leadership through granting far-reaching powers to the leaders.

In the Pilane matter, our clients come from the Motlhabe village in Moruleng, near Rustenburg. Their village is one of 32 which fall under the authority of the Bakgatla-Ba-Kgafela. Our clients are unhappy about various aspects of the leadership under which they fall due to a perceived lack of financial accountability and frustration caused during the process of resolving land claims. Their grievances are exacerbated by the fact that they dispute the legitimacy of the chief, who is not considered to be a member of the community. The lack of ability to participate in decision making as well as lack of employment opportunities, have led to violent protests in the area.

The leaders of the Pilane community began holding public meetings. In these meetings they discussed the possibility of separating from their current traditional leader and seeking independence as a separate traditional community. However, the chief successfully applied to court to prevent them from meeting. We challenged this order with partial success. In July 2011, we obtained an order allowing the community to meet, but only under the name of the current traditional authority instead of the name of their own tribe. We are appealing the matter to the Constitutional Court. A judgment in this court will be important in determining, in cases where communities do not feel that the authority represents their interests, whether they will have the ability to govern themselves independently.

The Centane case is another example of a traditional leader abusing his power. In this matter, a number of people in the community hold Permissions to Occupy (PTOs) certain land, granted to them by the apartheid government. PTOs were a method of granting a form of security to those who could not own land under apartheid as they indicate a right to occupy the land. The land in question is agricultural land, which was no longer used for the purpose of farming. The community decided that the land should be used to provide their children with space on which to start their own homes.



Many people spoke against the TCB during the national public hearings

In order to do this, the PTO holders and broader community met and resolved that the land be re-demarcated and allocated to beneficiaries chosen by the PTO holders. The headman attended this meeting, where it was further decided that he would be informed of the choices of beneficiaries. However, the headman then rejected the nominated people, demanding payment of money and gifts of liquor before he would approve the beneficiaries. This caused outrage from the community members, who felt that the headman was abusing his position for personal gain. The dispute was referred to the local tribal authority and then was taken further to the King's Council. The council found that the headman should not interfere with the land allocation and should try and resolve the issue with the community. Unfortunately, this did not occur and we intervened in order to assist the community in defending the matter in the Centane Magistrate's Court. The LRC argued that the headman had no ability to bring the matter to the court as he had in the meantime resigned as the headman. Judgement was handed down in favour of our clients. Although this did not settle the broader point about the powers of headmen relating to land allocation where community members have individual PTOs, it resolved the matter practically for our clients.

School seeks facilities for special needs learners

Grahamstown's Amasango Career School, one of three similar schools situated in the Eastern Cape, is a special needs primary school for learners with extrinsic barriers to learning, such as street children, abused children and children abandoned by their parents. The school initially operated out of two shipping containers on the grounds of the Eluxolweni Shelter; a shelter that assists street children. Since 2001, the school has rented three abandoned railway buildings. The facilities are barely habitable. The site is cramped and overcrowded. The buildings are dilapidated, with broken windows and peeling plaster. There is no playing field. These dire conditions have compounded the stress and learning difficulties already faced by Amasango's special needs learners.

Although Amasango Career School is registered with the Eastern Cape Department of Education (DOE) as a fully-recognised public special needs school, the DOE has never provided it with proper school buildings.

Nor has the DOE ever subsidised the rent for the run-down railway buildings. For the past three years, the LRC office in Grahamstown has been advocating to compel the DOE to build a proper, permanent school. Happily, we made significant progress towards that goal this year.

In September 2011, lead attorney and Regional Director, Sarah Sephton, issued an application for the Court to declare the



Learners at Amasango Career School now have a proper library

DOE in contempt of two previous court orders. These orders had mandated the building of temporary classrooms, toilets and a library. The DOE did not file an answering affidavit but arranged, in October 2011, to meet the LRC and representatives from Amasango Career School. An agreement was reached in terms of which the DOE undertook to take steps to construct temporary facilities. The DOE also agreed to meet with the LRC in January 2012 to discuss a permanent building.

By mid-February of 2012, the DOE had provided Amasango with five new classrooms, a library, toilet block and a storeroom. The school is extremely pleased with the temporary facilities. Amasango's principal, Jane Bradshaw, feels that the temporary structures will ease the pressure on learners and school staff. Teachers will be better able to give enough individual attention to the learners. The school's librarian, Linda Ngamlana, is thrilled that the learners now have a proper library in which to house learning materials and foster a love for learning.

The school and the LRC are still pushing ahead for permanent facilities. The DOE has advised that an existing school building has been earmarked for Amasango and that funds are available for it to be renovated. We are seeking confirmation of this in writing. With its limited resources thus far, Amasango Career School has had a long history of successfully rehabilitating street and other vulnerable children. Many Amasango learners have returned to mainstream high schools. One former student attended Rhodes University. We are confident that, with the long-awaited arrival of permanent school facilities, Amasango Career School will reach other vulnerable learners even more effectively.

Ongoing monitoring of mud schools

As reported in the 2010/11 Annual Report, a settlement regarding the upgrading of seven mud schools in the Eastern Cape was reached and an agreement was signed on 4 February 2011. This important case has received extensive press coverage both nationally and overseas.

The Provincial Department of Education (DOE) undertook to provide both temporary and permanent infrastructure to the seven schools. First, it was agreed that the schools must be supplied with mobile classrooms, sufficient desks and chairs and water by 31 March 2011. Secondly, construction of permanent classrooms at the schools was to commence by 31 May 2011 and was to be completed within one year. The agreement also recorded that R8,2 billion has been committed by National Government for the replacement of inadequate school structures countrywide and R6,36 billion of that amount was to be used at schools in the Eastern Cape.



Construction of permanent school infrastructure is underway in many Eastern Cape schools



Although the March deadline was not met by the Eastern Cape DOE, by July 2011 the temporary structures and desks and chairs had been provided to the schools. All seven schools are now using the temporary structures and are extremely happy with the developments. We also received written confirmation from the DOE that they were moving ahead with the appointment of contractors to build permanent facilities.

In February 2012, construction of permanent classrooms, administration blocks, kitchens and multimedia centres began at two of the seven schools. These were scheduled to be completed by August 2012. In terms of the settlement agreement, Ingqondi Consulting, an independent monitor appointed to oversee the building of the temporary and permanent structures, will be attending site meetings.

In addition, LRC's Grahamstown office has been trying to address the under-spending of the infrastructure budget by national and Eastern Cape provincial governments. We wrote directly to the National Department of Basic Education on 2 March 2012 to get clarity on expenditure and noted the impossibility of eradicating mud structure schools by 2014 if the National Department continued to move at the current pace. As such, should the LRC not receive satisfactory responses from the Departments, we will consider applying to court to have the settlement agreement made a court order.

The next phase of the mud schools matter is to expand our monitoring to include some of the other 395 mud schools that are not currently scheduled for upgrading during the next 3 years.

Mud schools on their way out:

New facilities for learners at Emvilo Junior Secondary

LRC Grahamstown recently achieved a significant triumph for its long-time client, the Emvilo Junior Secondary School (JSS). Emvilo JSS has 430 learners and is located in the Libode District of the former Transkei. Through successive waves of court applications and negotiation, the LRC has compelled the government to provide desks, chairs and a new school building for the school's impoverished learners.

Emvilo JSS was a mud structure school that was promised a new building in 2008. That same year, the building contractor arrived on site, demolished the old mud structures and proceeded to construct four very small corrugated iron shacks for the learners to use while a permanent structure was being completed. The contractor laid the foundations for the new classrooms and then disappeared. The Department of Education (DOE) suggested that the contractor had acted fraudulently. The principal of Emvilo JSS made desperate attempts to have temporary classrooms put in place while the dispute was being resolved and the new classrooms completed. The DOE promised new temporary classrooms but did not deliver on the promise.

In 2010, the LRC instituted legal proceedings against the Minister of Basic Education and the Eastern Cape Department of Education. In August 2010, before the LRC was able to reply to the governments' affidavit, they agreed to settle the matter. Building of the new school commenced later that year. In June 2011, a beautiful school building, with a administration block, computer lab, library and ten classrooms, was completed. However, despite these positive improvements, the school had no furniture whatsoever.

In early 2012, LRC Grahamstown revived the legal process by filing a replying affidavit and demanding that the Department of Basic Education provide the school with the furniture it had originally agreed to supply. In response to the LRC request, the Head of Department proceeded to meet the government's obligation to provide the school with desks and chairs. This case has since been concluded, resulting in an extremely positive result for the school and its learners. Throughout this lengthy process, the case has received significant media coverage in the Eastern Cape newspaper, the Daily Dispatch.



Then and now



Children's Rights

Bridging the education divide

iNkolovuzane Primary School is located in the Kwama-phumulo District, in rural KwaZulu-Natal. It is situated near the Mvoti River which at times is wide and fast-flowing. The river is known to hold waterborne diseases such as bilharzia. The community living around the school is very poor and lacks the most basic of infrastructure. Many community members have no option but to use the river for drinking, cooking water and washing.

The LRC's work at the school began in 2010 after we became aware of the high incidence of illness among community members and in particular among learners and school staff members. We learned that there were no bridges across the river within walking distance of the school and that the school did not have regular access to clean drinking water. Consequently, learners and other community members were forced to swim across the river several times each day and, in the process, were contracting waterborne illnesses. Proper sanitation was also an issue as the school only had six pit latrines to cater for its 126 learners and four staff members. Our goal was to facilitate safe transit across the river and improve the sanitation facilities for learners and educators.

