

LRC

Legal Resources Centre

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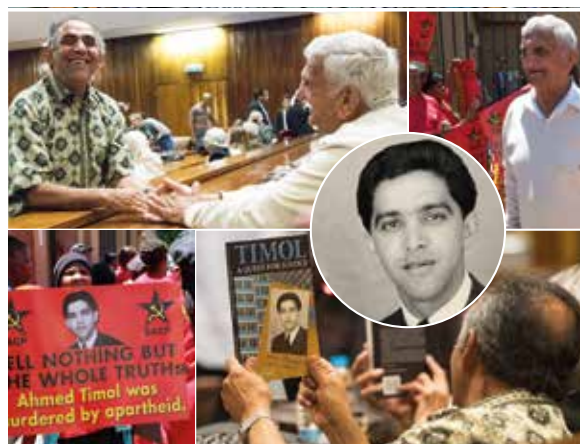
ON THE COVER

The reopening of the Ahmed Timol Inquest

In 2017, a significant 1972 inquest was reopened by the Legal Resources Centre as requested by the family of Ahmed Timol, who died in police detention in 1971. At the original inquest, his death was ruled a suicide. Forty-five years later, this finding was challenged in the High Court, with new evidence presented to the court showing that Timol had been murdered by the security police.

At the time of his death, the family were able to secure a post mortem, which showed that Timol may have been tortured while in the custody of the security police while in John Vorster Square, as the Central Johannesburg Police Station was known at the time. They did not believe that he had jumped from the 10th floor of the building, as was claimed by the security police during the initial inquest in 1972, but believed that he had been pushed or thrown. Timol was one of 73 people who died in police detention and the reopening of the inquest was a chance to demonstrate the truth to the public.

The High Court heard from many witnesses, including former detainees who had been tortured by security police, as well as two members of the security police. Witnesses were also called to testify as to the time of Timol's death. An expert was called to give evidence regarding his injuries, which demonstrated that he had been tortured and would have been unable to walk to the window and throw himself out of it, as was claimed by the security police. An expert also testified as to the trajectory of his fall, which showed that he could only have fallen, and not jumped, as was claimed in the original inquest.



There was palpable relief throughout the court room when, on the 12 October 2017, Judge Mothle handed down judgment, finding that the death of Ahmed Timol amounted to murder with *dolus eventualis*. The court found that Timol had been pushed from the 10th floor or roof of John Vorster Square. The court also found that he had been tortured.

While the judgment proved to be a significant moment in South Africa's justice system, the family of Timol were disappointed that the former security police that testified at the reopening refused to admit that they had witnessed, taken part in, or knew of torture of detainees in detention, despite numerous affidavits and witnesses testifying that they had been tortured or knew of people who had been tortured. The National Prosecuting Authority has now opened cases against the former security police.

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ABOUT

The Legal Resources Centre

In the aftermath of the 1976 student uprisings in apartheid South Africa, new organisations emerged that were committed to ensuring change, despite an increasingly repressive society. The Legal Resources Centre was established in 1979 by the late Arthur Chaskalson, then senior counsel, and the late Felicia Kentridge, together with others such as Geoff Budlender.

In its earliest years, the LRC represented those arrested under the pass laws, which underpinned South Africa's migrant labour system. As the LRC grew from one to six offices, we also challenged forced removals, evictions, dispossession of land, dismissals from employment, consumer abuse, pension and unemployment insurance abuse and detention without trial under apartheid security legislation.

Shortly after the LRC opened its doors, the apartheid state declared a series of states of emergency, which blanketed South Africa for much of the 1980s. LRC lawyers tested these issues in the courts; sometimes interdicting torture, obtaining the release of persons detained without trial, exposing brutal acts against many, including children, and claiming damages for these wrongs.

The LRC staff worked through this period of state-sponsored oppression until the collapse of apartheid. The democratic elections saw a substantive shift in the possibilities available to our clients. LRC lawyers assisted in drafting our Bill of Rights and Constitution. Since 1994,

the LRC has focused on making the new Constitution the basis for the lived experience of people in South Africa and for building trust between citizens and state.

Despite government strides made in delivering services, changing policies and attempting to reduce discrimination, the need for the services of the LRC has not diminished. There remains a large contingent of people who suffer discrimination due to race, class, gender, disability or by reason of social, economic and historical circumstances. Furthermore, inequality has increased since 1994 and poverty remains a feature of the rural and urban landscape. In addition, there has been a growing trend of evasion of accountability and the use of power with a sense of impunity. We remain committed to the advancement of the rights contained in the Constitution and continuing the legacy of the work we have done over the past 38 years.

At present, the LRC works as an independent, client-based, non-profit public interest law clinic, with an emphasis on the development of Constitutional Law and human rights. The LRC offers legal services free of charge, is not restricted by political influence and can respond to the needs of poor and marginalised people. The LRC strives to contribute to democracy, enable vulnerable people to assert their rights, promote gender and racial equality, oppose all forms of abuse of power and is working towards making the implementation of constitutional rights a reality for all.

VISION AND MISSION

The Legal Resources Centre's Vision

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

The Legal Resources Centre's Mission

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

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

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

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

CHAIR'S REPORT

Ms Thandi Orleyn

In March 2017, the Legal Resources Centre was awarded a Gold Medal by the University of the Witwatersrand for its sterling work in advancing Human Rights in South Africa. I proudly attended the ceremony with LRC staff and veteran advocate, George Bizos SC. The acknowledgment of the legacy of the organisation is meaningful, but even more importantly, it is moving to know that the relevance of the LRC remains at the forefront of the minds of those who support and work with it.

During this time, the phase of “Ramaphoria” as it is known, we can sometimes forget the struggles that brought us here. The legacy of the past, and even of the recent past in which former President Jacob Zuma allowed South Africa to be “captured” for his own benefit and power, has left this country devastated. It is implausible to many that inequality can continue to grow, despite the socio-economic protections of the Constitution. But when the political apparatus has been so badly eroded, and the institutions that we have relied on to provide accountability and transparency have been hollowed out, the Constitution remains a dormant document for the majority of people. We need to bring it to life.

The apartheid legacy which disenfranchised the majority, together with the corruption of our democracy, makes South Africa a painful but necessary project. We will be recovering from state capture for many years and civil society, and all the people, organisations and institutions which form this body, will be looked to for hope and protection. It is unfortunate then that the financial and political support for civil society is becoming increasingly



flimsy. Like all non-profit organisations which rely on donor funding, the LRC must seek creative ways to ensure sustainability – including restructuring income streams and considering cost-cutting measures.

We cannot deny, however, that the services of the LRC have become increasingly more important. The hope and protection offered by the Constitution is only a dream unless people on the ground, working in the offices across

the country, can continue to provide their services. The scope and diversity of the LRC's work is truly something to behold. The number of history-making cases that are taken on successfully is inspiring.

The LRC's most important contribution to this country is in the work that it does at the grassroots level. Their focus is on the client in everything they do and every decision they make. It is the client's voice that is prioritised. Clients are the workers of our country, the people most vulnerable to exploitation and discrimination. These are the mine workers, teachers, informal traders, sex workers, those living in government housing, rural women and farm dwellers of South Africa.

As I have said before, we have chosen a path of constitutionalism and justice, and it is proving to be a successful mission. Our judiciary is a strong institution and we continue to obtain success in its findings. The judicial process is very progressive and many of our political and social battles are waged here where our clients have seen their rights upheld. However, we cannot take our eyes off the follow up – ensuring that court orders are implemented and that budgetary and capacity excuses don't become a way of escaping responsibility. The LRC's work to secure rights is a long-term and heavily committed one, which is why it is important that the organisation is provided with stable support.

Last year, one of our Patrons, Lord Joel Joffe, passed on. Our statement in this regard encapsulates the type of people we are proud to associate with, and who's support is essential to us. "Joel was a committed human rights lawyer, an honourable man whose commitment,

persistence and determination combined great intellect and modesty. Both the Legal Resources Centre and the Legal Resources Trust will miss his on-going support, critical engagement and abiding interest in advancing the rights of the clients we serve."

Joel's modesty is of special importance to the LRC. The organisation is of humble beginnings – and we are about to celebrate 40 years of our existence. This is testimony to the people who started it, Arthur Chaskalson and Felicia Kentridge, but also to the people that have sustained it.

I want to thank Janet Love, whose directorship at the LRC is coming to an end as she prepares for the next phase in her life. Janet has been working for 12 years at the helm of this remarkable organisation. Janet tirelessly provided leadership to the LRC, from having to reduce staff in the middle of 2000's to the exponential growth that has seen the budget increase during her tenure from under R20 million to about R60 million at present. During her tenure, the staff complement also saw a substantial increase.

She will be missed but myself, my fellow Trustees, and the staff of the LRC. We wish the LRC all the best as it turns 40 years old and hope that the celebrations serve as a reminder to both the internal supporters and the external supporters about the strength, fortitude and value of its work. I am proud of the transformative nature of this organisation. There is an increasingly youthful complement, bringing with them new passion and energy, as well as creativity and originality. I look forward to seeing how the organisation grows over the next decade.

This is a time of great change, but also a time of great hope.

NATIONAL DIRECTOR'S REPORT

Ms Janet Love

Welcome to the LRC's 2016-2017 Annual Report which represents just a brief snapshot of the work that we undertook and are taking forward to strengthen democracy and human rights in South Africa. This edition focuses on "Transformation".

The quest for a just society is what motivates the LRC to push for transformation that radically improves the circumstances of the poor and marginalised in our country. Our efforts can be seen in the everyday activities of the LRC and in the value of the work that we produce. We need to continue to ask ourselves, "What is the impact of what we do?" "Do we relate to our clients in a way that is transformative?" "Do we work internally in a way that is transformative?" "What is our impact on the legal profession?" "How do we make an impact on policy and law, on network building and participation?" These pertinent questions are intended to provide focus, growth and strategic direction.

However, we recognise that we cannot focus on external transformation without looking at the need to address transformation internally. The impetus from committed members of staff to strengthen internal communication and build more layered structures for internal consultation and decision-making has been coupled with greater internal monitoring of our commitments in relation to staff development, briefing patterns and appointments. It has prompted strong resolution to align the different initiatives around internal transformation and to build greater cohesion.



A critical element of realising the internal transformation imperative relates to our human resource management policies and processes. This was most apparent as a result of the protracted disciplinary proceedings which commenced during the year under review. At the end of 2017, the LRC concluded a process of investigating and severing ties with Henk Smith, a senior attorney who had worked in the Cape Town Regional Office for 27 years.

After an extensive disciplinary hearing, Henk Smith was found guilty of sexual harassment and workplace bullying and his ties with the organisation were severed following his immediate resignation.

While, upon learning of the complaints, the LRC's Executive Committee initiated an investigation which led directly to a decision to institute disciplinary proceedings, no incident of this magnitude can go without a great deal of internal individual and organisational reflection. A process to revise and strengthen the organisation's sexual harassment policy, and to address safeguarding in all its forms, is underway, together with a commitment to provide compulsory training to all staff in this regard.

In order to address the power dynamics – particularly as these are attached to gender – there is a need for more robust engagement to be promoted and facilitated within the LRC and involving the sector as a whole. We recognise that problems go unreported, unchallenged and without redress for long periods, often as a result of inadequacies in the enabling environment for those who bear the brunt of power imbalances. So, defining through engagement what is still lacking and what needs to be put in place, is something we are committed to pursuing.

There is so much that people in the LRC are doing and its work continues to make a profound contribution to meaningful transformation in our country. From the point of view of numbers and geographic spread, the scale of the work that the LRC does with very limited resources, and the incredible staying power that is the hallmark of this organisation, makes our impact remarkable. Some of our recent cases show this impact – and a small number of these are captured in this annual report.

The LRC has been fearless in the cases it has taken on. The use of the courts has always been a ready instrument to resort to so help serve our clients. We have used the

law consciously to get interpretations of our Constitution, and the law within that framework, to provide justice for our clients. We respond as much as possible to current issues. Our work is our hallmark, and this has made us what we are.

We need to treasure those that lead this work. They are not only the lawyers at the forefront of our battles; they are our paralegals, our researchers, our candidate attorneys – and their work would not be possible were it not for the administration, finance, grant, communications and management staff that enables us to execute our work. It is a collective effort. And what is important when we look at this effort, is how we work with our clients. There is a real conscious effort to relate to our clients in a way that not only responds to clients with respect, but also ensures that we are able to understand emerging issues; that we are not just responding to people that come to us but that we can go out and do outreach; and that when we have community clients, we spend time engaging them.

We have taken on board the importance of amplifying the voices of our clients and those of Community Advice Officers. We have achieved this through supporting the communication of our client communities, but also through community journalism training. We have also trained Community Advice Officers on resource mobilisation. Our impact on policy and law, through precedents in litigation, but also through the submissions in Parliament, is groundbreaking. In a relatively short period of time, the impact we have had on the environmental justice framework, for example, be it the carbon tax, seeds, artisanal mining and the Water Act, is remarkable. When we consider the work we have done to advance the rights of informal traders, which has a huge impact on people who will never be part of the formal economy, and which has assisted to secure their livelihoods, we can see the end results of our efforts.

Our submissions in terms of regional and global mechanisms have been positively received. In addition to working at the United Nations Human Rights Council, engaging with Special Rapporteurs and making submissions, we have also been given special consultative status. Just recently, we received United Nations Environment Program (UNEP) accreditation for the Environmental Assembly. Our partnership with the International Network of Civil Liberties Organizations (INCLO) has also allowed us to join globally-focussed court cases and join international conversations around issues like privacy rights and gender rights. These are spaces where we can make tremendous differences.

Our achievements do not detract from our need for continuous improvement. We need to interrogate our organisational matrix to consider how parts of the whole operate in a way that develops expertise.

The context of our work is shifting. Global uncertainty has thrown up moving targets and rapidly changing geopolitical dynamics. Every multinational institution, not just the human rights organisations, is at risk. These include the economic structures that are impaired in the current context. Security structures are also undermined - there is no compass that we can use when we articulate "global standards" for security: they are that opaque.

We are no longer in a euphoric situation in South Africa; we are at a crossroads. We need to interrogate what we mean by the changes in government leadership. The legacy of corruption is not something small in scale and not that easy to overcome. When we look at the issue of what needs to be done, we need to consider what must be put in place. The devil is in the detail. We need to recognise that the future is not going to be an easy time for the country in the run up to the 2019 elections. We must, therefore, set out the transformation agenda that we aspire towards, both externally in South Africa and

globally, as well as internally, to become better equipped to champion the work we do.

This is why the LRC continues to exist and to be embraced by our clients, donors and partners. We thank them for the support and understanding. Accessing justice is a team effort and one which is only enhanced by those around us. My appreciation goes out to the Trustees and a special thank you must be extended to all members of staff at the LRC with whom it has been my privilege to work.





COMMUNITY ACCESS TO LAND AND RESOURCES

Introduction

Section 25 of the Constitution enjoins the South African government to bring about equitable access to all of South Africa's natural resources, and places particular emphasis on the nation's commitment to land reform. Regrettably, land reform has by all accounts not yet succeeded in bringing about such equitable access to resources. While the 'land question', and the argument in favour of amending the Constitution to enable expropriation without compensation, has become one of the central themes of South Africa's current political power struggle, proper analysis shows that land and resource reform have failed in spite of the Constitution, rather than *because* of it. The Constitution provides all the necessary tools for proactive land reform that could have seen the government reach their own target of redistributing 30% of land within 5 years of democracy. Rather, 21 years later, a mere 7% of land has been redistributed.

The reasons for this failure include the lack of political will to trigger constitutional provisions that allow for expropriation; the lack of capacity within the Restitution Commission and the Department of Rural Development and Land Reform to give effect to the relevant legislation; land and resource reform policies that increasingly favour business over the poor; elite capture; non-existent support for communal landholding entities; and the failure of post-settlement support to assist successful land claimants.

To make matters worse, the extraordinary rise of traditional leaders over the last decade has meant that the already insecure tenure of members of traditional communities on communal land has become even less secure. There has

been an increasing assertion by traditional leaders that the land is theirs to do with as they please.

Within this context, the LRC participates in litigation and law reform and supports movement building to address the complexity of the challenge. Unfortunately, given the weak capacity of the State, much of our litigation has had to force the government to obey the rule of law and implement existing legislation. While representing one of our clients in challenging the legislation that re-opened the restitution process, for example, the LRC challenged the government's hasty decision to re-open land claims, which was largely motivated by political gains.

The tenacious *Mwelase* litigation, which seeks to extract the basic implementation responsibilities of the state prescribed in the Labour Tenants Act, illustrates the recalcitrance and even lackadaisical attitude of officialdom and political leadership when implementing legislation. Post-settlement support remains a vexed problem, as illustrated in the ongoing saga of the Popela Community. They have still not received their land despite a successful Constitutional Court decision in their favour, as far back as 2007.

The Legal Resources Centre's litigation and law reform efforts relevant to traditional governance seek to democratise rural spaces by curbing the powers of traditional leaders and elevating the rights of community members to hold their leaders to account. In some instances, our litigation is aimed simply at making members of rural communities visible. In the *Cala* and

Amahlathi cases, the rights of community members to assert a democratic version of customary law to push back against authoritarian legislative impositions were protected. The LRC also continues to represent client communities under the jurisdiction of the Royal Bafokeng Nation; the latter seeking to have all the land under its authority transferred into its name.

Customary law is not only a source of democratic values. It is also a legal system recognised by the Constitution and

a source of property rights for customary communities. The community of Xolobeni, who have famously fought to protect their land on the “Wild Coast” against the invasion of titanium miners, have asked the High Court to declare that they are not only the customary owners of the land they inhabit, but that their customary law allows them to provide or withhold permission for anyone to enter their land. Further north of Xolobeni, the fishing communities of Dwesa-Cwebe have asserted their rights to harvest marine resources in terms of their customary law.

Our work

The issue of labour tenant land claims features in two cases that the Legal Resources Centre has brought to the Land Claims Court in Randburg, Johannesburg. The bigger case, affecting a potential 10 000 labour tenants, is a case brought by **three labour tenants and the Association for Rural Advancement** seeking to force the Department of Rural Development and Land Reform to process land claims made by labour tenants as far back as 1998. This case has set precedent in South Africa by having a “special master” appointed to assist the Department in undertaking this work. The Department has not only failed to process the land claims, but has incomplete records of claims made. A special master would go a long way to accelerating this sluggish process. However, this historic judgment has been appealed and the case has continued in the Supreme Court of Appeal.