After we engaged with the Departments of Education and Transport, construction of a bridge near the school began in 2011. When members of the LRC's Durban office visited the school in February 2012, construction was nearly complete. The bridge now allows community members and vehicles to safely cross the river.

While the bridge represents a significant improvement to the local infrastructure, the

problems of access to clean drinking water and proper sanitation remain. After our interns, Veronica Fletcher and Thinn Nyunt, conducted a survey of sixteen other schools located in nearby communities, we learned that the lack of access to drinking water and good sanitation facilities is endemic to the area. Most schools collect rainwater in tanks. In only four instances were these tanks provided by the Department of Basic Education; the remainder had been privately funded. As is the case with iNkolovuzane Primary School, the only sanitation facilities present at any of the other schools is through pit latrines. None of the schools have separate facilities for handwashing.

Further communications with the Department of Basic Education about drinking water and sanitation have been unsuccessful. We are currently consulting with a public health expert to advise us on the long-term impact of the lack of access to water and sanitation on the learners, with a view to possible litigation.

School capacity issues highlighted in Rivonia



The power to determine the maximum capacity of a public school rests with the provincial education department and not the school governing body

In late 2011, the Legal Resources Centre welcomed a High Court ruling in a case which clarifies the position of school governing bodies (SGB) in relation to public schools' admission policies. In the Rivonia Primary School case, the former model-C school refused to admit a learner based on the admission policy of the school which allows for 30 learners per classroom and 120 learners per grade. The respondent's child was the 121st applicant and therefore was not enrolled into grade one. The MEC of Education intervened on the basis that the school had an obligation to enrol the learner. The Legal Resources Centre was involved in the matter as a friend of the court, supporting the argument that it is the relevant provincial

→ *continued on page 17*

Equal Education (EE) is a non-profit organisation, with its head office in Cape Town, that focus on securing access to education for disadvantaged groups in South Africa. Among the most trenchant legacies of Apartheid is the inadequate infrastructure and facilities that still exist in schools in former black-only areas. In a 2011 report by the National Department of Basic Education, it was stated that over 3500 schools in South Africa still do not have any access to electricity, over 900 are without sanitation facilities, and over 2400 are without access to water. The majority, if not all, of these schools are situated in formal black-only areas.

Equal Education and the LRC both strongly believe that the constitutional right to a basic education encompasses the right to have adequate school infrastructure. In support of this, the Grahamstown office of the LRC collaborated with EE and two other schools in the Eastern Cape Province on a legal application, for an order directing the Minister of Education to promulgate national minimum norms and standards.

There is currently no definition of what a school in South Africa must look like. The minimum norms and standards policy would set the basic level of infrastructure that every school must meet in order to operate effectively. It would include such basic necessities as toilets, running water, electricity, libraries, safe classrooms and perimeter security. Being legally binding, the minimum norms and standards would enable schools to hold the government accountable when it fails to provide this basic infrastructure.

The LRC filed the application on 2 March 2012 in the Bhisho High Court. It was a lengthy application of approximately 600 pages and included affidavits from schools

Minister agrees to norms and standards for schools

across the country. A court date was set for 20 November 2012. The case has received extensive media coverage thus far and we anticipate further publicity around the trial and the decision.

UPDATE: Norms and standards matter settled

On 16 November 2012 this matter was settled. The settlement arrived shortly before the matter was due to be argued, after the Legal Resources Centre had filed affidavits by over 26 public schools describing the desperate infrastructure problems faced by thousands of public schools across the country.

The agreement marks an important milestone in South African education law as the legal action has ensured there will be a binding law regulating the provision of school infrastructure.

Prior to the promulgation of the minimum norms and standards on 31 May 2013, the Minister has undertaken to publish a draft of the regulations for public comment by 15 January 2013, and to consider any comments made before 31 March 2013.



The shortage of adequate school facilities can have adverse effects on educational performance

Section 100 intervention:

Court confirms Minister's responsibility



Angie Motsheka - Basic Education Minister - Picture from sabc.co.za

In March 2011, the National Executive intervened and took over the administration of the Eastern Cape Department of Education. This intervention was effected in terms of section 100(1)(b) of the Constitution.

The national and provincial government departments signed a Memorandum of Understanding (MOU) regarding the intervention, agreeing that the National Minister of Education bore the responsibility for implementing all statutory and constitutional obligations relating to the delivery of education in the Eastern Cape. Despite the MOU, significant concerns arose regarding the respective responsibilities of each department. To clarify matters, in January 2012 the LRC Grahamstown Regional Director, Sarah Sephton, launched an urgent application on behalf of the clients, Save our School and Community (SOSAC) and the Catholic Institute for Education (CIE).

This case was important for practical and strategic reasons. On a practical level, the case sought to bring clarity to the implementation of the section 100 intervention. Previously, the lack of guidelines or regulations regarding the intervention meant that both the Eastern Cape Department of Education and the National Executive could claim that it did not have the authority to deal with core education-related issues. As strategic litigation, this case sought to clarify the law on section 100 interventions and lay the groundwork for subsequent successful education cases by the LRC.

At the commencement of the litigation, the parties held widely differing positions. The provincial government asserted that the MOU was 'nugatory in most practical respects', 'gravely flawed' and 'not of force and effect'. In contrast, the national government asserted that the MOU was valid and that the intervention was 'being fully implemented'. SOSAC and CIE argued that the National Executive had failed to fulfil a constitutional obligation because it had 'not given effect to [its] decision to assume [executive] responsibility for the obligations of the Eastern Cape Education Department'.

Owing to its practical and strategic importance, the matter received national press coverage. On 20 March 2012, the date of the court hearing, the parties reached a settlement agreement. The national and provincial governments confirmed that there was a section

100 intervention in place and that the National Minister of Education was responsible for education in the Eastern Cape Province. The settlement affirms that the Minister is obliged to act and intervene to ensure the constitutional right to basic education is fulfilled.

The LRC hopes to further build on this clarification in a future case which seeks to hold the National Minister responsible for the deplorable lack of desks and chairs in rural Eastern Cape mud schools.

Section 100 interventions

Section 100(1)(b) of the South African Constitution states that:

"[w]hen a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including ... assuming responsibility for the relevant obligation in that province to the extent necessary to

- maintain essential national standards or meet established minimum standards for the rendering of a service;
- maintain economic unity;
- maintain national security; or
- prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

In order to ensure that the right to a healthy environment is enjoyed by all, the LRC has been involved extensively in issues of environmental justice. Our concerns of late have been related, but not confined, to mining, pesticide spraying, changes in the Environmental Impact Assessment legislation and the Water Tribunals. Unfortunately, the Water Tribunals, which are independent entities constituted in order to deal with appeals and water use limitations, have not been able to assist us with our matters and many of our cases are now being heard in the North Gauteng High Court.

The LRC acts in a number of matters for the Escarpment Environment Protection Group (EEPG), an NGO which champions environmental issues in the Mpumalanga Province. A mine has to be granted both a mining right and a water use license before it can commence mining activities. The LRC has assisted EEPG in drafting objections and appeals where mines have obtained water use licenses without meaningful public participation, or without obtaining impact studies, sustainability studies or National Environmental Management Act authorisations. We have also alerted the Department of Water Affairs to the fact that the mines continue to operate illegally and use water without valid water use licenses.

The LRC also drafted submissions on mining matters on behalf of the Federation for a Sustainable Environment, which were then presented in a parliamentary briefing on the Department of Environmental Affairs' National Waste Management Strategy. In the submissions, we indicated that the Department of Environmental Affairs has failed to manage and mitigate

Towards a healthy environment for all



Mining waste is a leading cause of water pollution in many parts of South Africa

the environmental impact of vast areas of abandoned and disused mines. An estimated 6,000 square kilometres of land has been significantly contaminated by gold mining. Furthermore, 1,6 million people live in informal settlements close to mining residue and some have built their settlements on the sites of abandoned radioactive mine tailings. The Portfolio Committee of Water and Environmental Affairs has undertaken to investigate the matter.

A joint submission was also made by the LRC and the Centre for Environmental Rights to Parliament. This was in relation to the tabling of the latest amendments to several environmental laws under the National Environmental Management Act, 107 of 1998. The submission covered a wide range of topics, including deficiencies in the Department of Environmental Affairs' current proposed approach to dealing with the authorisation of activities commenced without following environmental procedures. This provision, which was initially intended to apply only temporarily, allows applicants who have commenced their activities without authorisation to apply for rectification and to pay a fine which, in turn, has become a form of revenue for those departments implementing the statute.

Another area of concern is a proposed new provision allowing environmental activities to commence if intended to address an emergency incident. This provision is drafted so widely that it could create a future loophole for parties trying to get around having to obtain environmental authorisation. We also submitted comments on the proposed introduction of a provision under the Traditional Leaders Governance and Framework Act, 41 of 2003, which would make traditional authorities the beneficiaries of benefit sharing agreements (see the box). This would happen in cases where any of the participants in such agreements fall under Tribal Authorities in terms of that Act. The result, we argued, was a violation of the equality clause in the Constitution and various principles of international law. It would also be ineffectual due to potential disputes over boundaries and the area of application of the provision. Our submissions were favourably received.

Benefit Sharing Agreements

A benefit sharing agreement is a legally binding contract that is entered into between a bioprospector using indigenous biological resources or traditional knowledge, and the provider of such resources or knowledge. Through the agreement process, the parties will negotiate how the benefits which will be shared between the bioprospector and the provider. The process is regulated by The Bioprospecting, Access and Benefit Sharing Regulations 2004.