In a second case to do with a labour tenant land claim, **Mr Msiza** has taken over a land claim from his deceased father. Delays in the case were caused following a disagreement between the land owner and the state as to the amount of compensation to be paid to the land owner in order for the land to be purchased for Mr Msiza. The issue of compensation is a contentious one in South Africa following land claims such as “Mala Mala”, which saw over a billion rand paid for a piece of land. The Msiza

judgment in the Land Claims Court advanced Section 25 of the Constitution after Acting Judge Ngcukaitobi found that market value must not be given more value than other factors listed in section 25 of the Constitution, including the current use of the land, the history of the acquisition of the land, the extent of investment in the land and the purpose of the expropriation. However, the judgment was appealed at the Supreme Court of Appeal and unfortunately the SCA did not further our arguments for a more progressive view of section 25’s compensation provisions.

A key piece of legislation that was enacted without proper community consultation was challenged by the **Land Access Movement of South Africa (LAMOSA), Nkuzi Development Association (Nkuzi) and the Association for Rural Advancement (AFRA)**, as well as three communal property associations, **Makuleke, Moddervlei and Popela**. The Restitution of Land Rights Amendment Act 15 of 2014 reopened the restitution process for another five years, giving more individuals and communities an opportunity to lodge additional land claims. Previously, the cut-off date for land claims was 1998. Our clients raised two issues: that Parliament and the Provincial Legislatures failed to comply with their constitutional obligation to ensure a meaningful and inclusive public

involvement process before passing the Act, and that Section 6(1)(g) of the Amendment Act states that prior land claims must be “prioritised” – which is vague and gives little guidance on how new claims will affect older claims. The case went straight to the Constitutional Court where the Amendment Act was declared invalid. The Court also put on hold the processing of land claims lodged from 1 July 2014 (when the Amendment Act was enacted and reopened the land claims process), pending the enactment of new legislation. Parliament was given two years to enact new legislation.

Integral to this Constitutional Court challenge was the issue of competing land claims – the reopening of the land claims process has inevitably lead to overlapping claims and the question before the courts was how to adjudicate such claims. This was clarified in the Land Claims Court in the matter of the **Amaqamu** and **Emakhasaneni communities**. We were invited by the Court to make a submission on behalf of our clients, based on our involvement in the Constitutional Court challenge to the Restitution of Land Rights Amendment Act. In its judgment in this matter, the Land Claims Court set out various principles for moving forward in competing land claims; namely that: “The need to dispose of old claims as expeditiously as possible...is manifestly indisputable.” The Court found that, in the instance of competing land claims where one land claim was made before the end of 1998 under the Restitution of Land Rights Act 22 of 1994, and the other under its Amendment of 2014: the court cannot adjudicate or consider the new claim at all. The Land Claims Court found that new claimants who are contesting old claims can be admitted as interested parties only to the extent that their participation may contribute to the establishment or rejection of the old claim. New claimants cannot get compensation or land before there is new legislation.

The Legal Resources Centre and Richard Spoor Attorneys have been supporting a community of anti-mining activists in the **Xolobeni** region of the Eastern Cape who are challenging the actions of the Department of Mineral Resources to allow mining to occur on the pristine dunes which is the home of the community. Transworld Energy and Mineral Resources SA (Pty) Ltd made an application to mine the dunes but, due to significant resistance from the community at significant expense to themselves and their safety, which included filing an objection to the mining right application, the Minister of Mineral Resources announced an 18-month moratorium on the mining right application. In coming to this decision, the Minister referred to the, “significant social disintegration and highly volatile nature of the current situation in the area”. The community has been divided over this issue, with one anti-mining activist, Sikhosiphi Rhadebe, murdered in March 2016 in a suspected assassination.

A significant aspect of the anti-mining case was instituted in 2017. On behalf of the **Umgungundlovu Community**, papers were filed in the Pretoria High Court seeking a declarator stating that the Minister of Mineral Resources may not grant a mining right in Xolobeni without the consent of the Umgungundlovu Community. To date, the Department of Mineral Resources has refused to accept that the community’s consent is required in order for mining to go ahead in the area. If granted, the application will establish that mining rights may not be granted on communal land, anywhere in South Africa, without community consent.

The LRC’s work in this area overlaps, to a large extent, with rural governance. The LRC represents communities in conflict with their traditional authorities; because they are imposed upon the community, act undemocratically or, in the case of the Amahlathi, are not part of their custom. In a ground-breaking judgment in the Bhisho High Court in the latter instance, the senior traditional

leadership was disestablished – this being the first time this has ever happened. The case was brought by the **Amahlathi Crisis Committee**, representing eight villages near King Williams Town in the Eastern Cape, who were challenging a decision by the Commission on Traditional Leadership Disputes and Claims, and of the Premier, that recognised and imposed a chief on the Amahlathi. The Committee argued that the custom of the Amahlathi people was not to have a chief. Instead, they governed themselves through a system of elected chairpersons and have continued to practice this customary law until today. When handing down his decision to disestablish the traditional leadership, the Judge noted his concern that communities have to go through such a prolonged process to have their customs recognised, and commended the Amahlathi communities for not giving up.

The LRC represents the **Bafokeng Private Land Buyers Association, the Setuke Family and the Thekwana Community** in challenging the ability of the Royal Bafokeng Nation (RBN) to go to court on behalf of the traditional community they claim to represent. The RBN are seeking a declarator that all land that is registered “in trust” for the Bafokeng tribe be registered for itself. The RBN has argued that they bought this land and therefore own it, but our clients contend that their predecessors, and not the whole Bafokeng community, were the original buyers of certain parts of the land. They dispute that the RBN is entitled to registration as owners of that land. They also dispute the RBN’s attorneys’ authority to go to court on their behalf. The determination of whether the RBN can do so should be determined first, before the issue of registration of land can go ahead. Our clients raised the defence that the application which seeks to declare the RBN the registered owner of all the disputed land was not properly authorised by the Bafokeng traditional community. In the North West High Court, the court made a finding that the RBN executive council *does* have

authority to make these types of decisions, which our clients appealed. The case continues.

Customary representation of communities was also the centre of a case in the Eastern Cape in which a community were asserting their custom of electing their own headman. The community of Cala Reserve approached the LRC after their chief imposed a headman on the community in 2013 – someone whom they did not recognise a headman. Through the **Cala Reserve Local Planning Committee**, the community have challenged this unlawful appointment to the Premier, the MEC of Traditional Affairs and the Qamata Regional Traditional Council, but to no avail. Finally resorting to court, judgment was handed down in favour of the community. The judge found that the community’s argument, that the legislation allows them to elect their headman, “...advances, rather than retards, the promotion of democratic governance and the values of an open and democratic society by recognising the customary law of local communities in the identification of those who will govern them on the local, and most intimate, level. This, in turn, is a recipe for legitimacy of local government”. Unfortunately, the journey is not over for the community and the LRC have had to intervene once again after officials from the Department of Cooperative Governance and Traditional Affairs staged an election in the community which was won by the Chief’s preferred candidate. The LRC are bringing a review of this latest election and the Premier’s subsequent decision to persist in recognising the imposed headman.

The LRC made submissions as a friend of the court on behalf of the **Serodumo sa Rona**, a community-based organisation based in Rustenburg, on the empowerment provisions of the Mining Charter. The case is ongoing but involves the interpretation of the empowerment provisions in relation to the Constitution and the Mineral and Petroleum Resources Development Act (MPRDA).

Serodumo sa Rona made submissions on two particular issues that have been raised in the matter: 1) does a mining company, once it has received a mining right, have a continuous and repeated obligation to meet a 26% black ownership target as per their empowerment obligation? And 2) can the Minister force compliance with the 26% target? Serodumo sa Rona's submissions argued that the Chamber of Mines is incorrect to contend that the empowerment provisions require only a 'once-off' 26% stake. Instead, in order to achieve substantive equality which is integral to transformation, as required by the Constitution, the 26% ownership requirement must be

ongoing. The High Court found that this obligation of 26% is not ongoing, but this finding is being appealed by the Minister of Mineral Resources.

A jointly-run matter has been recently instituted in Namibia in partnership with the Legal Assistance Centre. We act for the **Hailom People**, the largest San grouping in Namibia which is also the only landless group. The case seeks to recognise the ancestral land of this group. The case will firstly proceed with a class action application for the purposes of bringing the main application on behalf of the entire People.

Submissions, Publications and Workshops

The **Artisanal Mining Report** (2016) was released detailing research done on "illegal" or artisanal miners in South Africa – otherwise known colloquially as "zama zamas". The report argues for their inclusion into the formal economy.

The LRC's attorney, Wilmien Wicomb, has conducted an extensive research project on the right of **Free, Prior and Informed Consent (FPIC)** in legislation, and its implementation in South Africa, Malawi, Mozambique,

Zambia and Zimbabwe. This report will be available in 2018.

The LRC represents LAMOSA at the **North West Premier's Commission of Enquiry** into the decision-making and financial flows of the Bakgatla ba Kgafela, one of the platinum-rich communities of the North West Province. The Commission is uncovering crucial evidence relating to the manner in which the resources of rural communities are vulnerable to looting by elites; both internal and external to the community.

High Level Panel: Land reform focus

On the eve of the Constitutional Court challenge on the Restitution of Land Rights Amendment Act (see above), the LRC invited a number of community representatives to make presentations to the **High Level Panel on the Assessment of Key Legislation & the Acceleration of Fundamental Change**, chaired by former President Kgalema Motlanthe.

The session was held at Stay City (Berea, Johannesburg) on 15 February 2016 and was attended by community

representatives from across the Gauteng, Limpopo, KwaZulu-Natal, Eastern Cape, North West and Mpumalanga provinces. The hearing was also conducted with representatives from civil society; namely **LAMOSA, Nkuzi, AFRA, Ntinga Ntaba kaNdoda and the LRC**. In addition, **LARC** (Land and Accountability Research Centre) and **MISTRA** (Mapungubwe Institute for Strategic Reflection) were present in their capacity as research institutions, as well as the **South African Human Rights Commission**.

The High Level Panel was established to probe whether the laws made by Parliament are working to advance the rights of people living in South Africa and to assess if there are any unintended consequences in the implementation of these laws. One of the key areas of focus for the High Level Panel is land reform legislation and policy. Part of the Panel's mandate is to identify reasons for delays in land reform and the lack of implementation of certain legislation, and to find solutions to these failures.

The session provided a unique opportunity for communities to meaningfully reflect on their experiences

of land reform. At the time, the High Level Panel had not yet begun the call for written and oral submissions. However, the LRC was able to facilitate this process for more than 80 community representatives. A summary of the proceedings can be accessed via our report: **“Land Restitution in 2016: Where to from here? The LAMOSA judgment, thought pieces and resources for communities and NGOs.”** The High Level Panel report has since been released and we are glad to say that many of our contributions have been recognised and included in the Panel's recommendations.

Case	Royal Bafokeng Nation
Summary	A number of communities under the jurisdiction of the traditional leadership of the Royal Bafokeng Nation are opposing attempts by the RBN's administration to have all the land currently held in trust by the Minister, on behalf of the Bafokeng people, transferred to them. These communities say that the land that they occupy belong to them as a 'sub-community' and not to the Bafokeng people as a whole. The communities have also challenged the claim of the Chief to be acting on their behalf in asking the Court to register the land in the name of the RBN administration.
Impact	The case is establishing important principles of democracy and participation to be inherent to the customary law that traditional leaders rely on to give them the mandate to make decisions and administer the communal resources on behalf of the community. It also seeks to challenge the persistent colonial distortion of customary land ownership as 'communal' to the extent that individual, household and 'sub-group' rights of members of the community are completely ignored.
Case	Restitution of Land Rights Amendment Act
Summary	This case challenged the constitutionality of a key piece of land reform legislation which reopened land claims in South Africa. The legislation was rushed through Parliament and thus did not go through the rigorous and inclusive public participation process that the Constitution requires. This matter was successful and the Restitution of Land Rights Amendment Act was declared unconstitutional
Impact	This case defends the rights of thousands of people and communities who made land claims in terms of the initial process but who are twenty years later, still waiting for their claims to be finalised. The finalisation of these claims was threatened by the re-opening of the land claims process as it would have added an estimated 100 years to the finalisation process! The case further reinforced the rule of law, and the principle of a participatory democracy, whereby people have a say in the laws that are passed.

Case	Amaqamu and Emakhasaneni
Summary	<p>Following the declaration of unconstitutionality of the Restitution of Land Rights Amendment Act, this matter came before the Land Claims Court and the LRC joined as <i>amicus curiae</i> to make submissions on how the courts should deal with competing land claims, one claim being made before the Amendment Act, and one after the advent of the Amendment Act. The Land Claims Court found that it cannot adjudicate or consider the new claim at all.</p>
Impact	<p>The LRC has been involved in helping the Commission, the legislature and the courts in thinking through how to deal with the overlapping claims that now exist on land, and plan for a further potential re-opening so that this does not prejudice old claimants. The Land Claims Court brought clarity to the issue in this case where it was definitively decided that new claims brought under the Amendment Act will wait for the completion of old claims, bringing important certainty on the issue.</p>
Case	Mwelase
Summary	<p>The Association for Rural Advancement and labour tenants living on a farm in Kwa-Zulu Natal are seeking to compel the Minister of Rural Development and Land Reform to process land claims that were made under the Land Reform (Labour Tenants) Act as long ago as 1998. The clients proposed that a Special Master be appointed to oversee the implementation of this legislation that, as admitted by the Department, had simply fallen of the table.</p>
Impact	<p>The case should bring significant relief to the thousands of labour tenants who have been stuck in a legislative scheme that the government failed to implement. It establishes the principle of the rule of law and asserts the possibility of courts intervening, in exceptional circumstances, to provide oversight of the executive in order to ensure that legislation is implemented.</p>
Case	Msiza
Summary	<p>The issue of calculating just and equitable compensation for expropriation is central to this case that involves a labour tenant land claim. Mr Msiza had inherited the land claim from his late father, but now awaits the courts to make a final pronouncement of the compensation that should be paid by the government to the land owner. The Land Claims Court found that the owners of the land were entitled to an amount less than market value and much less than the amount they claimed was just. Unfortunately, the SCA overturned the judgment which is now on appeal at the Constitutional Court.</p>
Impact	<p>In the context of the debate over the amendment of the Constitution to allow for expropriation without compensation, this case is very important in illustrating that just and equitable compensation can be far less than market value (and even zero!) within the parameters of the Constitution.</p>

Case	Amahlathi
Summary	<p>The case was brought by the Amahlathi Crisis Committee, representing eight villages near King Williams Town in the Eastern Cape, who are challenging a decision by the Commission on Traditional Leadership Disputes and Claims, and of the Premier, to recognise a chief of the Amahlathi. The Committee argued that the custom of the Amahlathi people was not to have a chief. The case was successful and the court disestablished the chieftaincy.</p>
Impact	<p>The case marked the first time that a community in the former homeland areas were able to have their traditional leadership disestablished. Remarkably, whereas under apartheid rural communities could have either traditional authorities or elected community authorities depending on their custom, the post-constitutional legislation disestablished all elected rural authorities and forced all communities under traditional leaders. The Amahlathi was the first to rely on their customary law to assert their own democratic form of governance.</p>
Case	Cala II
Summary	<p>This case was brought on behalf of the Cala Reserve Local Planning Committee. The community of Cala Reserve approached the LRC after their chief imposed a headman on the community in 2013 – contrary to their customary law. The community's customary law has always been to elect their headmen. Judgment found that the community's customary law had to be respected, but a subsequent contrived election process resulted in the imposed headman still being recognised. This election result is under review.</p>
Impact	<p>The Cala matter is important for establishing that the source of authority of traditional leaders is the customary law of the people they serve. It is a very significant mechanism for holding traditional leaders – and government - to account.</p>
Case	Etosha
Summary	<p>This matter in Namibia is being instituted in partnership with the Legal Assistance Centre. We act for the Hai//om People, the largest landless San grouping in Namibia. The case seeks to recognise the aboriginal ownership of the Hai//om over Etosha National Park. Given the narrow standing rules in Namibia that do not allow for representative actions, individual leaders of the Hai//om will first ask the Court to certify that they may represent the Hai//om people as a class/group for the purposes of bringing the claim for the land, cultural, religious and development rights of the Hai//om people.</p>
Impact	<p>Apart from seeking to establish the class action route as a means for groups to approach the Court in Namibia, the case is also potentially very significant in establishing the applicability of peoples' rights, protected in the African Charter on Human and Peoples' Rights, in domestic courts. In the absence of any legislation in Namibia affording people the right to land restitution, the Hai//om people are asserting their rights to land, culture, religion, development and natural resources in terms of the African Charter. If successful, this may have significant implications for communities across the continent.</p>

Case	Baleni
	<p>The Umgungundlovu Community is seeking a declarator stating that the Minister of Mineral Resources may not grant a mining right in Xolobeni without the community's consent. The community is arguing that, while the Mineral and Petroleum Resources Development Act extinguishes the rights of common law owners to consent to mining on their land, it does not do the same for customary law ownership. They argue that this is constitutionally justified because customary ownership was historically not recognised as ownership and therefore customary owners suffered from discrimination and arbitrary deprivation of their land and resources, while common law owners have always been afforded the highest protection of their rights.</p>
Summary	
	<p>If granted, this declaratory application will establish that mining rights may not be granted on customary land anywhere in South Africa without the consent of the affected rights holders. It will vindicate the many mining-affected communities in South Africa that demand the right to say NO!</p>
Impact	
Case	Serodumo sa Rona
	<p>The community-based organisation is challenging the interpretation of the empowerment provisions of the Mining Charter, calling for 26% black ownership to be a continuous and repeated obligation for all mining companies. Judgment was recently handed down in favour of the Chamber of Mines. It is likely to be appealed.</p>
Summary	
	<p>The implementation of a continuous and repeated 26% black ownership requirement for all mining companies will ensure that companies do not comply with the mining charter as a tick the box exercise, but will be forced to continue seeking sustainable ways of transforming the ownership of the industry.</p>
Impact	

ENVIRONMENTAL JUSTICE



ENVIRONMENTAL JUSTICE

Introduction

Mining and its associated environmental destruction are one of the greatest threats to future generations. For too long, mines have been favoured over more sustainable and equitable forms of land use. The mineral richness of South Africa is a curse for communities living along the platinum, gold and coal belts. Their lives are affected by relocations, pollution, unfulfilled promises in Social and Labour Plans (SLPs), health issues and fighting amongst artisanal (small-scale or “illegal”) miners. This is particularly an issue for poorer communities living near the mines.

Communities have been unable to successfully challenge mines, or enforce accountability for the failures of the SLPs. However, communities across South Africa are

starting to push back on unrestrained and unequal development. Together with civil society organisations, such as the LRC, they are challenging mining rights’ allocations and empowering communities to influence developmental decisions which affect their rights.

This LRC’s work to promote environmental justice seeks to ensure that vulnerable and disadvantaged communities share equally in the benefits of development and are not burdened unfairly with the negative consequences and impacts on the environment arising from development. In this context, key concerns include the socio-economic and environmental impact of nuclear energy, access to safe water and the impact of mining on rural communities.

Our Work

The issue of community consent and consultation is not restricted to localised issues, but also to issues of national concern. In a highly publicised case, in which the LRC’s environmental attorney, Angela Andrews, acted as advisor to the applicants due to her extensive research and experience on the issue, **Earthlife Africa Johannesburg and the Southern African Faith Communities Environment Institution** went to court in a bid to challenge the South African government’s plan to procure 9600 MW of nuclear reactors. This procurement was challenged on the basis that the procurement deal was not conducted in a fair, equitable, transparent, competitive or cost-effective way. The case was successful and the Western Cape High Court found that

the proposed deal was unlawful and unconstitutional. However, SAFCEI and Earthlife continue to monitor the situation as the plan for nuclear energy has not been scrapped altogether by the South African government.

Access to resources is dependent upon transformative legislation and policies which enhance equality and sustainability. In the case of small-scale fishers, government recently implemented the Policy for the Small-Scale Fisheries Sector in South Africa. This is a policy which seeks to enhance access to fishing rights and yet failed to provide a small community of fishers with the justice they deserve. The **Langebaan small-scale fisher community** approached the LRC following

a decision by the Department of Agriculture, Forestry and Fisheries to restrict them from fishing in an area of the Langebaan lagoon in the Western Cape. On the other hand, white land owners were not restricted from fishing in the same area. After going to court, we were pleased

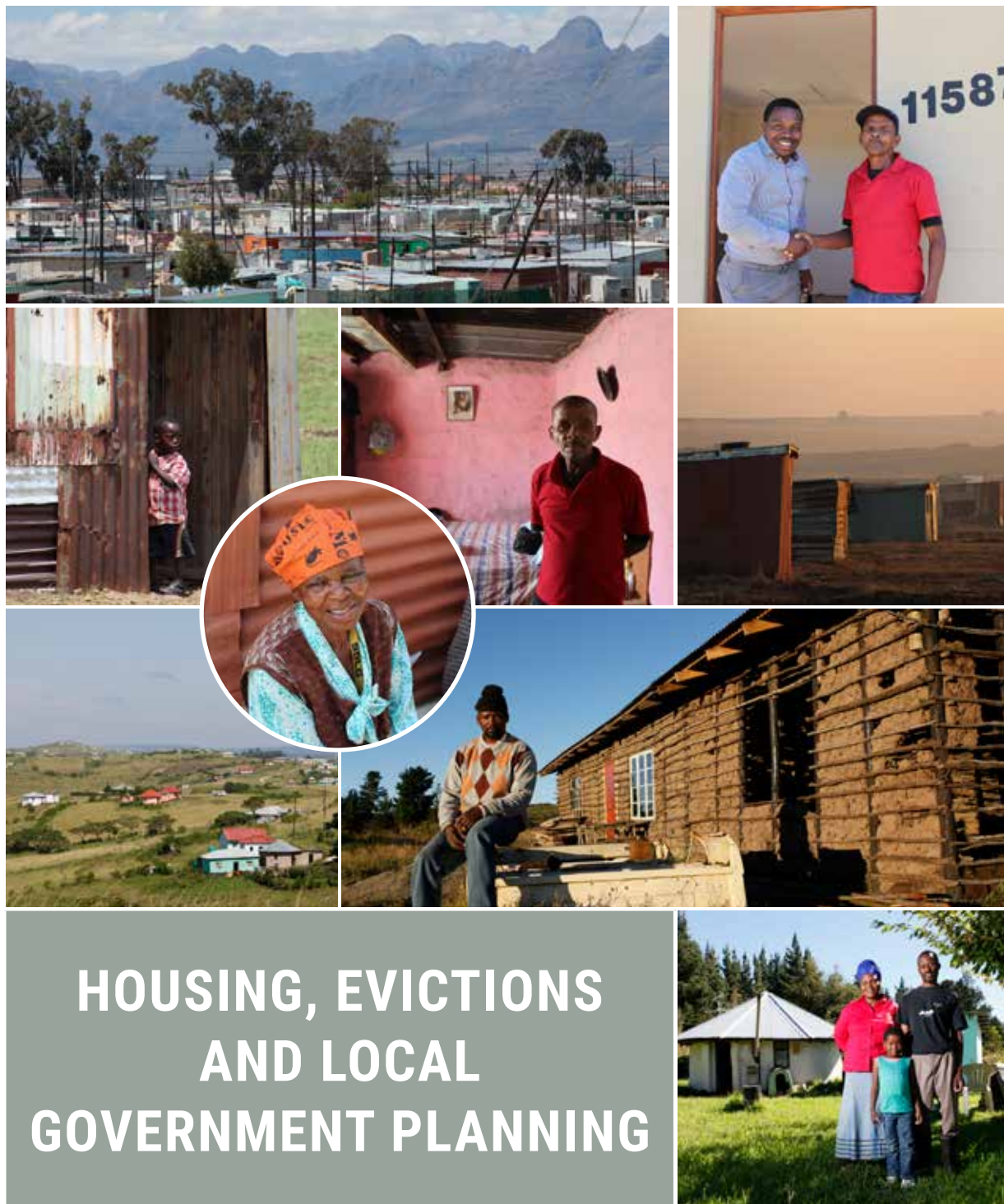
that judgment found in favour of our clients – finding that their ban is arbitrary and irrational and constitutes unfair discrimination against the fishers on the grounds of race. These restrictions were set aside.

Case	Langebaan small-scale fishing
Summary	The small community of fishers challenged their restriction from fishing in a part of the Langebaan lagoon. Their restriction was found to be arbitrary and irrational and constituted unfair discrimination.
Impact	This case enforces the principle that all policies regarding fishing must be fair and not discriminate against small-scale fishing communities. This protects the rights and livelihoods of thousands of fishers and their families.
Case	Nuclear litigation
Summary	The government of South Africa planned to introduce an expensive nuclear energy into the country. This was challenged on the basis that the procurement deal did not include a consultative process, as required by the Constitution.
Impact	The success of the case emphasised that any plans or policies introduced in South Africa must go through a fair, equitable, transparent, competitive and cost-effective process, in which the public gets a voice in which to agree or challenge it.

Submissions, publications and workshops

The LRC developed the booklet, “**A Practical Guide for Mining-Affected Communities**” (2016) to assist communities that are impacted on by mines, whether through land negotiations, community relocations,

pollution effects or labour provision, to understand their rights and how to hold mines accountable for the promises they make to communities.



HOUSING, EVICTIONS AND LOCAL GOVERNMENT PLANNING

HOUSING, EVICTIONS AND LOCAL GOVERNMENT PLANNING

Introduction

Access to housing in South Africa, although a guaranteed right, is still deeply divided along income and racial lines. The term, “spatial inequality”, has become a buzz word amongst housing activists. In 2016’s Household Survey, the statistics show that very high percentages of black and coloured populations continue to live in informal or very cheap formal housing structures (RDP housing), with 42.6% of black Africans and 28.7% of coloured households living in houses worth less than R50 000, while 83.8% of white and 63.1% of Asians/Indian households live in houses valued at over R400 000.

According to the Department of Human Settlements, access to housing still remains one of the most pressing issues in South Africa. Between 2002 and 2014, the percentage of people living in informal settlements only decreased fractionally, from 13.6% to 13.1%, despite government strides to deliver housing. In fact, housing backlogs continue to grow in South African cities: In 1994, the urban housing backlog was determined to be

approximately 1.5 million housing units with an annual growth rate of around 178,000 units.

Current figures concerning the housing backlog are not readily available and part of this stems from the fact that an official linear waiting list does not exist, as discussed in a document by the Socio-Economic Rights Institute of South Africa entitled, “Jumping the Queue”. Instead “there are a range of highly differentiated, and sometimes contradictory, policies and systems in place to respond to housing need”. The SERI report noted that the process lacks transparency and is marred by corruption.

A significant area of the LRC’s work has been to fight corruption through litigating the right of access to housing and reforming the law relating to evictions. The LRC continues to protect the rights of victims of unlawful housing schemes and non-complaint, irresponsible lenders, and provides support to people to enable them to obtain documentation needed to secure their tenure.

Our Work

With debt in South Africa on the increase, more and more people resort to lending from unregulated or fraudulent schemes, which can have devastating consequences for families. In Johannesburg, we have over 100 clients who have lost their homes, or are vulnerable to losing their homes, due to lending money from a “reverse mortgage scheme”; in this case, the **Brusson Finance Scheme**. This scheme saw them mistakenly sign over the ownership of their homes. Instead of signing a loan agreement, they signed a transfer of ownership. The cases are at various

stages of litigation, except for one, in which we received judgment at the Constitutional Court. The Constitutional Court found that, in the **Moore’s** case, the couple cannot be expected to pay for a fraudulent loan obtained under the Brusson Finance Scheme. The Moore’s house went on auction because Brusson had given over ownership to a third party who defaulted on payments to the bank. An urgent interdict stopped the sale of the house, but then the Moore’s approached the court in order to restore ownership of the house into their name. This was

resolved by the Court when it declared that the property be returned to the Moores. Absa Bank, which was owed the money from the third party, wanted the Moores to pay what was owed to the bank, but the Constitutional Court found that Absa had no further claim to the money.

A similar scheme operating in the Eastern Cape resulted in the **Tshathu** family losing ownership of their home. The scheme, **Dream World Investments**, also fraudulently obtained ownership of the Tshathu's home through a loan agreement. When they were about to lose their home, the family approached the LRC, who went to court to get the agreements declared unenforceable and to set them aside. We were successful, with the court relying on the precedent set in the Moores case. The court found that there was no intention to sign over ownership of the home and the agreement could therefore not be enforced. The Tshathu home was reregistered in their name.

Assisting people to challenge their evictions forms a part of the housing work of the Legal Resources Centre. In a case in Durban, a seventy-eight year old woman had to defend her right to have her granddaughter and great-granddaughter remain living with her in a granny flat. **Mrs N** had unknowingly signed over ownership of her house to her son, and her son attempted to evict her granddaughter and great-granddaughter, who served as her primary care-givers. On her behalf, the Legal Resources Centre argued that the granddaughter was not an unlawful occupier and that Mrs N's son could not disturb her right to use and enjoy the property in accordance with the usufruct registered in her favour. The central issue of our appeal was whether Mrs N's son had satisfied the fundamental requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act). The court held that Mrs N's right to enjoy the fruits of the property could be transferred to another person subject to the preservation of the character of the property; the usufructuary had not ceded nor transferred the usufruct to her granddaughter and that the right to enjoy the fruits of the property was being shared with the

granddaughter by consent of the usufructuary. Mrs N's tacit consent to allow her granddaughter to reside with her created a legal relationship, and the permission to use or occupy was revocable at the will of the person granting it. The court ordered Mrs N's son to yield to the rights of the usufructuary. The court also found that Mrs N's son acted contrary to the law by forcing our client and her family to live in an outbuilding and by seeking to evict the granddaughter and great-granddaughter, since Mrs N's granddaughter did not fall under the category of persons classified as an "unlawful occupier" as defined by the PIE Act.

Again in Durban, another pensioner was threatened with eviction after her house was unlawfully sold by the municipality to a third party. **Mrs Khonzeni Mpulo** has been living in her house for just under 25 years when she was informed of eviction proceedings against her. The person evicting her, Mr Robert Motaung, had bought the house from the eThekweni Municipality unlawfully. The ownership of the property had previously come into dispute as Mr Motuang's family had lived there prior to 1989 and then left it vacant, fleeing political violence. But in a later adjudication process, it was confirmed that the Mpulo family was the legitimate claimant of the property. Despite this, in 2011, Mrs Mpulo was informed by the ward councillor that the property had been sold to Mr Motaung in 2008. In 2013, Mr Motuang brought an application to evict Mrs Mpulo from her home. The LRC represented Mrs Mpulo in having the sale set aside. The matter was heard on 7 September 2016 in the Pietermaritzburg High Court. We were successful in defending Mrs Mpulo and the Court set aside the decision of the Municipality that sold the property to Mr Motaung.

Some families living in **Yeoville** in Johannesburg were represented by the Legal Resources Centre after the owner of the building they are occupying tried to evict them. The 27 adults and six children had lived in the building since 2000 and 2001 following the payment of a once-off fee to a person who presented themselves

as being in charge of the property. The owners of the property, Revelation Church of God Investment Company, tried to unlawfully evict them – and the occupiers had to spend almost two weeks living on the street before the LRC intervened. The court allowed them to return to their homes. However, the details of the eviction infringed on the rights of the occupiers and resulted in injuries and damage to property. The notice of eviction contained a different address and was not signed. The occupiers were evicted at 4am in the morning by men dressed in plain clothes. The residents asked for a copy of the eviction order to be shown to them but this request was denied. After they phoned the Yeoville Police Station for assistance, two police officers arrived. They requested to see the eviction order, were taken aside and allegedly shown one. However, despite repeated requests by the residents and their legal counsel to see the eviction order, it was not produced. The Legal Resources Centre also attempted to access the court order giving rise to the eviction, but the order was not stamped or signed. The LRC then contacted the attorneys on brief. The original attorneys did not have knowledge of an application for eviction and did not have evidence of a court order. The eviction was therefore unlawful.

People living in shacks in informal settlements in South Africa are extremely vulnerable to the elements. In Alexandra in Johannesburg, in an area known as **Wynberg**, people were living in shacks made of corrugated iron and gum poles. They were constructed by the City of Joburg some ten years ago as a temporary housing solution following an eviction order against the residents as part of the Alexandra Renewal Project. The occupiers of the shacks had not been relocated to permanent housing and the poor living conditions have impacted on the residents' health, with many developing health conditions such as arthritis and pneumonia. Following severe storms, many of the shacks were in a poor state and the LRC intervened on behalf of the residents. The residents were seeking emergency assistance - asking the City to repair and

renovate the shacks of the residents, to an extent that such dwellings provide sufficient shelter to withstand the elements for at least the duration of the rainy season. The court ruled in the residents favour and the City repaired their shacks.

People living in shacks also face another vulnerability – that the local municipality will demolish their homes when they occupy land unlawfully. This occurred time and again to a group of people living in **Madlala Village** in Durban, despite the LRC getting a court order to stop the demolitions. EThekweni Municipality then had to defend its actions because they kept on defying the court order – which resulted in our clients having their homes and property destroyed. Personal belongings of our clients were also destroyed, including school uniforms and identity documents. The municipal officials used guns with rubber bullets to intimidate the residents and force them to vacate their homes. This is not the first time that the eThekweni Municipality has acted unlawfully when demolishing homes. Furthermore, in 2015, the court found a blanket court order which would have allowed the Municipality to demolish homes on 1568 properties, in and around Durban, unlawful.

Access to housing has many dimensions. In a case in Durban, the LRC challenged the rules governing a hostel in which a number of poor women lived. **Thokoza Hostel**, which is owned and managed by **eThekweni Municipality**, had a policy that minor children are not allowed to live in the Hostel with their mothers. Officials of the Municipality had, at times, prevented minor children from entering the Hostel. The children would return home from schools in the surrounding areas only to find that they were not allowed into the Hostel. Their mothers' pleas were ignored. The LRC intervened to challenge these rules. On behalf of the 26 affected women, we secured an order which allowed the 24 minor children (including one unborn child) to continue living at the Hostel until the second part of the case is finalised. The second part of the case is challenging the legality of the rules, arguing that they are

inconsistent with the Constitution and should therefore be declared invalid and set aside. The matter will be argued in the Durban High Court on the 8 May 2018.

The LRC's Durban office also leads a case seeking to provide indigent communities with **free basic electricity**. The case was brought on behalf of the **Electricity Action Group** (EAG) against the Msunduzi Local Municipality and Eskom. EAG represents the interests of poor residents who accessed electricity using a prepaid electricity meter and who do not receive free basic electricity. EAG and the LRC approached the court to compel the Municipality to provide free basic electricity and install, replace or repair prepaid meters. This was the first public interest case in this country to clarify the rights of citizens to access free basic electricity. The case was settled, with the Municipality agreeing to meet the demands of EAG. There has since been only partial compliance with the court order by the Municipality, which is unsatisfactory to our client and the Legal Resources Centre has enrolled a contempt application against the Municipality. The matter continues.

The LRC's housing work is not just confined to urban areas. In two cases, the LRC are working on behalf of people who live on agricultural land; in one case, occupiers, and in the other case, farm dwellers. The LRC represents approximately 375 desperately poor households who are being evicted from property that is an agricultural holding close to the Johannesburg city centre known as **Miredel**. The occupiers have lived there since 1993, paying rent under valid lease and sub-lease agreements. The eviction is being brought under the **Extension of Security of Tenure Act** (ESTA). Representing the occupiers, the LRC argued in the Land Claims Court that evicting them would be unlawful and invalid - in that it was not just and equitable to terminate their occupation rights in terms of ESTA. Furthermore, there are elderly and long-term occupiers residing on the property whose rights enjoy special protection under ESTA and the occupiers should not be evicted without

making provision for suitable alternative accommodation. The Department of Rural Development and Land Reform indicated that alternative accommodation must be provided to the occupiers. However, the Department had failed to adequately consult with the occupiers and consider the individual circumstances of each family. The case was postponed in order for further arguments to be made regarding the responsibilities of other parties to the occupiers, like that of the provincial governments and the municipality, and also to hear arguments about the payment of compensation by the state to the owner of the property.

After more than 7 years of legal engagement and litigation, LRC clients who reside on a farm called **Shoreline** are on the verge of having the City of Joburg fulfil their obligation to provide the residents with permanent housing on the land. This case is an important example of the value of LRC's capacity to provide assistance to a community over a protracted period of time, as initially the LRC defended the clients' rights not to be unlawfully evicted and secured a court order to have alternative accommodation provided. Since then the LRC has supported the residents in engaging with the City to ensure compliance with the court order.