West Point Lodge families sheltered from eviction

In February 2011, the Organisation of Civic Rights approached the LRC seeking assistance for approximately 58 families who lived in a Durban inner-city building called West Point Lodge. The LRC represented the occupants in an effort to compel the Ethekwini Municipality to restore the electricity and water supply to the building and to secure their tenancy with the Kwa-Zulu Natal Department of Human Settlements, the owners of the property.

The right to adequate housing and access to water are fundamental human rights entrenched in our Constitution. The courts have, in several matters, pronounced on this core human right and placed a duty upon the State to take action to provide housing. The most widely noted judgment is *Grootboom*¹ where the Constitutional Court placed a duty on the State to devise a comprehensive and coordinated programme to progressively realise the right of access to adequate housing. The right to water too was confirmed in the Constitutional Court matter of *Lindiwe Mazibuko*². The judgment of the Constitutional Court noted that, "Water is Life... Without it, we will die. It is not surprising then that our Constitution entrenches the right of access to water."

The clients had entered into verbal lease agreements with a Mr Maharaj, who identified himself as the owner of the property. West Point Lodge is a building that was previously used for overnight lodging and not permanent habitation. At the time when the LRC visited the property, one unit was occupied by two adults and two children. These families either survive on wages earned by casual labour or social grants. Their household incomes did not enable them to rent privately. There was also a shortage of affordable rental



The right of access to water and adequate housing are fundamental human rights

housing stock within the Durban Central Business District and attempts to secure low-cost housing from the government had proven futile. The reality for these clients was that, if they vacated their rooms at West Point Lodge, they would have been compelled to reside in substandard living conditions or be left homeless.

In December 2010, the clients were informed by officials of the Department of Human Settlements that Mr Maharaj was no longer the proprietor of the building and that it was owned by the Department. Furthermore, the department was adamant that it did not recognise our clients as legitimate tenants. It appears that the department acquired the property through an unauthorised fraudulent sale that was concluded between Mr Maharaj and certain departmental officials. In February 2011, the clients were served with notices to vacate although the department did not initiate eviction proceedings at that time.

On 25 January 2011, without prior notice or warning to the clients, the electricity supply was disconnected. As a direct result thereof, the water supply was also cut off because water was accessed via an electric pump. The disconnection was linked directly to the fact that, after Mr. Maharaj's departure, there was no registered consumer recorded on the municipality's system.

The LRC attempted to negotiate the reconnection of services with both local and provincial government but the negotiations were fruitless. The department did not want to intervene in providing the occupants with services, as it did not want to appear to legitimise their occupancy. The LRC launched an urgent application on behalf of the clients who spent six weeks without access to electricity and water. On the morning that the matter was to be heard, the LRC reached a settlement with the municipality in which it was agreed that electricity would be restored upon payment of a sum of money.

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Housing and Local Government

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The LRC met with the municipality and its attorneys to discuss a long-term solution in order to secure uninterrupted electricity supply to the building. It was agreed that the occupants would open one electricity and water account for all those living on the premises, for the purposes of billing. However, the occupants could not reach an agreement amongst themselves with regards to who would oversee the account. As a result, an account was not opened and, subsequently, a few of the occupants then made illegal electrical connections. Although the LRC had secured a fair and practical solution for our clients, this was compromised by the unlawful conduct of a few of the occupants.

From December 2010, tensions increased with the deployment of guards at the building. Due to incorrect lists of occupants being issued to the guards, from which they determined who could be allowed into the building, many people were denied access to the building, or refused to leave the building in case they were not allowed to return. The LRC liaised with the Department of Human Settlements in an attempt to resolve the issue of the guards. After much communication that produced no results, we were compelled to launch an urgent application on behalf of the clients. In terms of the court order obtained, the clients were allowed to access their rooms at West Point Lodge and were required to produce their identity documents to the Department in order for their details to be included in the list of occupants.

¹ Grootboom and Others v Government of the Republic of South Africa and Others - Constitutional Court Order 2001 (1) SA 46 (CC)

² Mazibuko and Others v City of Johannesburg and Others 2010 (4) SA 1 (CC)

Joe Slovo Residents Association, Cape Town



Joe Slovo houses

In 2007, the national and provincial Ministers of Housing, together with the state developer Thubelisha Homes, brought an urgent application to evict residents of Joe Slovo informal settlement in Cape Town. The LRC assisted one of the two residents' committees in the legal challenges that ensued. Five years later, the former informal settlement has been developed and residents have started moving into their new houses.



Joe Slovo new house owner

Striving to end domestic violence

For the past two years the Legal Resources Centre's gender project has been working on the issue of gender-based violence, with a specific emphasis on domestic violence. The focus of the work is to highlight the obligations of the state and its various departments, in terms of domestic legislation, regional protocols and conventions, international conventions, local policies, guidelines and directives to protect women from domestic violence.

We represented Mrs N in obtaining a protection order against her brother in-law and mother in-law after her husband's death. Her in-laws came from the Eastern Cape and attempted to evict her from her house in Cape Town. Her brother in-law assaulted her and damaged her property while her mother in-law threatened her on a number of occasions. They had themselves appointed as executors of her husband's estate and sold the house without her knowledge.

After helping Mrs N to obtain a protection order and ejecting her in-laws from the house, we approached the Master of the High Court and reported their fraudulent and abusive behaviour. We successfully had them removed as the executors and we will be providing Mrs N with on-going legal support to have the house transferred into her name.

This matter is indicative of how domestic violence plays out within extended family situations. It is also evident that some customary practices and patriarchal norms continue to disadvantage women; especially those who may have limited formal education or be from poor backgrounds.

Difficulties in accessing the justice system, either at their first point of contact via the South African Police Service or via the clerks of the Court, further entrench their vulnerabilities.

Some of the ways that the LRC offer assistance to women are through our front desks and



through advice and legal representation in the family courts or the criminal courts. In the majority of the cases we have represented women married in terms of customary law. We continue to provide on-going advice, support and training to civil society organisations that are focused on providing services to women. We regularly receive referrals from the Mosaic Centre, the Treatment Action Campaign, the University of the Western Cape Law Clinic and the Centre for Justice and Crime Prevention.

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education department, rather than a school's governing body, that should have the final say in admissions.

On 7 December 2011, judgment was granted in favour of the Gauteng Department of Education. Judge Mbha of the South Gauteng High Court supported our arguments based on equality and the interpretation of section 3(4) of the South African Schools Act, 84 of 1996, which states that the MEC for Education must take steps to ensure that every learner has a place in a school. The court stated that the power to determine the maximum capacity of a public school in Gauteng Province vests in the Gauteng Department of Education and not in the governing body. The judgment clarifies that School Governing Bodies do not have the unqualified power to determine a public school's admission policy. The matter has been appealed and will be heard in the SCA in late 2012.

The importance of the case is that it reinforces the right of access to education for children and has the potential to redress past discriminatory policies which resulted in black children receiving sub-standard education. Importantly, the judge also felt that certain sections of the South African Schools Act would provide significant guidance to the school government bodies and allow the Minister of Basic Education to promulgate norms and standards on school capacity.

Social grants to ease the plight of refugees

In a case seeking to improve the livelihoods of refugees living in South Africa, the LRC launched an application on 30 November 2010 contending that the exclusion of minor refugee children with disabilities from the Social Assistance Act, 13 of 2004, was unconstitutional. Although state assistance was provided to adult refugees with disabilities, the same did not apply to disabled child refugees. We represented four applicants and the Scalabrini Centre for Refugees in Cape Town in this case.

In *Hassan & Others*, the LRC sought to have section 7 of the Social Assistance Act, which provided that only South African citizens were entitled to a care dependency grant, declared inconsistent with the Constitution and invalid. We argued that the Department of Social Development must accept and process applications for care dependency grants for the disabled children of refugees. We submitted that section 27(1)(c), section 28, section 9 and section 10 of the Constitution clearly conferred the necessary rights and failure to grant social assistance in this regard amounted to unfair discrimination.

Furthermore, the International Convention relating to children and disability emphasises the importance of social security for children and the disabled.

After considerable delay, the State Attorney indicated that the Department no longer intended to oppose the application. The Department thereafter amended its regulations to enable such children to receive the necessary social grant. We then prepared an application for *Kesangala & Others* seeking to have the Department of Social Development amend its legislation to include childcare grants for the minor children of impoverished refugees. In late March 2012, just before the application was to be launched, the Department of Social Development published a change to its regulations. In terms of the notice, the state finally extended social grants to refugees, as required by the Constitution and international law. The social assistance regulations have now been amended to ensure that refugees are eligible for all types of social grants.

The International Convention relating to children and disability

Articles 23 and 24 of the Convention related to the status of refugees provide that the contracting States shall accord to refugees in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals and, more specifically, in respect of "social security". Social security is seen as those legal provisions in respect of employment, injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme.

Extradition: South Africa stands by constitutional and international principles

The LRC represented the Society for the Abolition of the Death Penalty earlier this year in a Constitutional Court case concerning the extradition of two Botswana nationals on murder charges. Mr Tsebe and Mr Phale had, in separate incidents, fled to South Africa fearing the death penalty in their home country. A full bench of the High Court ordered that they could not be extradited to Botswana in the absence of a written

assurance that, if the death penalty was imposed, it would not be carried out. Following the High Court order preventing South Africa from extraditing them, the government pursued the matter to the Constitutional Court.