The LRC also represented the **Trust for Community Outreach and Education** (TCOE) in making submissions to the Constitutional Court in a matter between a farm dweller, Yolanda Daniels, and a farm owner. Daniels is a farm dweller and tried to make improvements to her home, including installing a window, water supply, wash basin, ceiling, level floors and paving, but the owner of the farm objected to these. TCOE made arguments that the improvements that Daniels wanted to make falls within the constitutional meaning of adequate housing. Preventing Daniels from making those improvements limited her right to adequate housing. The TCOE sought to invoke the horizontal application of the Bill of Rights. This means that socio-economic rights, such as the rights to housing, impose a negative obligation on private parties.

In essence, private parties, here being the owner of the farm, are generally obliged not to interfere or diminish the enjoyment of the right to adequate housing. The judgment handed down in the Constitutional Court, which

found in favour of Ms Daniels, explicitly links access to land and housing with the protection of dignity, finding that Ms Daniels has the right to make upgrades in order to improve the way she lives.

Matter	Tshatshu & Moore
Summary	Due to signing over ownership of their houses in fraudulent mortgage schemes, the LRC's clients have nearly lost their homes. The LRC have taken on the matters for numerous people in order to challenge this and have succeeded over time in protecting the ownership rights of our clients.
Impact	The fraudulent lending schemes in South Africa potentially affect thousands of people. By setting a good precedent in our cases against the banks, more people will be able to ensure that they don't lose their homes.
Matter	Trust for Community Outreach and Education
Summary	The LRC represented the TCOE in making submissions in a matter in court where a farm dweller, Yolanda Daniels, took the farm owner to court after he refused her the right to make improvements to her home.
Impact	The case promotes the horizontal application of the Bill of Rights in regard to housing whereby private parties, here being the owner of the farm, is generally obliged not to interfere or diminish the enjoyment of the right to adequate housing. It recognises that the right to housing and tenure is linked to the right to dignity.
Matter	Thokoza Hostel
Summary	The LRC challenged the rules governing a hostel in which a number of poor women lived. Thokoza Hostel is owned and managed by eThekweni Municipality. The policy of the Hostel prevented minor children from living with their mothers. We received a court order which ensured that they could do so and are challenging the legality of such a policy.
Impact	The case challenges the rules set out in local government-owned hostels and ensures that the rights of women and children are protected.
Matter	Mrs N
Summary	The LRC represented a seventy-eight year old woman defending her right to have her granddaughter and great-granddaughter remain living with her in a granny flat on a property – she had usufructuary rights but her son then tried to evict them.
Impact	This case clarified that usufructuary rights provide benefits to those who live with the right's holders.

Matter	Madlala Village
Summary	<p>A group of occupiers living in Madlala Village in Durban had their shacks demolished and belongings destroyed despite the LRC getting a court order against the eThekweni Municipality to stop the demolitions. We were able to get an interdict to stop the demolitions, but also challenge a blanket court order which would have allowed the Municipality to demolish homes on 1568 properties, in and around Durban – the court found it unlawful.</p>
Impact	<p>This case has had a positive impact on thousands of shack dwellers throughout the eThekweni Municipality who were under threat of eviction by an unlawful blanket eviction order. The case has also provided the Madlala Village community with access to justice through ensuring that the Municipality fulfils the lawful requirements of an eviction.</p>
Matter	Mpulo
Summary	<p>The LRC represented Mrs Mpulo, a pensioner who was threatened with eviction after her house was unlawfully sold by the municipality to a third party. We challenged the sale of this home.</p>
Impact	<p>The LRC were able to ensure the protection of a pensioner and challenge a municipality's actions in selling her home unlawfully.</p>
Matter	Electricity Action Group
Summary	<p>The case was brought on behalf of the Electricity Action Group against the Msunduzi Local Municipality and Eskom and represents poor residents who accessed electricity using a prepaid electricity meter but who did not receive free basic electricity. EAG and the LRC approached the court to compel the Municipality to provide free basic electricity and install, replace or repair prepaid meters.</p>
Impact	<p>This is the first public interest case in this country to clarify the rights of citizens to access free basic electricity.</p>
Matter	Yeoville
Summary	<p>The LRC assisted a small number of families who were evicted from a building in Yeoville. The eviction was deemed unlawful because it was fraudulent.</p>
Impact	<p>The case was able to assist a number of families and individuals by ensuring that they weren't unlawfully evicted.</p>

Matter	Wynberg
Summary	A number of families living in Wynberg in Johannesburg lived in poor quality shacks, which were damaged following severe storms. The LRC intervened on behalf of the residents and were able to ensure that the municipality repaired and renovated the shacks to ensure the families were protected from further storms.
Impact	The application provided a short term solution by repairing damaged shacks. The long term solution is a full upgrade which will entail access to permanent housing, as well as access to permanent basic services. An in situ upgrade will ensure the effective utilisation of government funds, as well as ensure that the community's housing needs are met.

Matter	Miredal
Summary	The LRC represents families being evicted from property that is an agricultural holding close to the Johannesburg city centre. The eviction is being brought under the Extension of Security of Tenure Act (ESTA). We are attempting to protect them from being evicted without being given access to alternative accommodation. Furthermore, there are elderly and long-term occupiers residing on the property whose rights enjoy special protection under ESTA.
Impact	The case challenges the government's failure to adequately consult with occupiers and is attempting to reinforce the principle of providing alternative accommodation to evictees. The case also examines what the responsibilities are of various parties, such as the national, provincial and local government.

Matter	Shoreline
Summary	The LRC clients who reside on a farm called Shoreline are on the verge of having the City of Johannesburg fulfil their obligation to provide the residents with permanent housing on the land. The case started when the City tried to evict them from the land and we intervened on their behalf.
Impact	This case is an important example of the value of LRC's capacity to provide assistance to a community over a protracted period of time, as, initially, the LRC defended the clients' rights not to be unlawfully evicted and secured a court order to have alternative accommodation provided. The case is also one of the few cases whereby the government has used its Constitutional powers to expropriate land for a public purpose. Furthermore, the compensation offered was not necessarily in line with the market value.

Submissions, publications and workshops

The LRC produced a booklet, the “**Handbook on the Rights of Informal Trade Workers**” to assist informal traders in the eThekweni Municipality to know and access their rights. It

provides information on ways to acquire permits to trade, how to recover confiscated goods, and who creates and enforces the laws that apply to informal trading.

EDUCATION AND CHILDREN'S RIGHTS



EDUCATION AND CHILDREN'S RIGHTS

Introduction

An article in the Economist in January 2017 entitled, "South Africa has one of the world's worst education systems", provides a dismal picture of the state of education in the country. Despite South Africa spending a higher portion of its Gross Domestic Product (GDP) on education compared to many other countries (6.4% of GDP as opposed to the average in European Union countries of 4.8%) we have an unequal education system, with children coming from poor families and rural provinces bearing the brunt of a failing system. According to 2016 statistics, only 37% of children starting school go on to pass the matriculation exam and just 4% earn a degree.

Based on data from the 2016 Household Survey, there were approximately 13,188,000 learners enrolled in public schools. Of these, 65.3% attended no-fee schools and relied on government schemes to provide them with teachers, textbooks, materials, transport and food.

Our work

The Department of Basic Education provides scholar transport to needy learners but, in recent years, the failure to properly implement the policy has left thousands of children stranded. This forces learners to walk long distances to school and places them at risk of assault, rape, poor weather conditions and health concerns. In the Eastern Cape the problem is more acute, as many smaller schools are being closed down due to urbanisation and falling learner numbers. This forces learners to walk long distances to neighbouring schools. In 2014, for example, the MEC for Education closed two small schools, Dindala Primary School and Hoyi Primary School, and learners

Nationally, 69.8 % of learners walk to school and 8.2% are transported by private vehicle. Of the students that are enrolled in a public school, 77.1% benefited from a school feeding scheme. Should any of these schemes fail or leave out deserving learners, and they do, the right to education is severely compromised. Access to education for learners with disabilities is even more precarious and unobtainable for many, with a Department of Basic Education report, updated on 26 February 2016, estimating that nearly 600,000 children with disabilities are out of school (Groundup, "Disabled and out of school").

With education comprising multiple facets, it's important that all the elements are in place to ensure that learner's rights are realised. The LRC has been working to address failings in the system for many years, spearheading litigation in the Eastern Cape through the Grahamstown Regional Office.

were moved to **Tyityaba Primary School**. Despite meeting the criteria to receive scholar transport, thirty-one learners were refused transport by the Department. Although scholar transport is just one aspect of the right to education, the additional cost of transport places an immense financial burden on families. One of the parents of the affected children, Mrs Ntombebandla Nqinana, was desperate: **"I cannot afford to give my child breakfast every morning. I also can't afford to buy new school uniforms and shoes. I have to rely on my mother's old age grant in order to buy food and pay for household expenses."** The LRC approached the court and requested

that transport be provided to the affected learners. In an out-of-court settlement, the Department agreed to transport the learners, largely because of earlier LRC litigation (*Tripartite Steering Committee v Minister of Basic Education 2015*) where the Eastern Cape High Court set a precedent by recognising that scholar transport forms part of the constitutional right to basic education. By giving content to the right to basic education, this case paved the way for similar litigation on education and basic services.

Across the country, provincial departments of education are closing farm schools in rural and remote communities in an attempt to eradicate small, underperforming schools. The consolidation and closing of schools must be conducted in a participatory manner so as not to prejudice learners and their parents. Unfortunately, schools are often closed without following the procedures set out in the South African Schools Act (SASA) and without making provision for the learners from closed schools to access education. Families are often forced to send learners as young as seven-years-old to live in under-staffed, poorly supervised hostel schools in distant towns, and many learners drop out of school altogether. Moreover, the decision to close farm schools is often taken without consulting the parents or school governing bodies of the affected schools. The principals at the **Huntley Glen, Belmont, Belvedere** and **Lynedoch** farm schools, all located in the Fort Beaufort District near the town of Bedford, were told that their schools would be closed by the end of the first term in 2016. The Eastern Cape Department of Education (ECDOE) proposed that learners be sent to a hostel in Adelaide, 80 kilometres away. There was no consultation with parents and a mother of two learners at Huntley Glen, Yandiswa Nqangela, summed up her discomfort with the planned closure: **“Many of the learners will find a move to a hostel extremely difficult after having experienced nothing but rural farm life....parents are concerned about the general safety of hostels and the increased risks to learners**

that will accompany less supervision. The threat of violence and sexual assault may increase for learners who are living in hostels away from their families.”

The Legal Resources Centre represented the **Centre for Child Law and the school governing bodies of the four schools** by seeking a court interdict to stop the closures and to compel the Department to properly consult with the schools. The case was settled and the ECDOE agreed to follow the correct procedure before closing down the schools.

Textbooks for learners have been in the spotlight for a few years due to the failure of the Department of Basic Education to provide schools with their prescribed textbooks in a timely and coordinated fashion. The Supreme Court of Appeal ruled in 2015 that it is the duty of the Department to provide every learner with every textbook prescribed for his or her grade before the commencement of the teaching course for which the textbook is prescribed. In two schools in the Eastern Cape, **Nombulelo Secondary School** in Grahamstown, and **Bethelsdorp Comprehensive School** in Port Elizabeth, a large proportion of their textbooks, valued at R356 677,59, were not delivered for the 2016 school year. Both schools are “no fee” schools which rely entirely on government support to function. After the LRC intervened, a settlement agreement was reached with the Department of Education who agreed to deliver the 2017 textbooks – meaning that the schools could take comfort in the fact that the necessary textbooks for two years would be available for their learners.

Issues of inadequate and broken furniture have been evident in the Eastern Cape for many years. While there has been some hope – court orders in 2012, 2013 and in 2014 in *Madzodzo and 7 Others v the Minister of Education and 4 Others* have all resulted in more than 200 000 units of furniture being delivered – many learners are still sitting on the floor, or on makeshift seats made from bricks and paint tins, or sitting four to a desk designed

for two. According to one list compiled by the ECDOE in 2014, almost 40% of the province's 5,700 schools needed furniture. The LRC and our client, the **Centre for Child Law** were pleased to be able to accelerate the process of having furniture delivered with a judgment handed down in early 2016 that compelled the Department of Basic Education to set up a task team to assess furniture needs and deliver all the furniture needed by 30 April 2017. This was a significant step in the legal process, as auditing of furniture needs is the first step to delivering the right furniture to all needy schools.

On 17 March 2016, the ECDOE announced that funding transfers to schools for the Norms and Standards, post provisioning (staff) allocation and National School Nutrition Programme (NSNP) would be based on the learner numbers where valid South African identity, passport and permit numbers have been captured on the South African School Administration and Management System, (SA-SAMS). This raised alarms, as many children across the country have not been registered by the Department of Home Affairs. In the past, schools were funded based on actual numbers of learners, regardless of whether they had valid identity, passport and permit numbers. Requiring these documents in order to register in a school would leave many learners unfunded. This decision meant that schools will have less to spend on learners registered in the system, compromising their education and nutrition. To support those not registered in the system, schools will either have to fundraise for their shortfall or will ask unregistered learners to leave. This is a violation of the rights of learners. The LRC, representing the **Centre for Child Law and the School Governing Body of Phakamisa High School** in the Eastern Cape, launched an application to declare the decision unconstitutional. We await judgment. This judgment will hopefully have a marked impact on thousands of learners in the Eastern Cape who are currently being excluded from funding and from schools.

On 30 March 2017, **Phakamisa High School** in Port Elizabeth received R306 730.75 from the ECDOE after the Legal Resources Centre intervened to ensure that money, which had been outstanding on their paper budget and their school nutrition budget since 2016, was paid. In September 2015, Phakamisa, a no-fee school in Zwide, was forced to merge with Thembalabantu Senior Secondary School and Lwazilwethu Senior Secondary School. The merger was overseen by the Eastern Cape Department of Education's (ECDOE) district office in Port Elizabeth, but did not comply with the procedure for the merging of schools as set out in the South African Schools Act. The schools were forced to merge after it became apparent that the infrastructure at Thembalabantu and Lwazilwethu was so dilapidated and unsafe that learners could no longer be taught in the school buildings. After the merger, Phakamisa's learner numbers increased from 544 to 860 (the number has since declined and is currently at 729) and the other two schools were closed. Despite the increase in learner numbers, the 2016/2017 paper budgets and NSNP budgets for Thembalabantu and Lwazilwethu were not transferred from the closed schools to Phakamisa. Phakamisa was consequently forced to provide education to 860 learners while only receiving funding for 544 learners. This had an impact on the quality and quantity of the food provided through the school nutrition programme and the overall financial situation at the school. The school was forced to use much-needed maintenance funds to subsidise the nutrition programme and pay their outstanding accounts. At the start of the 2017 school year, Phakamisa was experiencing financial problems and had no money to feed the learners or pay any of their bills. On 17 February 2017, the Legal Resources Centre, representing the **school governing body of Phakamisa**, applied to the High Court in Grahamstown for an order compelling the ECDOE to merge the budgets of the three schools and pay Phakamisa the outstanding money for their paper budget and NSNP budget. The parties reached a settlement and

the ECDOE agreed to pay the outstanding money within 21 days of the settlement. This payment has ensured that Phakamisa can settle their outstanding debt and provide school nutrition to all the learners.

Moving into higher education, the LRC were pleased to represent the **Students for Law and Social Justice** (SLSJ) in making oral and written submissions to the Commission of Inquiry into Higher Education and Training (known as the Fees Commission). The Fees Commission was set up following student protests arising from fee increases at tertiary education institutions, which would add to the existing financial burden placed on lower income families. SLSJ's submissions stated that higher education must be made progressively available and accessible and that fees are a primary consideration in determining a student's ability to access higher education. Furthermore,

for some prospective or current students, fee-free higher education may be the only way in which the constitutional right to access further education can be achieved. However, SLSJ did not interpret the Constitution to mean that, ultimately, higher education should be fee-free for all; rather that higher education should be universally available and accessible to all, which may require that it is fee-free to certain students. At the time of this report, the Fees Commission report was released. It recognises that everyone has a right to further education and that the State has a duty to progressively realise this right. It further found that free higher education is not in the best interests of South Africa's higher education sector and that those who can afford to pay must pay, setting out ways which existing funding schemes can be made more equitable, adequate and sustainable.

Case	Tyityaba Primary School
Summary	The Department of Education's decision to close schools has led to many learners having to take transport to schools further from where they live. When this transport was not made available to certain learners, the LRC intervened to ensure that this basic right is provided to needy children – and further requested the finalisation of a scholar transport policy in the Eastern Cape.
Impact	The finalisation of a scholar transport policy could benefit thousands of learners that are either not being transported, or have not had the decision not to transport them communicated to them so that they can query the decision.
Case	Centre for Child Law
Summary	When furniture was not delivered to a number of schools in the Eastern Cape, the LRC stepped in to assist the schools to take the Department of Basic Education to court. Together with the Centre for Child Law, we also compelled the Department to set up a task team to assess furniture needs of all schools and deliver the furniture needed by a certain date.
Impact	The development of a task team for furniture meant that the reach of this case could be broadened to other schools not captured in the litigation, and provided a means for greater cooperation between the LRC and Department of Education. The case also resulted in the development of a schools furniture policy, and reform of the shambolic system of tracking furniture needs and ensuring delivery.

Case	Nombulelo and Bethelsdorp schools
Summary	A large portion of textbooks for 2016 had not been delivered to two schools in the Eastern Cape, Nombulelo Secondary School and Bethelsdorp Comprehensive School. After intervening, a settlement agreement was reached with the Department of Education who agreed to deliver textbooks for two years.
Impact	This case reiterates that textbooks are a key component of the right to education.
Case	Huntley Glen, Belmont, Belvedere and Lynedoch farm schools
Summary	A number of principals of farm schools were told that their schools would be closed and learners would be sent to a hostel 80 kilometres away. There was no consultation with parents. The Legal Resources Centre represented the Centre for Child Law and school governing bodies to stop the closures and compel the Department to properly consult with the schools.
Impact	This case upheld the principle that the public and parents should be consulted when school closures affect the rights of children and that any school consolidations or closures should not prejudice learners and their parents.
Case	Centre for Child Law and Phakamisa High School
Summary	A decision by government to only fund learners with identity, passport and permit numbers was challenged due to the fact that it prejudices a large number of children, as well as their schools, who are unregistered on any government system, impacting on how much funding it provided to schools.
Impact	This case will impact on thousands of learners, as well as the schools they come from, in ensuring that funding is provided for all of their needs within the context of education.
Case	SLSJ Submissions to the Fees Commission
Summary	Following mass protests on campuses across the country due to the increase in fees, a Commission was set up to hear inputs on the way forward for students who cannot afford higher education. The LRC represented Students for Law and Social Justice in making submissions. A report was released which eases some of the burdens on students, but does not scrap fees altogether.
Impact	The Commission's report recognises that everyone has a right to further education and that the state has a duty to progressively realise this.

Submissions and international work

The LRC were part of a coalition of organisations that drafted an Alternative Report to the African Committee of Experts on the Rights and Welfare of the Child. Prepared by the Alternate Report Coalition – Child Rights South Africa (ARC – CRSA) coalition – the report was a response to the country report submitted to the African Committee by the government of South Africa. While recognising South Africa's relatively comprehensive child rights protection framework, the coalition responded to the fact that some aspects of the framework are problematic,

and the lives of the majority of children in South Africa are characterised by serious challenges. The 100 page report details them more comprehensively, but some of the issues raised included violence against children, harmful practices such as botched circumcisions and forced marriages, the burden of childhood tuberculosis, unaccompanied migrant children, statelessness, lack of registration of births, failures of children with disabilities to access services and many other challenges.

Research

Following research on the National School Nutrition Programme (NSNP) in the Eastern Cape, research fellow, Anna Bulman, drafted a report on the findings, entitled: **“Realising every child's right to nutrition: An analysis of the National School Nutrition Programme in the Eastern Cape.”** The NSNP is a nationally funded scheme which provides a daily meal to learners in South Africa's poorest schools during the school term. Research at eight schools shows the challenges faced by schools when implementing the scheme – including some children being excluded from the scheme due to not having identity documents, inadequate funding, late payments and the continued exposure of poor households to food insecurity and hunger. The report (and accompanying smaller booklet) gives a number of recommendations. These include adding a daily breakfast, improving the food servers' pay, including funding for security, better

infrastructure and training for teachers. The report can be found on our website.

In 2015, Cameron McConnachie was approached to be the field researcher for a comparative study undertaken by the **Open Society Foundations** looking at the role of strategic litigation in improving “equal access to quality education” in India, Brazil and South Africa. Interviews were conducted with judges, lawyers, clients, teachers, and learners involved in various pieces of litigation undertaken in South Africa over the past eight years. The research was submitted to Ann Skelton from the Centre for Child Law, who wrote the report. The report was completed in early 2017 and was officially launched in April 2017 in Sao Paulo. The report can be accessed at <https://www.opensocietyfoundations.org/reports/strategic-litigation-impacts-equal-access-quality-education>.



EQUALITY AND NON-DISCRIMINATION



EQUALITY AND NON-DISCRIMINATION

Introduction

The LRC's Equality and Non-discrimination (END) work focuses on making the promise of Section 9 of the Constitution a reality for all persons; especially those that are marginalised and vulnerable for various reasons. These classes of persons include women, children including refugee children, refugees, persons with disabilities and Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons. Guided by fundamental rights enshrined in the Constitution, the END project has committed to an intersectional perspective to equality and, therefore, to a multidimensional approach to finding the answers to realise the right to equality.

The right to equality before the law is written into the South African Constitution as a founding principle and fundamental value, as well as a stand-alone right. Taken broadly, as part of LRC's comprehensive outlook on the meaning of safe and liberated individuals and communities, this right encompasses an array of transformative social

and economic components. The END project seeks to explore these components in pursuit of a more equal South Africa. There remains significant and pressing gaps in the realisation of these goals throughout the country and, from inception, the LRC's END focus area has and continues to work steadfastly to ensure that steps are taken to remedy these gaps.

The END Project works to ensure that these values are realised and affirmed through creative and effective combinations of strategic and impact litigation, advocacy, law reform, education and networking. Thus far, the project has made diverse and significant contributions to the development of jurisprudence on the issues, and continues to do so, to ensure that vulnerable and marginalised persons are empowered to affirm and enjoy their right to equality and are able to exercise their own agency, bodily integrity and self-determination.

Our work

Increasingly, marriage is becoming an option that many people do not exercise. Rather, people are opting to enter into committed, long-term partnerships. However, opting for a life-partnership over a marriage often leaves one vulnerable to discrimination, as "relationship rights" generally stem from marriages in South Africa. What happens to people in same-sex partnerships when their partner dies without a will? Are they allowed to inherit from the estate of the partner, even though they never married? This was the question the Constitutional Court

was faced with in *Laubscher N.O. v Duplan and Another* 2017 – specifically, what are the intestate inheritance rights for same-sex permanent partners in light of the enactment of the Civil Union Act 17 of 2006, which legalises and regulates same-sex marriage. Mr Duplan was in a partnership with Mr Laubscher for 12 years before Mr Laubscher passed away without a will. The brother of Mr Laubscher claimed to be the heir to the estate, which Mr Duplan contested. The LRC represented the **Commission for Gender Equality** as a friend of the court, making

submissions that supported Mr Duplan. We argued that same-sex partners should be allowed to inherit – that no *one* type of family relationship should be prescribed or preferred over another and that the prevalence of permanent life partnerships is increasingly common and should be afforded recognition. The Constitutional Court agreed that Mr Duplan should inherit, as someone in a same-sex partnership, but didn't extend this benefit to heterosexual life partners.

Women who are in abusive relationships, in that they are experiencing emotional, physical, sexual or financial abuse, can seek protection orders against the abusive partner. These are issued at Magistrate's Courts under Section 6(4) of the **Domestic Violence Act 116 of 1998** (DVA). An interim order will precede the granting of a final order, which can only be granted by a Magistrate after a hearing. The LRC made submissions in a case that went to the South Gauteng High Court following the granting of an interim protection order. The person accused of abusing the partner was responding to the evidence placed before the Magistrate. The key issue was how the hearing was done and how the evidence was considered. We made presentations on the relevant international law on domestic violence arising from the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). We argued that, when issuing interim and final protection orders, the context should be considered. This includes considering the frequency and likelihood of the abuse happening again, as well as whether the person making the application for the protection order is convinced of a real, perceived risk of physical abuse that threatens the safety of themselves or their children. We also argued that, when finalising protection orders, hearings should be inquisitorial, i.e. a court must proactively direct its own inquiries, instead of relying exclusively on the information provided by the parties.

The Alteration of Sex Description and Sex Status Act 49 of 2003 (Act 49) provides for people who have transitioned from one sex to another to amend their sex description on the national population register, on their birth certificates and on their identification documents. Three couples, married in terms of the **Marriages Act 25 of 1961**, were unable to successfully apply to alter their sex description as envisaged by Act 49. The Department of Home Affairs refused to process and finalise their applications arguing that the existing civil marriages precluded the Department from amending the sex descriptor, as it would amount to recognition of a same-sex marriage under the Marriages Act, which regulates heterosexual marriages. Same-sex unions are regulated by the Civil Union Act. One of the couples' applications in terms of Act 49 was successfully processed, but in doing so, the Department deleted their marriage from the marriage register and reverted one of the spouses' surname back to her maiden name. Two of our clients were advised to get divorced first before the applications to alter sex description could be made. But, our clients' marriages had not irretrievably broken down as required by the Divorce Act 70 of 1979. In fact, our clients were in loving marriages. The Department's response to the applications was unlawful and discriminatory. The LRC went to court on behalf of the three couples and **Gender DynamiX**, a civil society organisation advocating for the rights of transgender persons. The court found that Act 49 obligates the Department to consider applications by *any* person, irrespective of the person's marital status. Therefore, the Court declared that the Department had infringed on the applicants' rights to administrative justice, equality and human dignity and acted in a way that is inconsistent with the Constitution. The Court ordered the Department to reconsider the applications within 30 days of the order.

In continuing our efforts to ensure that all spheres of the law realise and affirm transgender persons' and gender diverse persons rights, the END project is currently representing **Gender DynamiX** as *amicus curiae* in **September vs Department of Correctional Services (2016)**. Jade September is a transgender woman who is currently in prison and has not been allowed to express her gender identity. The prison has insisted that because she was arrested as a man, she cannot change this status. Jade September emphasises that her gender identity is a vital component of her identity – it is the core and the essence of who she is. By limiting it, the Department of Correctional Services is violating her right to equality, dignity and bodily autonomy as set out in the Constitution. Representing GDX, we aim to place relevant expert evidence before the court relating to the realities and experiences of transgender persons. We also aim to provide comparative opinions on how transgender and gender diverse prisoners are accommodated in other jurisdictions.

The allocation of police resources in South Africa has become the focus of a case in the Equality Court of the Western Cape. Unfair and arbitrary allocation of police resources has had a negative impact on the equality, dignity, safety and security of residents living in informal settlements. The case, brought by the LRC on behalf of

the **Social Justice Coalition (SJC)**, **Equal Education** and **Nyanga Community Policing Forum**, against the Minister of Police and others, argues that there is a Constitutional obligation on the South African Police Service (SAPS) to provide resources in an equitable manner. On behalf of our clients, we argued that, *[t]hrough arbitrary systems of resource allocation, SAPS is perpetuating unfair discrimination against poor and working class communities. This impairs the dignity of members of these communities, and jeopardises their rights to life, freedom and security of the person, and to bodily integrity. Rectifying this misallocation of resources will not immediately resolve the problem of crime in these areas. But it will help. It will make it easier for police to prevent and investigate crime in the areas where those basic tasks are most needed.*" Our clients are seeking an order declaring the allocation of police human resources in the Western Cape and nationally as unfair discrimination towards black African and poor people on the basis of race and poverty. We also seek an order compelling the Provincial Police Commissioner to prepare, within three months, a plan to re-allocate resources within the Western Cape to address the serious disparities in the allocation of human resources. We also seek to have the court order that a national and provincial plan be drawn up which effectively addresses the unfairness in the allocation of resources.

Case	Laubscher
Summary	This case dealt with the question of what the intestate inheritance rights for same-sex permanent partners are in light of the enactment of the Civil Union Act 17 of 2006, which legalises and regulates same-sex marriage.
Impact	This case emphasises that, in ensuring that there is equality in relationships, no <i>one</i> type of family relationship should be prescribed or preferred over another, as doing so is discriminatory and contrary to the Constitution. This case also aimed to assert that permanent life partnerships are increasingly common and the rights of partners should be afforded recognition.

Case	Protection orders
Summary	The LRC made submissions in a case that went to the South Gauteng High Court following the granting of an interim protection order in a case of domestic abuse. We made presentations on the relevant international law on domestic violence arising from the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).
Impact	The key issue in this case is how a protection order hearing is done and how the evidence is considered. We argued that hearings should be inquisitorial, i.e. a court must proactively direct its own inquiries, instead of relying exclusively on the information provided by the parties. We hope this will advance the protection and dignity afforded to survivors of domestic abuse.
Case	KOS
Summary	The LRC assisted three transgender people who had married their spouses under the Marriages Act 25 of 1961, and were unable to change their sex descriptor after the Department of Home Affairs refused to do so, arguing that the existing civil marriages precluded the Department from amending the sex descriptor as it would amount to recognition of a same-sex marriage under the Marriages Act.
Impact	This case highlights the framework that operates when a person married in terms of the Marriages Act transitions from one sex to another. The court highlighted that post-nuptial sex description alteration has no impact on the existing marriage between a transgender spouse and a cisgender spouse and that transitioning from one sex to another is not automatically grounds for divorce.
Case	Jade September
Summary	Jade September is a transgender woman who is currently in prison and has not been allowed to express her gender identity. The prison authorities have insisted that, as she was arrested as a man, she cannot change this status at all. Jade September emphasises that her gender identity is a vital component of her identity and the limitation of her ability to express this therefore violates her right to equality, dignity and bodily autonomy as set out in the Constitution.
Impact	This case aims to challenge the manner in which prisons continue to operate in a heteronormative and exclusionary manner, affirming only “male” or “female” as the only recognised sex (and that these are permanent). This case will advance the rights to administrative justice, equality and human dignity for transgender persons and gender diverse persons in prisons.

Case	Social Justice Coalition
Summary	This case aims to challenge discrimination based on race and gender that continues to plague the allocation of human resources by the police nationally. This case considers the constitutional obligation on the police services to provide resources in an equitable manner. Specifically, the right to equality, based in the Constitution, read together with s 195(1)(d) of the Constitution, binds the police services to equitably and fairly allocate resources.
Impact	This case seeks to contribute to a fairer and more equal distribution of police resources so as to advance the dignity, safety and security and protection of poor and black African people living in areas with high contact crimes.

INCLO Transgender Convening

As part of its membership of the International Network of Civil Liberties Organizations (INCLO), the Legal Resources Centre assisted to host a closed legal convening for civil rights partners, academics and legal experts on the issue of transgender rights. Forty-five transgender and human rights activists from 15 countries attended the convening. This convening took place in Cape Town during February 2017 and was very successful in creating a space for effective engagement and strategic planning of legal strategies and advocacy focused on advancing

transgender rights globally. Attendees were able to discuss international and domestic legal issues relating to the protection of transgender persons' rights relating to access to basic rights, legal recognition of gender, threats of violence and criminalisation, detention and the feasibility of utilising litigation to ensure that the rights of transgender persons are respected, protected and fulfilled. The participants have continued to engage, strategise and share developments which are useful for the work being done at various levels.

Intervention at the Committee on Economic, Social and Cultural Rights

The END project participated in submitting a third-party intervention as a member of the Strategic Litigation Working Group and Women and the ESCR Working Group of ESCR-Net (International Network for Economic, Social and Cultural Rights) to the Committee on Economic, Social and Cultural Rights. This case before the Committee is the first case in which the Committee has had the opportunity to fully consider the interaction between the rights to non-discrimination and substantive equality of women, and the rights to social security and to an adequate standard of living – all articles under the International Covenant on Economic, Social and Cultural Rights. Together with the

other contributors, we made submissions which dealt with (a) the obligation of State parties to ensure that the right to social security is enjoyed without discrimination, whether direct or indirect, with a focus on the accessibility of existing social systems for women who undertake unpaid care work; (b) the obligation of State parties to ensure old age social security protections for persons unable to access or benefit from existing social security systems, particularly for older women; and (c) the obligation of State parties to ensure access to information and due process protections within social security systems.

Submission of alternative reports to treaty bodies

As the Legal Resources Centre, we recognise that treaty bodies play a pivotal role in ensuring that State parties are complying with the obligations set out in each treaty. South Africa as a state party to various treaties has an obligation to take steps to ensure that everyone within its borders enjoys the rights set out in those treaties. The treaty body helps state parties to do this by monitoring implementation of treaties and recommending further action to realise the rights and obligations set out in the treaties. Civil Society Organisations play a crucial role in providing the treaty bodies with alternative, complimentary information to ensure that the treaty bodies have sufficient, correct and useful information during their review period, and enable the recommendations given to speak directly to local experiences in order to be meaningful and ensure the realisation of rights. Over the last year, the END project

has consulted on, drafted and submitted alternative and complimentary reports in various coalitions on children's rights including unaccompanied, separated and stateless children, and transgender, gender diverse and intersex children to the African Committee of Experts on the Rights and Welfare of the Child and to the Committee on Economic, Social and Cultural Rights. We have also participated in providing information for the review of South African's obligations towards women's economic, social and cultural rights and adult transgender, gender diverse and intersex persons. We continue to ensure that these reviews speak directly to the experiences and challenges faced by our clients, in an effort to ensure that all the rights entrenched in South Africa's Constitution are respected, promoted, protected and fulfilled.



REFUGEES, ASYLUM SEEKERS AND MIGRANT PROTECTION



REFUGEES, ASYLUM SEEKERS AND MIGRANT PROTECTION

Introduction

The LRC is visited every year by a large number of asylum seekers and refugees who are confronted by an overburdened and underperforming migrant system. While asylum seekers and refugees living in South Africa enjoy certain rights, accessing their legal status as a refugee can be difficult, and the process of undertaking the route towards legalisation and regularisation is fraught with obstacles. This includes long waiting periods, unlawful detention, poor communication and comprehension of the process, discrimination faced by certain vulnerable groups and the closure of refugee offices. The Department of Home Affairs continues to flout laws which undermine the dignity of our clients.

While living in South Africa, migrants are faced with discrimination. In 2008, xenophobic tensions resulted in a series of attacks on migrants originating around Johannesburg and then spreading to other regions of the country, including Kwazulu-Natal and the Western Cape. These attacks resulted in the deaths of more than 60 people and the initial displacement of over ten thousand others. Xenophobic tensions have risen again in recent years and are exacerbated by the belief that migrants are bribing officials, are flouting the laws of South Africa and are stealing jobs.

The asylum management system in South Africa is fraught by protracted delays in finalising asylum applications. The impact of the poor management systems is that asylum seekers often wait years for their asylum applications to be adjudicated. A temporary asylum permit offers limited protections for refugees and often exacerbates their

efforts to integrate into the South African community. Asylum seekers are forced to renew their asylum seeker permits every 3 to 6 months. The closure of some Refugee Reception Offices (RROs) in major metropolitan areas such as Cape Town and Port Elizabeth means that those asylum seekers living in the Western and Eastern Cape are forced to travel long distances to other Refugee Reception Offices in Durban, Musina and Pretoria to renew their permits. Most of these asylum seekers, often due to financial constraints, are unable to travel to other RROs, and thus allow their permits to expire. This presents several risks as Immigration officials, contrary to the protections guaranteed in the Refugees Act and International law, often arrest, detain and deport asylum seekers who have expired temporary asylum seeker permits. Migrants are detained in police stations before being transported to the Lindela Repatriation Centre. Sometimes the actions of the police and immigration officials are unlawful – resulting in migrants being kept in detention for more time than the law allows.

Those who are defined as refugees also face uncertainty in South Africa. Angolans were given refugee status during the protracted civil war in that country. Angola has since stabilised and, as such, the South African government, the UNHCR and government of Angola have entered into a cessation agreement which ensures the safe repatriation of Angolan refugees to Angola. It is common for refugees forming part of this cessation agreement to be allowed to invoke compelling reasons why they should not have to return to their country of origin. The South African government therefore allowed for such Angolan refugees

to apply for permanent residence whilst at the same time revoking their refugee status. The delay in finalising permanent residence applications for those Angolans and the limited temporary stay granted by the Department of Home Affairs of two years created uncertainty for many Angolan refugees and placed them at risk of being repatriated against their will. These refugees are mostly those living in South Africa in excess of 20 years, have often started businesses or are permanently employed, started families in South Africa and have children born in this country who have no affiliation to Angola, their culture or its identity.