The approach of the government in this matter was puzzling given the previous decisions of the Constitutional Court relating to the death penalty. In 1995, the LRC successfully fought to have the Constitutional Court declare the death penalty abolished in South Africa. Six years later, the Constitutional Court heard a case dealing with the legality of the South African government's decision to hand over a suspected criminal to the United States authorities. The Court held that the government may not extradite any suspect who may face the death penalty without first seeking an assurance from the receiving country

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LRC challenges unlawful detentions in Lindela

On 21 February 2012, the LRC re-launched its Immigration Project when it received reports of continued unlawful conduct on the part of immigration officials at the Lindela Repatriation Centre in Krugersdorp, Gauteng. Lindela is the detention facility established by the Director-General in terms of the Immigration Act, 13 of 2002. Section 34(1)(d) of the Act states that no person may be detained in excess of 30 calendar days without a warrant and that such detention may only be extended on warrant for a period not exceeding 120 days. Furthermore, section 28(1)(g) of the Constitution states that a detained child may not be kept with detained persons over the age of 18.

To date, the Immigration Project has successfully secured the release of 29 persons detained in contravention of the Immigration Act and of the Constitution. In the light of continuing consultations at Lindela, the LRC has reason to believe that non-compliance with and abuse of the Immigration Act has become widespread and systematic within the Department of Home Affairs (DHA). The following cases further illustrate our work in relation to unlawful detentions.

On 14 March 2011, the South Gauteng High Court granted the immediate release of Jery Kaculando, an Angolan national, who has been detained as an illegal foreigner in South Africa for 132 days without a warrant. Mr Kaculando was arrested at the border post whilst trying to enter Zimbabwe on his way home to Mushiko, Angola. Dissatisfied with the unwillingness of South African immigration officials to assist him in obtaining a temporary residence permit, he had decided to leave South Africa. However, immigration officials detained Mr Kaculando, first at the Waterport Police Station in Limpopo and then at Lindela. He was released after 132 days in detention and ordered to leave South Africa within 7 days.

On 15 March 2012, the South Gauteng High Court granted the immediate release of Idowu Lateef Sikuola, a Nigerian national, who had been unlawfully detained in South Africa for 114 days whilst in possession of a valid work permit. Mr Sikuola, a computer science teacher, was arrested in King Williams Town, in the Eastern Cape, whilst involved in a labour dispute with the Department of Education. During the 13-hour journey to Lindela, he was only afforded a five minute toilet break and was not given any food. Affixed to his passport is a quota work permit valid until February 2014. The judge sitting in the urgent court stated that 'the validity of his permit alone was grounds for his release'. The judge further questioned the advocate acting on behalf of the Minister of Home Affairs as to why the applicant was arrested in the first place.

On 29 March 2012, the South Gauteng High Court ordered the immediate release of 22 foreign nationals who were being unlawfully detained in South Africa for periods in excess of 120 days. Of the 22 applicants, some had been arrested as early as 3 May 2011. The initial application was set down for hearing on 27 March 2012. The matter was then stood down until Thursday 29 March 2012 in order for the DHA to verify which of the 22 applicants was still in detention.

However, on 28 March 2012, the LRC had received reports that one of the applicants was going to be deported early on Thursday morning prior to his matter being heard in court.



According to the immigration act, no person may be held in detention for a period in excess of 120 days

After numerous attempts to resolve the matter, the LRC was informed by a senior immigration official at Lindela that 'no deportations were taking place'. Subsequent events led the LRC to believe otherwise. The LRC had to intervene on more than one occasion when we learnt that our clients were about to be deported. Fortunately, after judgment was given favouring our clients, all 22 applicants were released.

Working in collaboration with Lawyers for Human Rights, on 3 May 2012, the LRC consulted with three minors being detained at Lindela in contravention of the Constitution and section 139 of the Children's Act, 30 of 2005. Urgent proceedings were launched in the South Gauteng High Court but were withdrawn after an agreement was reached. The children were removed from Lindela and placed in a temporary place of safety.

During the litigation against the DHA, the LRC became aware of riots taking place at Lindela on 26 March 2012. Reports indicated that tear gas and rubber bullets were being fired at detainees and that immigration officials were beating detainees with batons. The LRC reported the incident to the South African Human Rights Commission. We are still awaiting the report of the outcome of its investigation.

Logan Mosieling v The State

In early 2012, the Legal Resources Centre went to court on behalf of the Children's Rights Project of the Community Law Centre, in the matter of minor children convicted of criminal offences. The Child Justice Act, 75 of 2008, is a new piece of legislation and when it was enacted, there was no clarity on the issue of automatic review and there have been a number of contradictory judgments in courts. The LRC hoped that this case would provide clarity.

The case concerns a 15 year-old boy who was charged with possession of drugs. He pleaded guilty to the charge and was found guilty. Sentencing was postponed for a period of one year and he was ordered to submit to the supervision and control of a probation officer. We argued that, when a minor child is convicted of an offence in a Child Justice Court, and if that child should fall into certain categories relating to age and sentence, the conviction and sentence must be automatically reviewed by the High Court. Such an interpretation is in line with the constitutional, regional and international obligations of South Africa.

In the judgment handed down by the Western Cape High Court, it was held that all cases referred to in Section 85 of the Child Justice Act should be the subject of automatic review. The court recognised that the Child Justice Act aims to afford children who are in conflict with the law special protection and specific safeguards. This affirms the constitutional principle that the best interests of the child is of paramount importance in all matters that concern children.

*Director of Public Prosecution v Prins**

The Centre for Child Law, represented by the LRC, was admitted as *amicus curiae*

Interpreting the law to protect children



The LRC also held some presentations on sexual offences Act

(friend of the court) in the Supreme Court of Appeal, following a decision by the Western Cape High Court in a matter concerning charges brought in respect of sexual offences under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

In an unanimous judgment, the Supreme Court of Appeal overturned the Western Cape High Court decision which found that criminal charges could not be prosecuted in respect of sexual offences under the Sexual Offences Act because of the absence of penalty provisions in that Act. The High Court judges had noted that the act provided no punishment for indecent assault (the charge in this case), and that, in terms of the principle of legality, as summed up in the Latin *maxim nulla poena sine lege* (no penalty without law), there is no crime unless and until a law says so and no punishment for an offence unless and until a law says so.

The LRC emphasised the rights of victims of sexual offences, particularly children, in the constitution and under international and regional conventions such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. We submitted that the High Court's judgment ignored these constitutional and international rights of children.

The SCA held that the penalty provisions found in the Criminal Procedure Act, 51 of 1977, empower courts to impose sentences in cases where a person is convicted of sexual offences under the Sexual Offences Act. The fact that the Act itself does not contain penalty provisions does not justify the quashing of charges laid under the Sexual Offences Act. Furthermore, the SCA held that the constitutional principle of legality is satisfied by reference to the sentencing powers enjoyed by all courts under the Criminal Procedure Act. The judgment concluded by setting aside the order of the Western Cape High Court.

* Director of Public Prosecutions, Western Cape v Prins and Others 2012 (2) SACR 183 (SCA)

Judiciary urged to review its recruitment policy

The LRC was instructed by South African National Council for the Blind and the League of Friends for the Blind to apply for their admission as *amicus curiae* in the case of Ms Parvathi Singh, a partially blind acting magistrate. Ms Singh applied for a permanent magistrate position in various courts around the country but was not shortlisted for any of the positions. She was informed that the reason for the decision not to shortlist was “an over-representation of Indian females countrywide”.

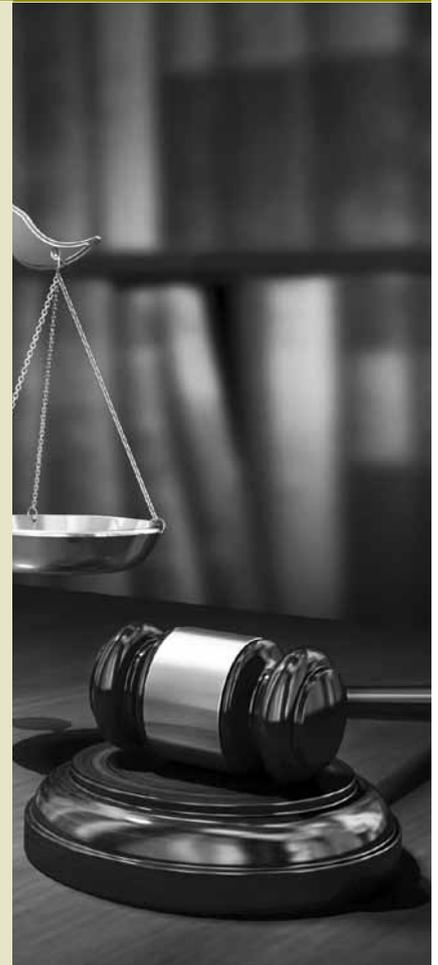
She filed a complaint for unfair discrimination in the Pretoria Equality Court on the basis that her disability was not taken into consideration in the application process. The LRC felt that this case was important in establishing a policy that includes the consideration of disability in judicial appointments so as to prevent unfair discrimination and promote equality. This will also contribute to the diversity of the judiciary and its ability to reflect South African society.

The LRC argued that the appointment policy for magistrates was unconstitutional in that a proper interpretation of the Constitution required South African judicial appointment policies to mention disability as a consideration for appointment. We also argued that the Commission’s approach to disability in the appointment of magistrates is, as it exists, insufficient to fulfil its obligations under the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.

In the light of South Africa’s constitutional obligation to consider international law when interpreting the Bill of Rights, the LRC further contended that, in accordance with the Convention on the Rights of Persons with Disabilities, the government is obliged to take active steps to promote the representation of people with disabilities in the magistrates’ profession.