According to a report published in June 2016 by the United Nations High Commission on Refugees, the number of asylum claims was stated as 1,096,063 with 62,200 new claims for the year 2015. These claims represent cases that are still open and in review i.e. a backlog of applications to be processed. However, other sources, such as Africa Check, question the authenticity of these statistics and the UNHCR report even mentions in its methodology that the higher number represents shifts in the Department of

Home Affairs and the way that applications are counted. Other data from the UNHCR presents 369,393 asylum applications through the year 2015. Generally speaking, the number of migrants that currently reside in South Africa can be estimated around 1 to 3 million according to many sources. The Global Detention project lists the number of migrants living in South Africa at 3,142,500. The 2016 community survey released by Stats SA puts the foreign born population around 1.6 million but qualifies it by stating that this number, “could be a result of foreign-born people lying about their nationalities.”

According to data from the Department of Home Affairs, in the year 2015, 62,159 asylum applications were lodged, 2,499 were approved for refugee status while the remaining 58,141 were rejected. However, 14,093 were appealed, with 12,361 of these still open for review. Sources indicate that the total number of new applications logged for asylum seekers was 35,329 in the year 2016. As of 2016, sources indicate that 90,958 refugees reside in South Africa.

Our work

In Cape Town, a decision was made in January 2014 to close the **Cape Town Refugee Reception Office**. On behalf of the **Scalabrini Centre, the Somali Association for South Africa and asylum seekers**, the LRC challenged this closure in the Western Cape High Court. Such a decision impacts negatively on asylum seekers who have to travel great distances to renew their asylum permits, at great expense and sacrifice. It violates their rights to equality, dignity, freedom and security of the person, freedom of movement, freedom of trade, occupation and profession, and children’s rights. The High Court dismissed our challenge, which we appealed in the Supreme Court of Appeal. The SCA found this closure to be unlawful,

finding that its opening would fulfil the requirements of the Refugees Act and provide opportunities for migrants to exercise their rights.

The **Cape Town Refugee Reception Office** was again the focus of a case that came to a head during 2016 after officials at the office refused to renew the asylum seeker permits of 450 people because they had made their initial application at another Refugee Reception Office (RRO) in South Africa. The LRC brought an application on behalf of **Ntumba Nbaya and 450 asylum seekers** in the Western Cape High Court challenging this policy on the basis that asylum seekers were entitled to have access to

a Refugee Reception Office in terms of the Refugees Act and thus be able to renew their asylum seeker permits until their claims have been finally adjudicated. Asylum seekers have rights to fair administrative processes and their rights cannot be arbitrarily stripped away at the convenience of the Department of Home Affairs. Asylum seekers faced many hardships as a result of this unlawful decision. By the time judgment was handed down in the Western Cape High Court, more than 3 500 asylum seekers had approached or been referred to the LRC. The Court ordered the Cape Town RRO to renew the asylum seeker permits of the original 450 people, but also extended this to other people in the same situation.

In a case that assisted a Somali asylum seeker, and will assist other refugees whose asylum seeker applications are rejected as manifestly unfounded, the LRC represented **Mr Mohamed** in *Mohamed v Minister of Home Affairs and Others*. In this matter, Mr Mohamed made an application for asylum. He was interviewed by the Refugee Status Determination Officer (RSDO) in 2011 and his application for asylum was rejected as manifestly unfounded. Because of the language barrier, he did not understand that he had to make written submissions to the Standing Committee for Refugee Affairs (SCRA) within 14 days for automatic review. Assisted by the LRC, Mr. Mohamed made written submissions but they only reached the SCRA after they had made a decision on his case but before they had communicated the decision to him. The SCRA refused to consider the submissions and confirmed that his case was indeed manifestly unfounded. We challenged this decision by the SCRA and sought clarity from the court to establish when an administrator, the SCRA in this case, can be said to be *functus officio* (their mandate has been completed). The full bench of the Western Cape High Court (on appeal) found in Mr Mohamed's favour, ruling that an administrator is only *functus officio* when the decision made by such

an administrator has been communicated to the affected person. Therefore the decision of the SCRA had to be communicated to the Mr Mohamed for it to be final. The court found that SCRA should have considered the submissions when making their decision.

When asylum seekers make applications, they are afforded the opportunity to appeal the outcomes as far as the High Court. The LRC assisted a number of asylum seekers to make High Court applications to review decisions made on their applications – but the asylum seekers were left in precarious positions following the refusal of the Acting Manager of the Cape Town Refugee Reception Office (**CTRRO**) to renew their section 22 asylum seeker permits pending the outcome of individual high court reviews. This permit provides protection from arrest and deportation – and in the past the LRC had been able to attain the permit for clients after receiving letters from the State Attorney, who request that the Refugee Reception Office in Cape Town renew our client's permit. Following a change of management at the CTRRO, the new manager refused to renew the permits of those whose cases were on review, even with the letter from the State Attorney. We challenged this refusal, in the matter of *Cishahayo Saidi & 28 Others vs the Minister of Home Affairs & Others* and our clients were vindicated when the court found that the Acting Manager, although having the discretion when choosing to renew a section 22 permit, should reconsider her decisions. The matter went to the Constitutional Court and judgment was positive, finding that the Refugees Act empowers and enjoins the Refugee Reception Office to extend asylum seeker permits until the finalisation of a judicial review.

When migrants are denied refugee status in South Africa, or fail to renew their asylum papers, they can be detained and deported from South Africa. Acting on behalf of **People Against Suffering, Oppression and Poverty**

(PASSOP), the Legal Resources Centre made submissions as a friend of the court on the detention of migrants and asylum seekers in the Constitutional Court in the matter of *Minister of Home Affairs v Rahim and Others*. The matter concerned the detention of foreign nationals in places not designed as immigration detention facilities, such as police holding cells. We made submissions on the international, regional and domestic law and argued that immigration detainees should be separated from general and awaiting-trial prison populations; that there is no corrective purpose to immigration detention and that foreign nationals should be detained only in designated immigration centres or facilities which should impact on normal life as little as possible.

In another matter concerning immigration detention, on behalf of PASSOP, we made submissions as friends of the court challenging two other aspects of this type of detention; namely, how much time should pass between an arrest of a suspected illegal foreigner and them appearing in court, and the method of getting a warrant in order to continue the detention of a suspected illegal foreigner. The case, *Lawyers for Human Rights v Department of Home Affairs*, went to the Constitutional Court. On PASSOP's behalf, the LRC argued that our current legislation doesn't provide for minimal procedural safeguards for immigration detention and is inconsistent with international guidelines and standards for immigration detention. The challenge was upheld, and the Court found that a suspected illegal foreigner must appear before court within 48 hours and must appear in person.

South Africa is a host country for a large number of Angolans, who fled their country decades ago. However, in 2013, the Department of Home Affairs decided that former Angolan refugees no longer needed the protection of the South African government and were advised

to apply for a special type of visa (**Angolan Cessation Process Permit**) which would allow them to legally work and study in South Africa for another two years – but this was non-renewable. Many Angolans have lived in South Africa for close to 20 years. They have created lives for themselves and raised their families in South Africa. Therefore the LRC, on behalf of **Scalabrini Centre and a number of Angolan refugees**, approached the courts in order to challenge this. A negotiated settlement spelt good news for Angolans, who were allowed to submit documents in order to attempt to regularise their stay in South Africa and apply for permanent residency.

For those foreign nationals who have lived for decades in South Africa and who have started families here, the LRC was able to assist their children to apply for citizenship, despite a policy of the Department of Home Affairs to refuse to retrospectively apply the amendments to the **Citizenship Act** that allows this. A number of children born in South Africa to foreign parents before 2013 and have now reached majority (over 18), were represented by the LRC in court because they all met the requirements for applying for citizenship in terms of Section 4(3) of the Citizenship Act, in that they were born in South Africa and have lived here since their births, and they have birth certificates showing that they were born in South Africa. The Department of Home Affairs refused to consider their applications, arguing that Section 4(3) was introduced through the Amendment Act of 2010, which came into effect in 2013, and therefore only applies to children born after 2013. This would mean that the section can only be implemented for those turning 18 after 2031. The LRC challenged this decision in the Western Cape High Court in the *Miriam Ali & Others vs the Minister of Home Affairs & Others*. The court found this interpretation incorrect – applying the Act retrospectively and allowing all South African-born children who have turned 18 to apply. The

Department of Home Affairs appealed this decision to the SCA and the matter is still to be heard.

Children born in South Africa to a South African parent and a foreign parent have also encountered resistance from the Department of Home Affairs when registering their births. This happened to **Mr Lawrence Naki's** daughter because the child's mother did not have a valid visa and therefore was considered an "illegal foreigner". The LRC went to court on Mr Naki's behalf, challenging

the Department's interpretation of the regulations which govern this. The court found the Department's refusal to register the birth was unlawful and invalid and ordered that the birth be registered. However, the court refused to pronounce on whether the Department's interpretation of the Regulations was incorrect and refused to make a finding on the constitutionality of the Regulations, asking instead that friends of the court make submissions on this. The submissions from a friend of the court are welcomed and we await further progress on this case.

Case	Scalabrini Centre, the Somali Association for South Africa and asylum seekers
Summary	The LRC's clients challenged the closure of the Cape Town Refugee Reception Office to new asylum seekers and refugees. The Supreme Court of Appeal confirmed this closure to be unlawful and ruled that it should be reopened.
Impact	This judgment is crucial in upholding the rights and dignity of asylum seekers and refugees, as well as providing them with the ability to exercise their administrative right to due process.
Case	Nbaya and 450 asylum seekers
Summary	This case challenged the decision taken by the Cape Town Temporary Refugee Facility to not renew asylum seeker permits of asylum applicants who applied for asylum at other Refugee Reception Offices in South Africa. The Western Cape High Court ruled in our favour and this was taken on appeal to the Supreme Court of Appeal by the Department of Home Affairs.
Impact	The case has the potential of assisting over 10 000 asylum seekers in the Western Cape who have not been able to renew their asylum seeker permits at the Cape Town Refugee Reception Office. This case will also reaffirm the rights of asylum seekers to access a fully functional refugee reception office within the area they reside.

Case	Mohamed v Minister of Home Affairs and Others
Summary	<p>This case came about after poor communication lead to Mr Mohamed not understanding his rights in terms of making an application for asylum. It also raised the issue of when an official has completed his task fully. In this case, Mr Mohamed made written submissions to the Standing Committee for Refugee Affairs after they had made a decision on the review of his case but before they had communicated such decision to him. The Court found that the decision had to be communicated before an official has completed his duties. Therefore the decision of the SCRA had to be communicated to the Mr Mohamed for it to be a final.</p>
Impact	<p>This case sought to establish that decisions on asylum applications, and the procedures that must be followed subsequently, must be properly communicated to asylum seekers. This case sets a good precedent to ensure that the administrative processes afford protection to asylum seekers in order to realise their constitutional rights.</p>
Case	Cishahayo Saidi & 28 Others vs the Minister of Home affairs & Others
Summary	<p>When asylum seekers make applications, they are afforded the opportunity to appeal the outcomes as far as the High Court. The decision of the Manager of the Cape Town Refugee Office to not renew asylum seeker permits pending a High Court appeal or review by applicants was challenged and was finally heard by the Constitutional Court where it was affirmed that the Refugees Act empowers and enjoins the Refugee Reception Office to extend asylum seeker permits until the finalisation of a judicial review.</p>
Impact	<p>This outcome will assist our clients who are asylum seekers whose permits have not been renewed pending their appeals or judicial reviews. However, the broader impact is that every other asylum seeker in a similar position now has a right to have his asylum seeker permit renewed pending an appeal or review.</p>
Case	Minister of Home Affairs v Rahim and Others
Summary	<p>The matter concerned the detention of foreign nationals in places not designed as immigration detention facilities, such as police holding cells. On behalf of PASSOP, we made submissions to the court.</p>
Impact	<p>This case provides that people in immigration detention must not be held in facilities that impede on their lives and are designated for awaiting-trial prison populations.</p>

Case	Lawyers for Human Rights v Department of Home Affairs
Summary	The LRC represented PASSOP making submissions as a friend of the court in a matter relating to how much time should pass between an arrest of a suspected illegal foreigner and them appearing in court, and the method of getting a warrant in order to continue the detention of a suspected illegal foreigner.
Impact	This case will affect the thousands of suspected illegal immigrants passing through the immigration detention system to have access to due process and access to justice.
Case	Scalabrini - Angolan Cessation Process Permit
Summary	The South African government's decision that Angolan nationals no longer could be given refugee status in the country, and instead be given access to a permit that only allows them to stay in South Africa for two more years, and which is non-renewable, was the subject of this case which sought to have Angolans given the right to apply to live permanently in the country. The challenge was successful.
Impact	The negotiated settlement will allow Angolan nationals, who have lived in South Africa for more than 20 years and built their lives here, the right to apply for permanent residency.
Case	Miriam Ali & Others vs the Minister of Home Affairs & Others
Summary	This case challenged the interpretation of amendments to the Citizenship Act which granted rights to foreign children born in South Africa to apply for citizenship. The Department of Home Affairs favoured an interpretation that this amendment did not apply retrospectively. The LRC argued that the proper interpretation the amendment must have retrospective application. The High Court agreed, but the positive judgment was appealed in the SCA and we await the finalisation of this court challenge.
Impact	Thousands of children are born in South Africa to foreign parents. The amendments to the Citizenship Act only came into effect in 2013. If the DHA's interpretation of the Act is successful all foreign children born prior to 2013 would be excluded from benefiting from this amendment. However, with the LRC's intervention, we may change this interpretation to their benefit.
Case	Naki v Department of Home Affairs
Summary	This case challenged the Department of Home Affairs' decision not to register the birth of a child born to a foreign mother and South African father. This refusal was based on the interpretation of regulations governing this, which was found to be unlawful.
Impact	Should the court make a pronouncement on the constitutionality of the regulations governing the registration of children born to a South African and foreign parent, this will bring clarity as to whether these children will be registered and therefore afford them the rights and protections that will come from this.



OPENNESS AND ACCOUNTABILITY

Introduction

The 2015-2016 news period in South Africa paints a grim picture of corruption and lack of accountability at every level of the country's governance structure. The State Capture Report, released by the Public Protector in 2016, shows that South Africa's key institutions had been "captured" by private individuals for their own gain, to the detriment of the public. Every single individual in South Africa is a victim of corruption, from those representing communities who are fighting the lack of transparency in the granting of prospecting and mining licences, to those facing financial uncertainty due to failing investor confidence. In 2016, Transparency International ranked South Africa 64 out of 178 countries when it comes to levels of corruption.

Corruption and government incompetency has compounded the historical socio-economic issues in South Africa, leading to increased levels of inequality, poverty and a lack of basic service delivery. Yet, people are still able to exercise many of their political rights, particularly their right to assemble and demonstrate their dissatisfaction. According to Municipal IQ, "the year 2017 has so far produced the third-highest number of protests, accounting for 11% of service-delivery protests

since 2004." Importantly, the data shows that the average number of crowd-related incidences has remained largely similar from 2012-2013 to 2015-2016.

The O&A focus area covers three specific sub-themes: 1) Information rights, which includes freedom of expression, access to information, privacy rights, including mass and targeted surveillance; 2) Protest and policing seeks to enable the right to peaceful protest, and ensure police reform and appropriate police oversight; and 3) Safeguarding public institutions, which focuses on strengthening and ensuring the structural independence of key democratic institutions and the accountability of public office-bearers.

The work of the LRC under this focus area is centred on ensuring that the political freedoms are enjoyed by all within South Africa, specifically to ensure people are able to organise politically, are able to freely express their views and be free from all forms of unlawful surveillance; while also ensuring that key democratic and constitutional institutions are sufficiently independent and appropriately accountable in order to be able to do their part in protecting South Africa's fledgling democracy.

Our work

In South Africa, recognition is given to a right to assemble or stage a picket and this is regulated through the Regulation of Gatherings Act. There are no provisions for a blanket ban on all gatherings – yet this was the excuse given by the Tshwane Metropolitan Municipality to reject an application by **Congo for Peace Without Borders**

(CPWB) to protest outside the offices of the United Nations Commissioner for Refugees (UNHCR) and the Department of Home Affairs (DHA) in Pretoria. The protest was aimed at highlighting the poor treatment of Congolese nationals by the UNHCR and DHA, as well as CPWB's concerns with the Green Paper on International Migration. The

Municipality claimed that all protests were banned ahead of the municipal elections. The LRC approached the Pretoria High Court to get the Municipality's decision overturned and were successful. The CPWB protest went ahead on the 29 July 2016.

One of the pillars of any democracy is the free flow of information in the public arena. However, this free flow of information was severely undermined when, during the 2016 State of the Nation address in Parliament, telecommunications were jammed and a limit was placed on the parliamentary television newsfeed. This policy decision was challenged in court by the LRC on behalf of the **Right2Know Campaign** and the **Open Democracy Advice Centre**. The Supreme Court of Appeal found this policy to be unconstitutional. "The right to vote...can be exercised meaningfully only if voters know what their representatives do and say in Parliament." - Lewis JA wrote on behalf of the Supreme Court of Appeal.

Public access to information was again the focus of the next matter, but this time regarding the policies of the South African Broadcasting Corporation (SABC) in terms of their editorial policies. Our clients, the **SOS Support Public Broadcasting Coalition** and **Media Monitoring Africa**, challenged amendments to the SABC's editorial policies on the basis that the SABC had failed to publish the proposed amendments for public comment before accepting them. Some of the amendments were concerning: 1) they altered the substance of the upward referral policy, by which the Chief Executive Officer would be replaced by the Chief Operating Officer to resolve disputes; 2) they removed the prohibition on hidden cameras and sensational reporting in the coverage of crime; 3) they removed the obligations to exercise care when interviewing people without broadcast experience; 4) they removed the obligation on staff to consult the office of the Chief Legal Advisor; and 5) they removed guidance

on privacy issues. These amendments were successfully challenged with the Complaints and Compliance Committee of the Independent Communications Authority of South Africa (ICASA). ICASA's finding was that the duty to engage in public consultation is "an essential condition" of the **Broadcasting Act**. The editorial policies were ruled invalid.

The independence of state institutions is a key component for accountability and it is imperative that those that are tasked with the investigation and prosecution of wrongdoing in organs of state are protected from interference by the government. It was concerning when the Minister of Police suspended the executive director of the **Independent Police Investigative Directorate** (IPID), Robert McBride – a clear indication that the independence of IPID was compromised. The LRC's client, the **Council for the Advancement of the South African Constitution** (CASAC), made submissions as a friend of the court during a court case challenging McBride's suspension. Evidence from a policing expert, David Bruce, together with publicly-available reports and statistics, demonstrated the particular need for adequately independent oversight bodies, such as IPID, in order to be able to deal with corruption and abuse of power within the realm of policing. It was argued that IPID's directorate and executive director must be clothed with adequate independence to avoid political interference by the Minister of Police. The court appreciated the submissions made by CASAC and referred to them in its findings, which declared certain statutory provisions relating to IPID unconstitutional for failing to afford adequate independence. The High Court's declaration of invalidity has been referred to the Constitutional Court for confirmation.

"In sum, an independent IPID as envisaged under s 206(6) of the Constitution will enjoy greater legitimacy and trust from both the public and police, and this will

enable it to carry out its investigative mandate under the IPID Act more effectively. If the public and police believe that the executive director is subject to political interference and operates in pursuance of a political agenda, IPID will lose its legitimacy and the efficiency benefits that accompany such legitimacy. This will undoubtedly result in IPID becoming considerably less effective in investigating corruption and the police’s excessive use of force (including torture).”

The government of South Africa made a decision to withdraw from the **International Criminal Court (ICC)** in 2016. An outcry followed and the opposition party, the Democratic Alliance, took the Minister of International Relations and Cooperation to court. The LRCs client, the **Centre for Human Rights (CHR)** at the University of Pretoria, made submissions as a friend of the court. The CHR argued that the government’s decision to withdraw from the Rome Statute of the International Criminal Court was unconstitutional and invalid for four reasons: 1) it violates the separation of powers, because Parliament had not, by resolution, approved the entering of the Instrument; 2) the decision was taken without any public participation; 3) it is substantively irrational because the means – withdrawing from the Rome Statute – are not rationally connected to ends, i.e. “to promote peace and security on the African continent”; and 4) it is inconsistent with the government’s obligations under the Constitution,

read in the light of its obligations under the African Charter, the Constitutive Act of the African Union, and decisions, resolutions and reports of the African Commission, to respect the sanctity of human life and to reject and condemn impunity. The court ruled that the withdrawal should have followed a broad consultative process and prior parliamentary approval should have been obtained. In 2017, the government issued a notice to formally revoke its withdrawal from the International Criminal Court.

The LRC has taken its openness and accountability to the international stage through its membership of the **International Network of Civil Liberties Organizations (INCLO)**. During 2017, we were part of eight members of INCLO to launch a global public information campaign to uncover **information-sharing agreements** between intelligence agencies. These arrangements potentially allow intelligence agencies to sidestep domestic legal constraints by funnelling surveillance data into a transnational intelligence network. As a collective, we filed **Freedom of Information (FOI)** requests with various governments in an attempt to uncover what data is being shared between governments. This is the first multinational coalition demanding that governments release any and all information regarding agreements between intelligence agencies, and provide answers about a practice largely shielded from accountability.

Matter	Congo for Peace Without Borders
Summary	The Tshwane Municipality banned all protests happening in its jurisdiction, which resulted in a protest planned by Congo for Peace Without Borders being denied. We challenged this blanket ban as being unlawful under the Regulation of Gatherings Act and were successful.
Impact	The small group who constituted the Congo for Peace Without Borders protest were able to peacefully march to express their grievances. The case also held the Municipality to account for manipulating the law. The case reaffirmed the importance of the Right to Assembly.

Matter	Right2Know and Open Democracy Advice Centre
Summary	During the State of the Nation address in Parliament, telecommunications were jammed and a limit placed on the parliamentary television newsfeed. This policy was challenged and the Supreme Court of Appeal found it unconstitutional.
Impact	This judgment upholds the principles of open democracy and citizen participation, as well as reinforcing sections 59 and 72 of the Constitution which regulate the access of the public to Parliamentary and other legislative processes.
Matter	Support Public Broadcasting Coalition and Media Monitoring Africa
Summary	The South African Broadcasting Corporation made amendments to its editorial policies which was challenged on the basis that the SABC had failed to publish the proposed amendments for public comment before accepting them. The Independent Communications Authority of South Africa ruled these changes invalid.
Impact	This judgment upholds the principles of open democracy and citizen participation in state institutions. It also reinforces the importance of a public broadcaster as a source of information for the public.
Matter	CASAC
Summary	The executive director of the Independent Police Investigative Directorate was suspended by the Minister of Police. This was challenged on the basis that IPID should be afforded independence in order to ensure government accountability, be able to deal with corruption, as well as deal with the abuse of power within the realm of policing.
Impact	The case reinforces the constitutional principle that certain state institutions should be sufficiently independent, so as to be properly insulated from undue government interference.
Matter	Centre for Applied Legal Studies
Summary	This case challenged the withdrawal of the South African government from the International Criminal Court, which was done without public consultation. This was an irrational decision which went against government's constitutional and international obligations. The court ruled that the withdrawal should have followed a broad consultative process and prior parliamentary approval should have been obtained.
Impact	This case reaffirms the principle that government decisions must be open to public scrutiny, follow due process and give effect to constitutional and international obligations.

Unlawful interception of the LRC's email

In the LRC's previous annual report, we reported on the unlawful interception of an email address belonging to the Legal Resources Centre by the **British Government Communications Headquarters** (GCHQ). The LRC came to know of this unlawful interception through engaging with the Investigatory Powers Tribunal (IPT) in the United Kingdom, who confirmed that the interception was in violation of the laws governing such surveillance and breached the GCHQ's internal policies. This was of serious concern to the LRC. The ruling revealed how invasive

surveillance operations have become and confirms a serious breach of the rights both of the organisation and the individuals whose communications have been intercepted. The matter was taken further to the **European Court of Human Rights**, who was approached by Liberty in the UK to challenge the lawfulness of the UK's surveillance laws and its intelligence agencies' mass surveillance practices. We await the outcome of this court case.

INCLO convening: Privacy Rights, Surveillance Wrongs

In October 2016, the LRC was proud to host a global convening on privacy and surveillance. "Privacy Rights, Surveillance Wrongs: An Activists' Dialogue" was co-hosted by INCLO at Constitution Hill in Johannesburg. The convening brought together leading lawyers, privacy activists and policy experts from around the world to explore the impact of surveillance on fundamental rights, such as the rights to dignity, privacy and freedom of expression. The convening included a discussion between iconic whistle-blower, Edward Snowden, and

South African anti-apartheid activist, Kumi Naidoo. Kumi Naidoo's case study is featured in "**Surveillance and Democracy**", a report that was launched at the convening. The report attempts to blow open the truth about the growing international scourge of surveillance and demonstrate the chilling impact unregulated and unrestrained surveillance can have – crushing dissent, intimidating activists and undermining the dignity of ordinary citizens. It can be accessed here: www.inclo.net/pdf/surveillance-and-democracy.pdf

Digital Security training at the 2017 Public Interest Law Gathering

During the Public Interest Law Gathering in July 2017, Murray Hunter (Right2Know Campaign), Karabo Rajuilin (amaBhungane), Keitumetsi Tsotetse and Matthew Bouffe (cyber security specialists) gave a one-day workshop to the public on digital security, delving into international and local trends in surveillance. They raised issues with

South African legislation governing privacy and data security, reflected on the rights to privacy and security, and the limited protection of our laws and regulations for journalists and whistleblowers. The audience were then given tips and suggested apps which can assist to improve online security.



ACCESS TO JUSTICE AND CIVIL SOCIETY SUPPORT



ACCESS TO JUSTICE AND CIVIL SOCIETY SUPPORT

Introduction

“Access to justice” is a broad set of rights – encompassing not just access to courts and legal infrastructure, but also legislation and the suite of rights that reflect society’s values. Within the South African context, it also includes access to legal assistance and advice through the actions of paralegals, Community Advice Officers and lawyers. The LRC provide a number of services under this focus area aimed at protecting political rights and access to social security, as well as the development and support of the civil society space.

There is a genuine sense and signals that the civil society space, which is the place in which people can do advocacy, promote social justice issues and influence duty bearers, is shrinking. Certainly, we need to focus efforts on the challenges that civil society faces: increasingly limited access to funds, legislation which is cumbersome and difficult to navigate, poor support from government, and even in some cases severe government backlash against

the individuals and organisations working to advance human rights. Within this context, the work that the LRC undertakes to protect many of the freedoms that allow civil society the space to function is extremely relevant today.

The LRC’s access to justice work includes providing individuals with assistance to assert particular rights and freedoms, such as freedom from discrimination, the right to be compensated for work-related illnesses, the right to register their children’s birth, to access their pensions or identity documents and to access their social grants. These are small acts largely done by paralegals that make a big difference to people’s lives. Social grants are the primary source of income for 21.7% of households in South Africa, and a contributing source of income for 46.2% of households in South Africa (2015 General Household Survey); as such, they play a significant role in reducing absolute poverty.

Our work

Class Actions are a fairly recent tool for litigation in South Africa and the Legal Resources Centre is proud to have been part of the first class action certification for sick mine workers through the **Silicosis class action**, together with **Richard Spoor Incorporated** and **Abrahams Kiewitz**. The class action represented an important moment in history as thousands of vulnerable members of society and their families were represented in court. The LRC represented gold miners suffering from silicosis and tuberculosis in their case against 30 gold producers.

It was argued that the gold mining companies that owned or operated 82 different gold mines from 1965 to the present, knew of the dangers posed to miners by silica dust, which leads to the fatal disease, silicosis, and failed to take the steps necessary to protect them. The High Court in Johannesburg certified the class action, which would have allowed the litigation to go ahead in order for the damages claim to be finalised. However, the mines decided to negotiate a settlement agreement which was concluded in 2018. This case was a culmination of

work that the LRC has been facilitating since 2004 in an attempt to get compensation for sick mine workers. We welcome the outcome and thank Legal Aid South Africa for their support.

Deep-seated racial hatred continues to exist in South Africa and can culminate in hurtful encounters, discrimination and hate speech, which impacts on the dignity of people. In Grahamstown, such an exchange between two people led to the LRC representing **Mr Sazi Matama** in the Grahamstown Equality Court. Mr Matama was called the “k-word”, a racial slur, following an altercation with a white woman, Mrs Els. Mrs Els claimed that Mr Matama called her a “witboer”. Both claimed an apology from the other, as well as compensation to the sum of R100 000 in damages. The court found that both parties were at fault and that the racial insults voiced by both parties amounted to Hate Speech. Both parties were instructed to pay the other R20 000 damages. The spate of hate speech incidences in South Africa does make this judgment controversial, as the k-word is a particularly harmful and hurtful phrase; however, the circumstances of each case must be thoroughly considered and we accept the court’s judgment in this regard.

After a problematic decision by the Department of Home Affairs not to register his child’s birth because her mother did not have a valid visa and therefore was considered an “illegal foreigner”, **Mr Lawrence Naki**, a South African citizen, approached the Legal Resources Centre for assistance. The Department claimed that the **Birth and Death Registration Act Regulations** prohibited the single father from registering the birth of his daughter, but in court the LRC argued otherwise. Their child was born in South Africa and is a South African citizen in terms of the Citizenship Act. Furthermore, the interpretation of the Regulations is incorrect and Mr Naki alone should

be able to register his daughter’s birth, notwithstanding the fact that the mother is an unregistered foreigner. We also argued that if the Regulation does, in fact, mean that children born to unregistered foreigners cannot be registered by their South African parent, then it is unconstitutional. The court ruled in Mr Naki’s favour and ordered that the birth be registered and a birth certificate be issued – however, it did not make a pronouncement on the interpretation of the Regulations and therefore did not make a finding regarding their constitutionality. However, the court did request that the Grahamstown Bar appoint an *amicus curiae* (friend of the court) to make submissions on this interpretation and the subsequent constitutionality of the regulations. We welcome this request.

After a gruelling five-year struggle, in 2016, **Mr M** was granted a **presidential pardon**. Mr M was convicted of a crime in 1985 and served a 6-month sentence. But he has struggled to find work and, in 2012, approached the Department of Justice with an application for an expungement of his record. But, after regular enquiries into the progress of his application yielded only confusion and frustration, Mr M approached the LRC to assist him in clearing his criminal record. The LRC made enquiries and discovered that his application was cancelled due to “a lack of activity”. No explanation was given as to why the application became inactive or why this was never communicated. We helped him to make a new application – but later it was determined that he did not qualify for an expungement but needed to apply for a presidential pardon. A person can apply for a presidential pardon ten years after a conviction. The president has the complete discretion when making his determination as to whether to pardon the applicant or not. We then helped to make his new application, which we are pleased to say was successful.

NPO support

Strengthening civil society is crucial for protecting our democracy. Ensuring the registration, good governance and increased capacity of organisations working to provide services in South Africa is one method of strengthening this space – as is interrogating the laws and policies which provide the space for civil society to function effectively. It is important to the LRC that we are able to provide services to Non-profit Organisations (NPOs) and Community-based Organisations (CBOs), as well as Community Advice Offices (CAOs) in various ways.

During the period of this annual report, the LRC were able to provide support to NPOs registering with the Department of Social Development. We assisted in compiling a constitution and other governance documents; sourcing and compiling supporting documentation for individual board members and assisting with the opening of bank accounts. We were able to assist 21 NPOs in the Durban office, 38 NPOs in Cape Town, 7 NPOs in Grahamstown and the Johannesburg office assisted 17 NPOs. We also assisted CBOs and community initiatives to engage with or challenge policy and laws which they believe affect their constituency.

We also held a number of workshops with members of CSOs on rights-based issues, government obligations and how to access government services: In Durban: 7 workshops; in Cape Town: 10 workshops; in Grahamstown: 4 workshops, and in Johannesburg: 21 workshops.

The LRC also provides face-to-face support, legal advice and services to clients. In total our LRC offices assisted more than 6 000 people with once-off legal advice and

referrals, and assisted more than 100 000 people with litigation and other on-going legal support. We also provided training workshops on a number of topics for a number of different people. For example, the LRC trained paralegals (who themselves have physical disabilities) on the legal frameworks for accessing socio-economic rights. This workshop was part of a series of workshops we have begun with paralegals from advice offices throughout the Free State.

Strengthening paralegal and community-based advice officers' knowledge of the law is crucial for ensuring that rights are protected – but so too is the protection and regulation of their role in society. The regulation of paralegals that operate in community-based advice offices and the impact of the Legal Practice Act remains a focus of the work of the LRC. We have continued to work with the **Association of Community Advice Offices of South Africa (ACAOSA)** to provide support and legal opinion on draft legislation to regulate paralegals. We are assisting ACAOSA to grapple with issues related to funding of the sector in order to ensure sustainability and autonomy. We also held a two-day workshop with ACAOSA leadership in order to identify and support weaknesses in their governance structures. This workshop was a resounding success, with all the participants reporting that the workshop had been a highly beneficial opportunity for the members of the broader leadership structures to engage. The need for training on fundraising and resource mobilisation was identified and resulted in a two-day workshop in early April 2017 to train paralegals from 8 provinces on fundraising and resource mobilisation.

Matter	Silicosis class action
Summary	The silicosis class action has been brought on behalf of thousands of former-gold miners who contracted silicosis due to poor health and safety standards at mines. The case resulted in a settlement agreement being reached which will see thousands of sick miners and their dependents compensated.
Impact	The settlement agreement will see thousands of miners and their families receive compensation.
Matter	Matama
Summary	The LRC assisted Mr Matama who was a victim of hate speech. The court ruled that both parties were equally liable for compensation to be paid, because both parties were complicit in hate speech.
Impact	The case assisted to advance the rights of a victim of hate speech. This case asserts the principle that, when hate speech cases are adjudicated, the circumstances of each case must be thoroughly considered.
Matter	Naki
Summary	The LRC assisted Mr Naki to have his child's birth registered after the Department of Home Affairs refused to do so because the child's mother is not South African. The court ruled in Mr Naki's favour and ordered the registration of the birth. However, it did not make a pronouncement on the interpretation of the Regulations regarding this, and did not make a finding regarding their constitutionality – but it did ask for submissions to be made on this interpretation and the subsequent constitutionality of the regulations.
Impact	The LRC welcomes the court's request for submissions on this case and hopes that this will lead to clarity on the issue of registering births of children born in South Africa to a South African parent and a non-South African parent, without the need for costly and time-consuming litigation.
Matter	Mr M
Summary	The LRC assisted Mr M who was unable to get a presidential pardon, despite being eligible for one. We were able to assist him successfully and he was pardoned in 2016.
Impact	The LRC successfully assisted a man who was severely prejudiced by his criminal record.

Submissions

The **Prevention of and Combating of Hate Crimes and Hate Speech Bill** (Hate Speech Bill) was introduced into Parliament in 2016 with much controversy. It has faced critiques and criticism by members of the judiciary and civil society, with the constitutionality of the Bill being called into question. The LRC commends the additional inclusion of protected categories, such as intersex people,

the inclusive of gender identity and gender expression, HIV status of individuals, and socio-economic status, but suggests even more protected categories. The LRC did not comment on the constitutionality of the bill, but rather sought clarification on the Bill's offences and the feasibility of enforcing these.

Events and workshops

Think!Fest 2017: Funding of non-state actors

On Monday 3 July 2017 at the Grahamstown National Arts Festival's Think!Fest, the LRC were pleased to host a panel discussion on state support of civil society organisations. Guest speakers included Elinor Sisulu, Justice Albie Sachs and Colleen du Toit. The title of the panel, "Should the State support pesky non-state organisations?" led to a discussion around issues of funding of NGOs by the state (for example, through the National Lotteries Fund), and a growing trend of cutting back on funding, as well as other issues effecting "non-state actors" in South Africa.

Some key points raised included the following: support for NGOs should extend to the administrative and regulatory architecture governing NGOs – this is erratic and problematic, making it challenging and confusing for NGOs to register and comply. Corruption and maladministration affect the support to NGOs, who are also "under attack" as government tries to impose control over NGOs. Yet, the public outcry in defence of NGOs is limited. NGOs fulfil important government functions and yet are underfunded and subsidies do not increase sufficiently across the board. NGOs are the "spare tyres" for government when it fails to provide services, yet NGOs are constantly retrenching staff and closing down. NGOs work should be better valued by both society and government.