The Equality Court ordered the Magistrate’s Commission, which oversees the recruitment

process, to revise its criteria for the appointment of magistrates. The new criteria must ‘clearly reflect’ that race, gender and disability will be taken into account when shortlisting candidates. The judge also found that Ms Singh was unfairly discriminated against, as her ‘gender and/or disability was not appropriately considered’.



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that the death penalty would not be carried out. Nonetheless, in this most recent case, the government appealed the High Court decision which clearly applied this principle.

Beyond these issues, the treatment of Mr Tsebe in the Lindela Holding Facility near Krugersdorp was indicative of the attitude of the Department of Home Affairs. He had been detained in South Africa for over a year awaiting an extradition enquiry, where it was ordered that he could not be extradited in the absence of an undertaking from Botswana not to impose the death penalty. After that decision was taken, he was held for another year in Lindela, despite the prior decision, and eventually died before the matter was decided in the Constitutional Court.

The matter was argued at the Constitutional Court in February 2012. In refusing the State’s application for leave to appeal, the court confirmed our submissions and reiterated the principle that the government may not extradite any suspect who may face the death penalty without first seeking an assurance from the receiving country that it will not be carried out. The judgment further ordered costs in favour of our client.

When metro police Captain Suraya Hugo's shifts kept changing, and she was constantly transferred between stations, her five-year-old son suffered "meltdowns", resulting in self-harming behaviour and setbacks in developmental stages such as toilet training. Captain Hugo's son has autism and, as a result, requires a stable routine to ensure his emotional and physical well-being. Despite Captain Hugo's requests to her employer that her responsibility to her son required reasonable accommodation, the transfers continued without further consultation with her, with devastating consequences. As a single mother to a child with special needs, Captain Hugo simply could no longer cope.

Early in 2011, Captain Hugo challenged the repeated unilateral, unreasonable and unlawful transfers on the basis that they prejudiced the well-being of her minor son. She alleged that her employer unfairly discriminated against her in terms of section 6(1) of the Employment Equity Act, 55 of 1998, on the basis of both her gender and family responsibility. In terms of the legal principle of reasonable accommodation,

Court affirms the principle of reasonable accommodation for family responsibility

her employer was obliged to consult with her prior to taking any decision to transfer her, or to change her working conditions, in order to assess whether her child's special needs could be reasonably accommodated in the workplace.

The employer refused to do so and instead, when challenged in the Labour Court, relied on the "employer's prerogative as to the most efficient manner of deploying its human resources." The Metro Police argued that "it is not for the employee to dictate to the employer where the employee wishes to perform the services that are the subject of the contract of employment."

An expert psychologist reported to the Labour Court that autism is a life-long, pervasive neurodevelopment disorder that particularly affects social, communicative and behavioural development. People with autism need structure, clarity and predictability, even into adulthood. Disruption to routine is likely to cause major setbacks for the child and to be highly upsetting for family members. This places a particularly heavy physical and psychological burden on their caregivers. The psychologist reported that it was in the best interests of the child that his mother be allowed to work according to a regular shift system and that it is adverse to his best interests that his mother is transferred frequently. In a settlement agreement that was made an order of court, the parties agreed that the employer would reasonably accommodate the family responsibility of Captain Hugo. Captain Hugo's son has since adjusted well to his and his mother's stable work routine.

Employers must be sensitised to the importance of reasonable accommodation of the needs of employees with caring responsibilities through the provision of flexible work practices. This case, the first in South Africa, provides impetus for this change. As the care burden for workers increases, policy and workplace practises must create flexibility to accommodate the family caring needs of the workforce, lest the time tax involved becomes crippling. This is important not just for the economic survival of the affected household, but also to ensure gender equity in the workplace, creating a more efficient and effective work environment.

Free, prior and informed consent for indigenous communities

The LRC's regional project focuses on the protection of community rights to resources and, in particular, aims to find ways in which to improve the imbalance of power between rural communities in Africa and those interested in their resources; be they government or potential investors.

The imbalance of power is not only a function of the gross inequality of financial resources between these parties, but exacerbated by the fact that the resource rights of rural communities on the African continent continue to be unrecognised within the formal legal systems of their countries. Ironically, while the British Privy Council's pronouncements in 1919 in *In re Southern Rhodesia* that, "some tribes are so low in the scale of social organisation that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilised society", seem outrageous in a world that now accepts equality as a fundamental right, African governments and

investors continue to regard customary tenure as inferior to titled ownership and treat it with the associated indifference. The result is the displacement and resource dispossession of millions of people across the continent as the demand for Africa's land and resources increase.

Our advocacy for the proper recognition of customary law as a source of community rights and resources aims not only to establish community ownership, and the protections that that will entail, but also to promote the principle of free, prior and informed consent. This principle has been established in international law as a right of indigenous groups. But rural communities consulting with potential investors can only have actual bargaining power if they have the right to say "no". We argue that this principle is one found in customary legal systems and, as such, should be applied to all customary communities.

The nature of customary law also provides the basis for our understanding of compensation and reparation. In cases where communities are compensated after removals, the measurement of their loss is generally reduced to the hectares of grazing land and the square metres of their houses. However, if the nature of customary communities is to be understood and recognised, reparation will have to take into account the loss of community, custom and culture.

The LRC's work in this regard is three-fold. We are engaged in litigation, both in South

Africa and, increasingly, in other Southern African countries, based on the proper recognition of customary law and tenure. We have also hosted workshops and other exchanges with lawyers from across the continent and share these discussions through publications and presentations. Finally, we are actively engaging with the African Commission on Human and Peoples' Rights and, in particular, its Working Group on Extractive Industries. Notably, we successfully lobbied for the Commission to adopt a resolution on the situation of extractive industries in Africa, which acknowledges the problem of the non-recognition of customary tenure and the right to free, prior and informed consent.

Community consultation by government and investors is a critical but often overlooked process



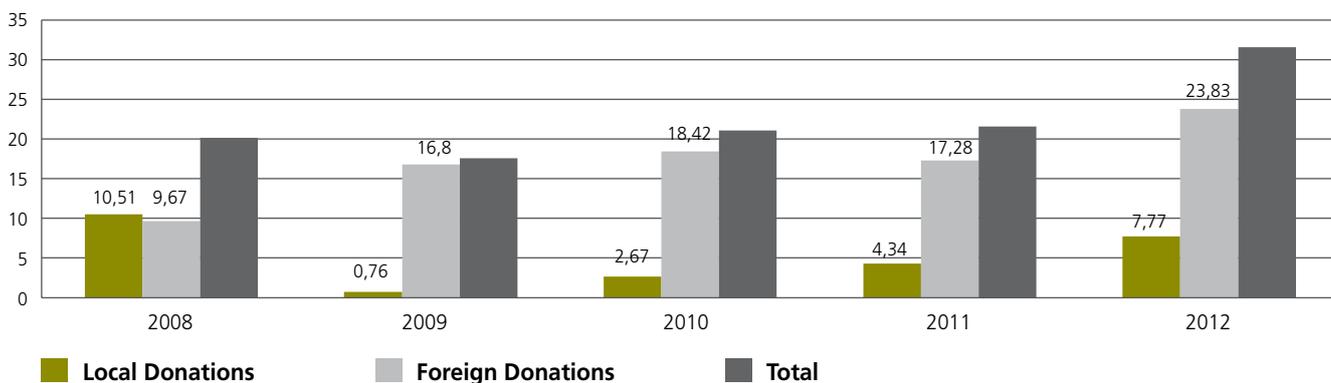
Financial Report on AFS 2011-2012

Legal Resources Trust (LRT)

Given the slow and uneven global and domestic economy that has been prevalent during the last two years, we are pleased to announce that the LRT has achieved an increase of 46.25% in its donations income compared to the previous year.

Grants and Donations

Donations Received 2008–2012 (R'm)



Local Source Donations continue to increase on a year to year basis:

From R 4,4m in 2011 to R 7,8 m 2012

This contributed to an improved local to foreign funding mix of 25: 75 (20:80 in the previous period).

Net Asset Value levelled at R 18,683,216 compared with previous periods:

2009 - R 15,268,101

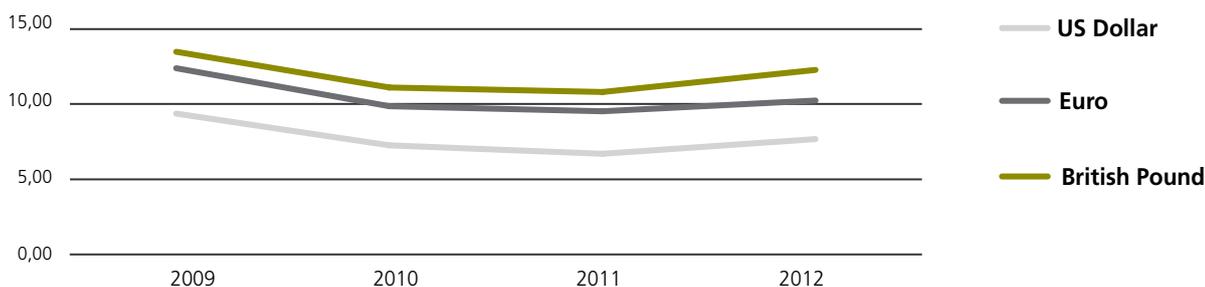
2010 - R 17,026,239

2011 - R 21,625,484

The Rand weakened against the USD, EURO and the British Pound in the financial period under review, which positively impacted on the value of the foreign grants received.

Foreign grants are fixed in the currency of the donor country and its Rand value determined by the exchange rate at the date of transfer.

Rand (ZAR) value per US\$, Euro and GBP on 1 April 2009, 2010, 2011 and 2012



Legal Resources Centre (LRC)

Resource Allocation

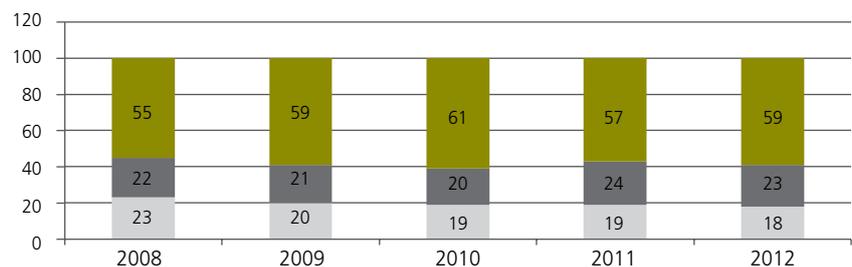
The allocation of resources continues to support and augment the administrative, operational and marketing requirements of the organisation and thereby ensuring meeting the mandate of the organisation.

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

	2012	2011
• Direct Project Expenses	59%	(57%)
• Management and Admin salaries	23%	(24%)
• Office Expenses	18%	(19%)

% Resource Allocation

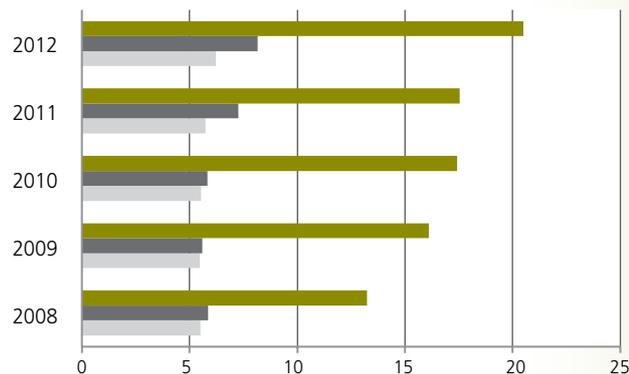
- Office Expenses
- Management & Admin Salaries
- Direct Project Expenses



Project Expenses

Expense Categories: Annual Spent

- Office Expenses
- Management & Admin Salaries
- Direct Project Expenses



Project related expenses have reached R20m in the period under review.

This increase reflects the increased activities on projects in fulfilling the mandate of the LRC.

Systems and Policies

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

The roll out of the various IT systems (Case Management System, Alfresco and SUN Systems) has contributed to the effectiveness of the reporting to both internal and external stakeholders.

Conclusion

For the financial period under review, the LRT needed to generate R34.7 m in donor income, and only realised R31.6m. The shortfall of R3.12 m was funded from reserves of the Legal Resources Trust (LRT).

The LRC still have challenges regarding income and during the next financial period will focus on the organisation building a more diverse income-base. At all times, within these resource constraints, the LRC strives to ensure that it does not compromise the quality of services provided.

Koop De V Reinecke, Financial Director: LRC

Approval of the Annual Financial Statements

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

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

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

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

The annual financial statements for the year ended 31 March 2012 were approved by the Executive Committee on 10th November 2012 and signed by the National Director

Financial Statements Legal Resources Centre

Report of the Independent Auditors

To the Executive Committee

LEGAL RESOURCES CENTRE

Report on the financial statements

We have audited the accompanying financial statements of the Legal Resources Centre, which comprise the statement of financial position as at 31 March 2012, the statement of comprehensive income, statement of changes in reserves and the statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory notes set out on pages 3 to 15.

Executive committee's responsibility for the financial statements

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

Auditor's responsibility

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

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

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

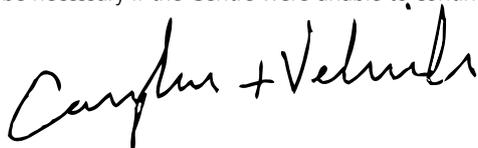
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Unqualified opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of the Legal Resources Centre as at 31 March 2012, and of its financial performance for the year then ended in accordance with its accounting policies.

Emphasis of matter

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



Douglas & Velcich Chartered Accountants (S.A.)

Registered Accountants and Auditors

Johannesburg, 10 November 2012

Legal Resources Centre

Statement of Comprehensive Income

For the year ended 31 March 2012

	2012	2011	2010
	R	R	R
INCOME	38 087 871	29 712 555	27 721 341
Cost recovery	2 787 323	7 181 768	2 445 786
Distribution from Legal Resources Trust	34 724 648	22 370 543	24 744 861
Sundry income	532 145	153 725	528 477
Interest received	43 755	6 519	2 217
OPERATING EXPENDITURE	34 906 751	30 508 053	28 800 829
Salaries and contributions	8 172 452	7 247 766	5 829 598
Office expenses	6 228 928	5 735 141	5 542 124
Administrative costs	1 123 696	910 749	904 051
Books and periodicals	368 368	307 256	328 945
Computer expenses	445 704	355 947	456 935
Depreciation	339 188	355 902	252 055
Lease rentals on operating lease	2 750 146	2 694 961	2 457 969
Printing and stationery	204 965	229 380	203 871
Telephone and fax	584 383	522 416	610 203
Travel - local	412 478	358 530	328 095
Project expenses	20 505 371	17 525 146	17 429 107
SURPLUS/(DEFICIT) FOR THE YEAR	3 181 120	(795 498)	(1 079 488)

Trustees' Report

For the year ended 31 March 2012

The trustees have pleasure in presenting their report on the activities of the Trust for the year ended 31 March 2012.

Nature of activities

The Legal Resources Trust has an oversight and fiduciary role with reference to the Legal Resources Centre, to enable the Legal Resources Centre to provide free legal services in the public interest to poor and vulnerable South Africans.

Financial results

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

Equipment

During the year under review, the trust acquired no equipment. (2011: R nil)

Post financial position events

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

Trustees

Ms Thandi Orleyn (Chairman)

Judge Jody Kollapen

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

Judge Dunstan Mlambo

Judge Lee Bozalek

Judge Lex Mpati

Former Chief Justice Arthur Chaskalson

Judge Mahomed Navsa

Professor Harvey Dale

Mr Taswell Papier

Judge Thabani Brian Jali

Mr Richard Rosenthal

Professor Michael Katz

Resignations during the year:

Ms Sonja Sebotsa

Appointed subsequent to the year

Mr Ezra Davids

Ms Marjorie Ngwenya

Ms Joy-Marie Lawrence

Ms Tshupo Monica Shabangu

Ms Lumka Mlambo

Auditors

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

Report of the Independent Auditors To the Trustees

Report on the financial statements

We have audited the accompanying financial statements of the Legal Resources Trust, which comprise the statement of financial position as at 31 March 2012, statement of comprehensive Income, statement of cash flows and the statement of changes in reserves for the year then ended, and a summary of significant accounting policies and other explanatory notes set out on pages 4 to 16.

Trustees' responsibility for the financial statements

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

Auditor's responsibility

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

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

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

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

Unqualified Opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of the Legal Resources Trust as at 31 March 2012, and of its financial performance and cash flows for the year then ended in accordance with its accounting policies.

Supplementary information

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



Douglas & Velich Chartered Accountants (S.A.)
Registered Accountants and Auditors
Johannesburg
10 November 2012

Legal Resources Trust (Trust Number IT.8263) Financial Statements

Statement of financial position at 31 March 2012

	2012	2011	2010
	R	R	R
ASSETS	24 441 490	27 868 715	19 803 592
Non - Current assets	23 936 403	24 772 373	18 792 837
Tangible assets	1 028 525	1 088 420	1 148 315
Investments	22 907 878	23 683 953	17 644 522
Current assets	505 087	3 096 342	1 010 755
Cash and cash equivalents	505 087	3 096 342	1 010 755
TOTAL ASSETS	24 441 490	27 868 715	19 803 592
RESERVES AND LIABILITIES	24 441 490	27 868 715	19 803 592
Equity and reserves	18 683 216	21 625 484	17 026 239
Initial trust capital	250	250	250
Revaluation reserve	1 110 979	1 068 878	1 026 777
Scholarship reserve	589 717	589 717	589 717
General reserve	16 982 270	19 966 639	15 409 495
Current liabilities	5 758 274	6 243 231	2 777 353
Deferred grant income	5 758 274	6 243 231	2 777 353
TOTAL RESERVES AND LIABILITIES	24 441 490	27 868 715	19 803 592

Legal Resources Trust (Trust Number IT.8263)

Detailed Schedule of Grant and Donation

Income for the year ended 31 March 2012

	2012 R	2011 R	2010 R
Foreign funders	23 830 384	17 275 789	17 922 098
Allan and Nesta Ferguson Trust	-	-	104 000
Anonymous	465 121	-	-
C S Mott Foundation	413 146	256 330	291 476
Comic Relief	4 775 531	4 082 215	2 530 486
Embassy of Belgium	1 900 020	1 312 296	722 177
Embassy of Finland	683 885	320 960	1 060 000
Evangelische Entwicklungsdienst (EED)	2 227 150	2 190 007	3 033 377
Freedom House	719 663	-	-
Hilden Foundation	-	-	56 000
International Labour Organisation (ILO)	-	43 000	-
Norwegian Centre for Human Rights (NCHR)	-	125 000	1 161 000
Rockefeller Brothers	-	-	829 920
The Atlantic Philanthropies	4 525 000	900 000	6 316 280
The ELMA Foundation	6 004 393	5 523 000	1 000 000
The Ford Foundation	947 313	1 333 228	160 057
The Sigrid Rausing Trust	1 169 162	1 049 668	657 325
Tides Foundation	-	60 016	-
US - (Julia Taft Fund for refugees)	-	80 069	-
Local funders	7 771 126	4 346 997	3 168 860
Bertha Foundation	1 000 000	-	-
Bowman Gillfillan	100 000	-	-
Cape Law Society	190 412	-	-
Claude Leon Foundation	170 000	-	225 000
Estate late Barker - Donation of share portfolio	-	-	41 191
EU/DOJ - Foundation for Human Rights	158 322	90 469	(130 000)
Former Chief Justice A Chaskalson	12 000	10 000	18 104
Inyathelo Award	-	90 000	-
Johannesburg Bar council	30 000	-	-
Legal Aid South Africa	1 043 250	1 275 083	695 500
Mones Michaels Trust	60 000	60 000	120 000
National Lottery Distribution Trust Fund	1 425 000	974 896	1 500 000
ND Orleyn	30 000	30 000	30 000
Open Society Foundation for Southern Africa	900 000	829 324	500 000
RAITH Foundation	1 184 092	740 002	-
South Deep Education Trust	1 125 000	-	-
The Frank Robb Charitable Trust	100 000	110 000	110 000
Other donors	243 050	137 223	59 065
	31 601 510	21 622 786	21 090 958

Financial Statements

Individual Donors

- Lynn Aschmann
- Judge Lee Bozalek
- Justice Arthur Chaskalson
- Sarah Christie
- Prof. Hugh Corder
- Brook Dooley
- Adv. Alec J Freund SC
- Henry Gilfillan
- Adv. GD Goddard
- Adv. Yolande Guidozi
- Adrienne Hall
- Moray Harthorn
- Justice Johann Kriegler
- Menzi Kunene
- Yves Laurin
- Janet Love
- Bongani Majola
- Lavery Modise
- Sue Myrdal
- Justice Mohammed S Navsa
- Adv. AJ Nelson
- Mark Nowottny
- Thandi Orleyn
- Adv. PC Pauw SC
- Adv. RM Pearse
- Clive Plasket
- BP Rabinovitz
- Annette Reed
- Koop Reinecke
- Dr. Felix Schreiner
- Adv. Milton Seligson SC
- Adv. Lindelani Sigogo
- MS Stegman
- Greig Stewart
- Adv. D Unterhalter SC
- Adv. Henry P Viljoen SC
- Delysia Weah
- Adv. Greg Wright SC

In-Kind Donors

- Debbie Budlender
- Lorraine Chaskalson
- Richard Moultrie
- Mail and Guardian
- Promise Branding

From our Candidate Attorneys



Mzukisi Loliwe

I joined the LRC Grahamstown office in 2010 as a Candidate Attorney (CA), an experience which turned out to be both fulfilling and rewarding for my fledgling career.

As a new employee, I was given an opportunity to gain practical experience through work and initiatives that make a difference in people's lives. In short, it is not just life at the photocopier.

From day one, I was expected and trusted to produce work of a standard far higher than what I have heard from trainees at other firms. I found myself being given substantial amounts of responsibility on client matters.

The LRC culture in Grahamstown is sociable, approachable and there is an open-door policy which contributes to a lively atmosphere on the office floor. We always greet each other in the morning and say goodbye at the end of the day. For me, it's those little things that made a difference.

There is a really strong social network at the LRC, especially among the candidate attorneys and interns. We often arranged weekend trips (most notable have been those to game reserves and weekend trips to the nearest coastal cities).

When you come to work each day at the LRC, you know your work has a direct impact on the lives of many people. What impressed me the most about the LRC, was the quality and objectivity and the growth opportunities that it provides to talented, hard-working people.

I had a fantastic experience at the LRC and the knowledge will definitely serve me well in my career.



Joseph with Caroline Msimango and Martha Bopape of the LRC

What our interns say

During my seven months with the LRC, I worked with the Johannesburg Office and the Constitutional Litigation Unit and assisted with over a dozen pieces of public impact litigation involving a broad spectrum of human rights. The LRC supports foreign trained lawyers and teaches them skills in the area of human rights advocacy. As a long standing, highly sophisticated and very successful public interest law firm, the LRC brand is strong not only in South Africa, but abroad. My LRC colleagues are talented and dedicated to their work and make the work environment pleasant, friendly, respectful and professional.

The opportunities to work on some of the most cutting edge litigation in South Africa and to meet daily with living legend George Bizos SC made this experience truly once-in-a-lifetime. It was a privilege to play a small part in making meaningful contributions to the LRC mission and vision. I am grateful to the LRC, the Canadian Bar Association Young Lawyers International Program, and the Canadian International Development Agency for what turned out to be the most rewarding, satisfying and meaningful professional experience of my life.

With my deepest respect and admiration,

Joseph Chedrawe

Staff and Supporters

Interview with Dunstan Mlambo, Head of the North and South Gauteng High Court

On 27 April 2012, at the UN Commission on Crime Prevention and Criminal Justice, the **Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** were adopted. The adoption of the Principles follows from a recommendation contained in the Economic and Social Council Resolution 2007/24 titled: *International cooperation for the improvement of access to legal aid in criminal justice systems*, particularly in Africa. The recommendation was that a meeting should take place with a view to developing an international instrument on universal principles and guidelines regarding access to legal aid.

The recommendation read as follows:

6. The United Nations Office on Drugs and Crime, subject to the availability of extra budgetary resources, to convene an open-ended intergovernmental meeting of experts, with interpretation, to study ways and means of strengthening access to legal aid in the criminal justice system, as well as the possibility of developing an instrument, such as a declaration of basic principles or a set of guidelines for improving access to legal aid in criminal justice systems, taking into account the Lilongwe Declaration and other relevant materials.

The Legal Resources Centre's Trustee, Dunstan Mlambo, who holds the position of Chair of the South African Legal Aid Board, and who has recently been appointed as the Head of the North and South Gauteng High Court, chaired the Open-ended Intergovernmental Group meeting in November 2011. The meeting was attended by 44 state parties, as well as a number of international NGOs, and the draft Principles and Guidelines document was developed.

We spoke to Judge Mlambo about the Principles and Guidelines document and the significance of its adoption.

LRC: What was the initial recommendation contained in the Economic and Social Council Resolution trying to address?

In the criminal justice system in particular, many states are behind in providing state-funded legal representation. The majority of people, therefore, go unassisted to their criminal trials in many African states and are not aware that the state has a duty to help them. South Africa is one of few African states where the right to legal representation at state expense is recognised. Therefore, the Economic and Social Council Resolution called on the UNDP to put aside money in order to bring together experts to draft a document containing guidelines and principles for access to legal aid in criminal justice systems.

LRC: Is legal aid a human rights issue?

In the human rights context, the Universal Declaration of Human Rights recognises equality before the law. In order to have equal treatment before the law, assistance is required; especially to those who do not have their own means. Access to legal aid, therefore, equalises the system and ensures that those that are condemned by poverty receive assistance when they require it.

LRC: What do you consider the most noteworthy aspects or values of the Principles and Guidelines document?

The value of the document is that it conscientises state parties regarding their obligations



Dunstan Mlambo, Legal Resources Centre's Trustee - Picture by Independent Newspapers

towards poor people who come into conflict with the law. It is also the first international instrument that brings together all aspects of access to legal aid in criminal justice systems.

LRC: Why is the Principles and Guidelines document significant for Africa?

Although South Africa sponsored the resolution, a number of African countries supported these efforts. Those state parties have now bought into the resolution. A number of delegations from African countries have also visited South Africa to better understand how the South African legal aid scheme works.

LRC: What further steps are required in the process?

It was fulfilling for me to see the Principles and Guidelines adopted by the CCPJ (Commission of Crime Prevention and Justice) in Vienna, as I was also involved in the Lilongwe Declaration in 2004, which started the process of dialogue and which eventually led to the birth of the Principles and Guidelines. The Resolution will be tabled for adoption at the United Nations General Assembly later this year.



Jackie Branfield

Please explain the significance of "Bobbi Bear".

The significance of Bobbi Bear is that we were the first to recognise that any child who had been raped would now be at risk of HIV, due to the high prevalence of HIV in the province [of Kwa-Zulu Natal]. We lobbied for post-exposure prophylactics (PEP) to be given to children. We have been speaking up for rights of the child since our inception. We are not only a voice but an intervention and the point of rescue.

Bobbi Bear, and other activists, have been part of getting the cautionary rule in law for woman scrapped. Under this rule, no woman or child would report rape because their testimony would be viewed with caution and as unreliable. The cautionary rule was finally scrapped in 1997.

Bobbi Bear is further significant because, when a child discloses that he or she has been raped, there is no one trained in how to listen to the child at police stations and hospitals, etc. And that is our point of rescue.

Interview with Jackie Branfield, Founder of Operation Bobbi Bear

What are some of the other ways in which you assist children who are victims of abuse?

We source money to train communities in the appropriate way to approach a child who has been raped. We train them on what the law says and what civil society is responsible for in these cases. We train them about PEP and show them that it cuts down the risk of the child contracting HIV. We train on when to give the PEP and when not to because sometimes it is not necessary to expose a child to PEP as paedophiles will groom the child and may not have penetrated them. We charge for none of this. We are all pre- and post-test councillors, so we are qualified and able to address HIV.

We also run programmes in schools using the HIV edu-toy. This programme demonstrates the tracking of the virus through the body. The reason for using this programme is multi-faceted. It gives children hope if their parents or themselves are positive because it gives them wellness management training. It also shows HIV and Aids ARV [anti-retroviral] Treatment Literacy. This shows them why they must report a rape. On one educational training day, we had 30 disclosures from a school.

We also run a support group under a tree in the area of Illovo. Here we give support to victims from that area who have been through the courts but still need help. Often the parents don't have the money to send them to the Bobbi Bear offices. We also run a feeding scheme at the site on Saturdays. Many children are not guaranteed a regular meal and their only guaranteed meal is with Bobbi Bear on a Saturday morning. We also do life-skills training with them.

Bobbi Bear also does court preparation through one of our programmes. We have seven police stations where our child safety officers work. We also have a container in Umlazi which we use for community building. We run a community safety programme and use the edu-toy. We try to get people to talk about child abuse and we educate them on protocols. This only happens when we have money.

Bobbi Bear also runs an honour programme. When a child has disclosed abuse, she is usually put in a place of safety. But this is like punishment for a child as they are taken from their schools and friends. But they are visited through the honour programme. We will visit the child and see if the child is going to school, and buy a uniform for them if necessary. It is also the responsibility of the honour programme to keep track of the child and liaise with courts to ensure that child is present in court when their case is heard. The honour programme will also buy the child a present on her birthday. We are currently looking for funding for this programme.

Bobbi Bear can only be a short-term place of safety. However, we would like to register as a place of safety, but we cannot prove two years sustainability of the organisation.

Operation Bobbi Bear was founded because of your frustrations with the services offered to children who were survivors of abuse. What changes have you seen since then, if any?

Along with the LRC, and other related children's organisations, after the activism and lobbying which was done after 1995, I saw the changes that the government have tried to bring about. They implemented Thuthuzela centres; they listened to us when we asked for PEP. There is evidence of government changing laws in favour of women and children. The fact that so many women and children (and boys) are reporting sexual abuse shows that, together, we have changed something; However, service delivery is another

question. We changed the cautionary rule. We initially used the edu-toy to train police and courts. The fact that the edu-toy is hailed by everybody as helpful, and that people can better understand the significance of HIV and how it works in the body, means that we have helped bring about change.

Operation Bobbi Bear has been featured in a documentary called "Rough Aunties". What has been the reaction to this?

I cannot tell you the reaction in South Africa. We had it banned here. The producers did not blur out the children's faces and I felt that we needed to protect the identity of the children. We do hand out a few copies of the documentary but there is a disclaimer on the back of the video.

If you are asking did "Rough Aunties" bring money into Bobbi Bear, it brought in a little bit, but not as much as I hoped. There was a negative perception that, because we were featured in this documentary, that we were rolling in money. The opposite is true.

The reaction of South African's; they say how wonderful and knowledgeable the Bobbi Bear staff are. Amongst the richer, white sector; they say we didn't know this sort of thing happened. Amongst the black community; they are proud of the black women working for Bobbi Bear.

Overseas the acclaim has been legendary. We got letters, phones calls and awards. But putting Bobbi Bear on the map and recognising HIV and abuse the risks...I was flown over to Europe talk on PEP, so the message got out.

The documentary was very favourable from a programme point of view, but not in terms of financial gain.

Have you ever encountered negative reactions to the work of the organisation?

Yes, all the time from government departments where there is no service delivery. Also the sexual predators and their families don't really like us. We feel that adult offenders must go to jail.

Can you tell us more about your partnership with the Legal Resources Centre.

Our partnership with the LRC has mainly been through Mahendra [Chetty, Regional Director of the Durban office]. It has been a positive relationship. There were times when I wanted to give up, but Mahendra has always been there to encourage me. He views me as an expert and I value that very highly. If we are stuck on a case, it is the most comforting feeling to have the LRC behind you, to see that justice is seen to be done. The LRC also brought us a fabulous opportunity for training, using Comic Relief money.

What have been significant achievements for you since the founding of Operation Bobbi Bear and what keeps you inspired?

The most significant achievement has been employing rural women, in 1994, who couldn't even read and write, who are now literate child safety officers, recognised by relevant authorities. They are respected by the communities as leaders and are seen as professionals.

Another significant achievement has been the inclusion of PEP into government policy, the dropping of cautionary rule, my partnership with Mahendra, and the various awards that

I have received; the most recent being the one I am most proud of, because it bought in money for Bobbi Bear.

What keeps me inspired? The Bobbi Bear Team, people like you, people like Mahendra, my family...Answering questions like this.

What are some of the challenges you still face as an organisation?

We have got to change the way that Bobbi Bear is run. At the moment we are one big happy, fighting family, but we have got bigger and we have got to get more professional and structured and that always costs money. We have never really accepted government funding. We don't have a proposal writer and we need one.

Our challenges are that people expect us to be sustainable. They come up with proposals and ideas but they are impossible to implement. People's perceptions are that we are super women; that we wear our panties over our jeans and fly around in capes. Society, in general, and funders don't want to pay running costs so it is hard to pay the staff. Luckily I have a husband that is functional but many of the women are single. Society's perception that they should be willing to work for nothing is ridiculous. We, ourselves, have children to educate, rent to pay etc. We need administrators but they cost money.

Our final challenge is that we need to show government two years sustainability so that we can get a licence as a place of safety.

Thank you for the interview and we wish you the very best for you and Operation Bobbi Bear going into the future.

In the words of Monique Salomon, Coordinator at Tshintsha Amakhaya

Briefly give us some background to Tshintsha Amakhaya

Tshintsha Amakhaya (TA) is a strategy - bringing together ten NGOs and their rural constituencies - to strengthen civil society and to support and connect community struggles in land agrarian transformation. The partner organisations are mostly active in the Eastern Cape, KwaZulu-Natal, Limpopo, and the Western Cape. Through action research, campaigns, and building active citizenship, TA seeks to enhance rural people's capacity to secure and realise their livelihoods and rights, and to promote alternative models of land tenure and agricultural production for food sovereignty.

What are Tshintsha Amakhaya's focus areas?

The collaborative process in TA has two dimensions: 1) the work of partner organisations in selected local sites, and 2) joint activities undertaken as a collective across sites at regional and national levels.

The work in the sites with community constituencies is aimed at developing alternative models for land and agrarian transformation, with specific focus on: Agriculture and food security, farm dwellers and farm workers, land reform and cross-cutting foci, such as gender equity and democratic governance.

How does TA impact on the lives of ordinary South Africans?

The work of TA focuses on mobilising and organising people to articulate their needs and demands for good working and living conditions, to defend their rights to land and agriculture-related resources and services, to promote ecologically sound agriculture and livestock production to increase household incomes, reverse hunger and malnutrition, and to establish



Monique Salomon

food value chains for smallholder producers.

What have been the successes of Tshintsha Amakhaya so far?

TA partners are noting positive changes: Participation of people in the sites is increasing, and youth in particular have become more interested and active in farming after seeing food gardens thrive, and money earned from farming. Partners note improvements in marketing of produce and stock. Yet many challenges remain. With the growing interest in agriculture, the demand for land for farming is also increasing. Some partners have started to record income of producers from sales of vegetables, other cash crops, seedlings, and poultry. With a variety of fresh produce becoming available, it is expected that household diets will improve. Farm workers and farm dwellers are more aware of their rights, and some relationships between farm owners and farm dwellers are improving and actively developed. Increased levels of organisation have resulted in purchasing power for agricultural inputs and lobbying for support. Growing support from municipalities to smallholder farmers have been noted. Good working relationships were also established with Traditional Administrative Authorities.

Challenges

NGOs and communities are becoming increasingly impatient with the Government's reluctance to listen to and engage with people's concerns, as demonstrated by the Department of Rural Development's lack of genuine consultation around the draft Green Paper on Land Reform. Protest marches and other acts of resistance are on the increase.

LRC Patrons and Trustees

In your view, what are the biggest obstacles facing NGOs in SA?

Severe budget cuts by international funding agencies have crippled NGOs. Financial constraints are further compounded by steep increases in the costs of living, due to hikes in oil prices, which have triggered rising project costs. As a result, human and other resources have come under pressure. NGOs struggle to afford and retain senior staff and increasingly rely on young, inexperienced field staff - and students - who are placed on short term contracts. With mobilisation and supporting community struggles becoming a key issue for NGOs, the question is whether such a staff profile is adequate to serve this purpose.

What are Tshintsha Amakhaya's long term goals?

Tshintsha Amakhaya's vision for the future is "a society that relies on smallholder agro-ecological farming, and in which rural women and men have agency, are realising their livelihoods, and lead social movements to defend their rights to land and agriculture-related resources, and in which civil society organisations are recognised as key stakeholders in land and agrarian policy and development".

Tell us about your relationship with the LRC

The LRC is an opinion leader in human rights and justice issues. They play an essential role in raising awareness among TA partners and alerting them to pending legislation and policies, and their potential impact on TA's constituencies. These include the LRC's work and submissions on the Marine Living Resources Act, NEDLAC Small Scale Fishing Policy, Spatial Planning and Land Use Management Bill, Traditional Courts Bill (TCB), and customary governance structures in the Eastern Cape. The LRC was instrumental in mobilising NGOs and rural communities - launching the Alliance for Rural Democracy of which some TA partners are part - to challenge the TCB.



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Allied Organisations

Canon Collins Education and Legal Assistance Trust

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

Visit www.canoncollins.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 and Interns

Our staff of more than 80 in four offices is committed to fulfilling the LRC's mission and vision. In addition, since 1979, the LRC has welcomed and benefited from the work of interns from all over the world. Our list of staff and interns is available on our website at www.lrc.org.za/our-people

Documents and Publications

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

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Lefa la LRC



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