PILG 2017: Regional and international human rights bodies

At the Public Interest Law Gathering for 2017, the LRC hosted a discussion on the use of regional and international human rights bodies to protect our fundamental rights. This discussion focussed on South Africa's failure to meet

its reporting obligations under various treaty bodies and its attempt – albeit abandoned, for now – to withdraw from the International Criminal Court. The question put forward to panellists was whether regional and international human rights bodies are able to protect our fundamental rights, or are they toothless in the face of atrocities taking place on a daily basis the world over?

Speakers included: Professor Ann Skelton, who serves on the United Nations Committee on the Rights of the Child, and is the Director of the Centre for Child Law at the University of Pretoria; Dr Ololade Shylon, who is the Programme Manager: Freedom of Expression and Access to Information at the Centre for Human Rights at the University of Pretoria; and Corlett Letlojane, who is the Executive Director of the Human Rights Institute of South Africa. The panel was moderated by Wilmien Wicomb, who is an attorney in the Constitutional Litigation Unit at the Legal Resources Centre.

FBO Roundtable 2017

Our work with faith-based organisations has been one of the highlights of our civil society work, culminating in a roundtable discussion at the Jesuit Institute in Johannesburg in March 2017. The roundtable was convened under the theme: Expanding the Reach of Justice by Strengthening Links with Communities, Paralegals and Faith-Based Organisations. The meeting culminated in a report and strengthened relations and interactions between faith-based organisations, with participants able to speak about their own efforts to contribute to social justice. What emerged from the plenary discussion is the strong need for such forums to continue, for collaborations to be established and for an increased interfaith response to imminent crises.

STAFF LIST AS OF DECEMBER 2016

National Office

Janet Love - National Director

Teresa Wegerif nee Yates - Deputy National Director

Koop Reinecke - Finance Director

Annard Chaytoo - Systems Manager

Martha Bopape - Finance Assistant

Isabella Rangata - Finance Assistant

Topsy Mackenzie - Payroll Administrator

Ongezwa Gontshi - Junior Accountant

Lufuno Mamburu - Junior Accountant

Esme Wardle - Office Administrator

Madile Modisaesi - Human Resources Generalist

Zamashandu Mbatha - Human Resources Assistant

Moleshiwe Magana - Development Officer

Claire Martens - Communications Officer

Lucky Mabasa - Communications Intern

Emma Broster - Grants Management Officer

Anelisa Mkatshane - Grants Management Officer

Nomagugu Nyathi - Channel Coordinator

Lucky Xaba - Library Manager

Delysia Weah - Professional Assistant to National Director

Constitutional Litigation Unit

George Bizos - Advocate

Michael Bishop - Advocate

Lunga Siyo - Advocate

Emma Webber - Advocate

Wilmien Wicomb - Attorney

Avani Singh - Attorney

Carina du Toit - Attorney

Simone Sonn - Project Coordinator

Michael Laws - Researcher

Mapule Maema - Researcher

Samantha Brener - Researcher

Akhona Mehlo - Researcher

Shireen Hartley - Senior Legal Secretary

Ocudy Mokoka - Receptionist

Johannesburg Regional Office

Naseema Fakir - Regional Director

Shirhami Shirandi - Legal Researcher

Sithuthukile Mkhize - Attorney

Michael Power - Attorney

Alexandra Ashton - Attorney

Josephine Mathebula - Paralegal

Bethuel Mtshali - Paralegal

Busisiwe Motshana - Paralegal

Tshepo Fokane - Researcher

Manson Gwanyanya - Researcher

Zamantungwa Khumalo - Researcher

Kelly Kropman - Candidate Attorney

Christine Grobler - Candidate Attorney

Ralph Madlalate - Candidate Attorney

Johannesburg Regional Office (cont.)

Mpho Raboeane - Candidate Attorney

Ntebaleng Mokoena - Office Assistant

Caroline Msimango - Office Manager

Lerato Lebotse - Receptionist

Durban Regional Office

Sharita Samuel - Regional Director

Anneline Turpin - Attorney

Thabiso Mbhense - Attorney

Ektaa Deochand - Junior Attorney

Cathy Mote - Paralegal

Previn Vedan - Researcher

Shaun Bergover - Candidate Attorney

Sindisiwe Mfeka - Candidate Attorney

Lungelo Baleni - Candidate Attorney

Suzanne Clarke - Librarian

Sandra Govender - Office Manager

Zama Ndokweni - Receptionist

Cape Town Regional Office

Sheldon Magardie - Regional Director

William Kerfoot - Attorney

Steve Kahanovitz - Attorney

Henk Smith - Attorney

Angela Andrews - Attorney

Charlene May nee Joseph - Attorney

Mandy Mudarikwa - Attorney

Ncunyiswa Hans - Paralegal

Anthea Billy - Paralegal

Sally Hurt - Candidate Attorney

Elgene Roos - Candidate Attorney

Naushina Rahim - Candidate Attorney

Nasreen Solomons - Candidate Attorney

Pamela Allen - Librarian

Zulfa Mohammed - Secretary

Naomi Davids - Secretary

Nhikiza Matshaya - Office Manager

Thembile Maneli - Receptionist-Interpreter

Thandiwe Gebengana - Office Assistant

Grahamstown Regional Office

Sarah Sephton - Regional Director

Cameron McConnachie - Attorney

Mandira Subramony - Junior Attorney

Rufus Poswa - Paralegal

Talita Mshweshwe - Candidate Attorney

Michael Tsele - Candidate Attorney

Cecile van Schalkwyk - Candidate Attorney

Tawana Nharingo - Researcher

Valencia Morrison - Specialised Administration

Nomfundo Somandi - Office Manager

Ethel Libi - Receptionist

Amanda Moli - Office Assistant

STAFF PROFILE

Sherylle Dass

The LRC welcomes Sherylle Dass as the new Regional Director in the Cape Town office.

“I have always admired and respected the work of the LRC and their ground-breaking litigation and its impact in transforming and revolutionising South African jurisprudence. The LRC has developed phenomenal legal



Sherylle Dass

minds since its inception; some of whom have made valuable and significant contributions to our judiciary and academia. I am therefore privileged and honoured to take up a leadership role within the LRC to help shape and advance the next generation of social justice lawyers.”

Prior to joining the LRC, Sherylle was the managing attorney of Harris, Nupen, Molebatsi Inc, a firm that has over 80 years of combined experience advising corporates, governments and state-owned entities. Sherylle predominately practiced Philanthropy Law at the firm, servicing various non-profit organisations.

Prior to this, Sherylle was a senior attorney at the Equal Education Law Centre where she conducted research, public interest litigation and policy analysis focusing on access of education. From 2007 to 2013, she managed the Refugee and Migrant Rights Programme in Durban for Lawyers for Human Rights.

She is currently the chairperson of the Board of Directors of Sonke Gender Justice and an executive committee member on the board of Refugee Social Services.

We welcome her warmly and look forward to continued growth under her leadership.

CANDIDATE ATTORNEYS 2016-2017



Christine Grobler

My articles have equipped me with a wide variety of skills and experiences necessary to be a dynamic and capable attorney –
Christine Grobler, Johannesburg 2017



Kelly Kropman



Ralph Madlalate



Shaun Bergover



Sindisiwe Mfeka



Cecile van Schalkwyk

I get to live my passion – using the law to make the world a better place. It is a real privilege - few people are this lucky –
Cecile van Schalkwyk, Grahamstown 2017



Mpho Raboeane

I chose this path so I could help vindicate my people's rights and restore their dignity. This time at the LRC has humbled me, yet there is yet much to do; many more hands are needed –
Mpho Raboeane, Johannesburg 2017



Lungelo Baleni



Sally Hurt



Elgene Roos



Naushina Rahim



Nasreen Solomons



Talita Mshweshwe



Michael Tsele

FELLOWSHIP REPORTS AND PROFILES

The Arthur Chaskalson Fellowship

The late Arthur Chaskalson, former Chief Justice of the Constitutional Court and one of the founding members of the Legal Resources Centre, believed strongly in the principle of transformation in the legal sector. Transformation is critical for South Africa and has become a key focus for the LRC.

The Arthur Chaskalson Fellowship was launched in 2016 and recognises the barriers to transformation that exist in the legal sector and aims to overcome them. It provides funding for pupils to train under advocates or associates in the Constitutional Litigation Unit.

The first two Fellows, Yanela Ntloko and Phumzile Mdakane, began their legal careers as pupils in 2017.

“The fellowship further assisted me reach a dream that could have easily been buried. Therefore the fellowship to me was a further expression of how far public interest goes, more so, in the empowerment of those like me, a black



Yanela Ntloko



Phumzile Mdakane

woman. We often hear the utterance of the words “black excellence” but the reality is that without funding, many will fall through the cracks and be forgotten.” - Yanela Ntloko, 2017 Fellow

The Fellowship aims to remove these barriers by providing the necessary means and support for young, previously disadvantaged people to get training, make connections, and be financially sustained; all within the collective structure of the Legal Resources Centre. The Fellowship is not just providing a foundation for a legal career, but is providing the foundation for social justice.

“The Fellowship gave me an opportunity to work within a dynamic organisation that has been at the forefront of social change for almost four decades. This past year has taught me that social justice goes beyond the litigation of cases. It is about fostering relationships with communities with the aim of ensuring sustainability even after the litigation process is complete; seeing the world through our client’s eyes and creating platforms where individuals and communities actively participate in the fight towards social justice.” - Phumzile Mdakane, 2017 Fellow

James Rooney

Oxford Human Rights Hub/Rhodes University Travelling Fellow

*As published on the Oxford Human Rights Hub:
31 August 2016*

I am one of the two Oxford Human Rights Hub/Rhodes University Travelling Fellows for this year [2016]. This is the first year of the fellowship, and the second fellow will be travelling down at the start of 2017. The Fellowship is a partnership between the Oxford Human Rights Hub, Rhodes University in South Africa, and the Legal Resources Centre (LRC), a pre-eminent South African public interest law firm. It will enable two Oxford graduate students a year to travel to Grahamstown, a town in South Africa's Eastern Cape, for six months to jointly intern at the LRC and research at the Rhodes Law Faculty. I will be blogging for the OxHRH throughout my time in Grahamstown about my experiences at the LRC and the Rhodes Law Faculty.

I am now into my second week of the fellowship. I am spending the first two weeks working full-time at the LRC, as the research which I am planning to undertake here is closely related to the area of law which they specialise in. After this week I will be spending more time at the faculty, probably one or two days a week, with the rest at the LRC.

The LRC is a fascinating place to intern. This is my first internship at a human rights firm, and in the space of the last week I was working on cases regarding issues as varied as hate speech legislation, prisoners' rights, and the rights to protest balanced against the right to education. I attended an ongoing case in which the rights of SADTU, the South African Democratic Teachers Union, to take industrial action was having to be balanced against the conflicting constitutional rights of the teachers' pupils to education. After having studied the right to education cases in my Comparative Human Rights class in Oxford last year, it was great to be able to witness litigation first-hand that has the potential to further develop the case-law in this area.



James Rooney

While the LRC take on both civil-political and socio-economic rights cases, my main focus of interest is in their socio-economic rights litigation. The South African model of protecting rights to education and housing through court action interests me because it diverges so markedly from the British approach of viewing socio-economic rights concerns as presumptively unjusticiable. My internship at the LRC provides a great opportunity to explore this contrast, and analyse the pros and cons of this alternative approach to ensuring adequate service provision.

The Eastern Cape is South Africa's poorest province, and consequently there is no shortage of pressing human rights issues, particularly relating to access to basic resources. The LRC have been at the forefront in vindicating the right to education by bringing suits against the state for failing to provide the necessities for teaching, including teachers' pay, and appropriate classroom facilities such as tables and chairs. I plan to use my research time at Rhodes University to pursue my interest in this area of

law. I will explore whether class action suits, as the LRC pursued in *Linkside v Minister for Education* are preferable to public interest litigation, such as *Madzodzo v Minister for Education*, also an LRC case, in regards the remedies which these forms of litigation deliver for the school involved. In this way, the internship side of the fellowship will be directly informing the research side.

To read more about the Fellowship, visit the OxHRH: <http://ohrh.law.ox.ac.uk>

We thank OxHRH for their generous support and permission to repost this article.

INTERNSHIP REPORT

Katie Joh Grahamstown Regional Office

As published in Quadrangle, the official news site of Michigan Law School in the United States.

Authored by Jordan Poll.

It was during a phone call—a hushed conversation in a tiny library in South Africa—when Katie Joh realized she already had begun her career as an agent of change. As an extern during her 2L year, Joh spoke with the principal of a junior secondary school in the small town of Libode about school furniture. “He was so excited to receive a new shipment of chairs and materials to build more classrooms,” says Joh, recalling the principal’s contagious delight. That moment not only changed her perspective on what it means to be a practicing lawyer, but also reaffirmed her passion for it.

With a minor in education and a regard for child welfare, Joh’s background prepared her well for the three-month externship in South Africa, and for law school. “I really liked that Michigan has this vibrant public interest community with a commitment to experiential learning,” says Joh, now a 3L. She came to Michigan determined to pack the next three years with a broad range of experiences, and went on to join the Pediatric Advocacy Clinic and the Student Rights Project. She also set her sights abroad.



Katie Joh

“I wanted to get outside of my context for a little bit, and yet still be in the legal world, to have more perspective on what does and doesn’t make sense about the American legal system,” Joh says. Wanting to continue her study of education and child welfare law, she reached out to the Grahamstown branch of the Legal Resources Centre (LRC), an organization in South Africa that was started more than 30 years ago to represent people who were being tried for violations of apartheid law. Since that time—and especially during the past 10 years—

the organization has focused on education litigation, specifically issues involving education access for the rural schools of the Eastern Cape (one of the poorest provinces in South Africa).

During apartheid, rural schools were denied infrastructure, textbooks, teachers, food, and more. It was not uncommon for the classroom experience to involve sitting under a tree with dozens of other children in the hot sun, taught by a single teacher without any textbooks, desks, chalkboards, or even lunch. With the ratification of the Constitution of the Republic of South Africa in 1996, every citizen gained the right to a basic education. This brought to light the question of what it means for the State to provide citizens with meaningful access to education.

Shortly before Joh's arrival, the LRC won a precedent-setting ruling that declared the State responsible for providing adequate classrooms and furniture to the schools in and around the city of Mthatha. In subsequent litigation, the LRC received permission to monitor and implement this judgment, which it did by visiting each school and encouraging it to report its number of students and pieces of furniture.

One of Joh's first experiences with the LRC involved traveling to the rural schools near Mthatha. Most of these schools have been involved in education-related litigation for the past decade. "They are somewhat inured at this point," Joh says. "That being said, they recognize that litigation is a big part of progressing education reform." During her visits, she assisted her managing attorney by having conversations with school administrators about their rights following the recent judgment.

She also listened to the schools' many concerns—the biggest being overcrowding. Since the schools' interest in pursuing this direction of litigation coincided with her arrival in South Africa, Joh jumped at the opportunity to help. She began building upon the legal groundwork laid by the LRC by drafting an initial demand letter to the provincial Department of Education.

"The practice of the law—the actual mechanisms, interpersonal skills, writing skills, and logical skills that you need—is the same even if the exact law is very different. I developed a much better sense of that and a better intuition through my experience in South Africa," Joh says. She continued traveling to the rural schools around Mthatha with her colleagues, once visiting nine in one day. They identified the locations that had infrastructure problems and encouraged them to join the LRC's complaint. Joh collected information from students, teachers, and administrators and wrote affidavits that were filed with the complaint.

Of the many schools Joh visited, one stands out. St. Patrick's Junior Secondary School in Libode, outside of Mthatha, has become well-known for its discipline and for producing students who perform well on tests. Parents throughout the surrounding area send their children to be educated there. The school couldn't keep up with the ever-increasing number of students they received, resulting in overcrowding. "I remember walking in and they [the learners, as students are referred to in South Africa] were sitting with their backpacks on their laps because there was no space," Joh says. "Even if they had desks, they wouldn't be able to fit them in." She quickly became involved and worked closely with the school and its principal to fight for the infrastructure they needed. When the effort led to additional classrooms and furniture coming to the school, Joh and the principal had their celebratory phone call.

"It was a moment for me: That I, this law student, and the words I typed into my computer—in a little house and even smaller library—could actually lead to a kid somewhere having a classroom to learn in," says Joh, who plans to join Legal Services of Northern California. "I was able to make a change in this one way, and I hope it will be the first of many such moments in my career."

Thank you to Quadrangle for their generous permission to republish this article.

<https://www.quadrangle.law.umich.edu/>

THE RESEARCHER CORNER

Samantha Brener

I joined the LRC in August 2016 as the researcher for the Education and Children's Rights focus area. Here, my work involves research to support cases, independent academic research, arranging conferences and workshops, strategic thinking on the work of the focus area, and general content knowledge. I am also an admitted attorney, having worked at a law firm for 3.5 years before joining the LRC. I also clerked at the Constitutional Court under Justice Johan Froneman.

A piece of work that I did and really enjoyed happened towards the end of 2016. I assisted a Constitutional Litigation Unit Fellow that was based in Cape Town to collect data for a project on the National Schools Nutrition Programme. This is a national programme in which the National Department of Basic Education provides one meal to every learner every school day (for schools in poor areas). In poor families, this is often the only meal children get. We travelled to the Eastern Cape and visited



Samantha Brener

a number of schools in Mthatha. We conducted interviews with principals, teachers, learners and parents in order to get a sense of the impact of the programme on learners and families and also to find out how they thought it might be improved.

It's very inspiring to see how teachers, who are often very poor themselves, go out of their way to assist the worst-off children in their schools, often bearing the costs of assisting these children themselves.

Mapule Maema

I joined the LRC in June 2016 as the Housing Researcher where my research has focused on title deeds, subsidies, indigent policies and sectional titles. I'm part of a Ford Foundation-funded programme, and I've facilitated workshops on access to basic services, family law and asset-based community development. I've also facilitated and developed the resource content packs for workshops on Housing, Land and Local Government Planning, Land and Housing, and Labour Tenants. As part of the LRC's Housing Team, one of the current projects I'm working on is drafting written comments to the Minister of Rural



Mapule Maema

Development and Land Reform regarding the proposed Extension of Security of Tenure Act regulations.



Tsanga Mukumba

I joined the LRC in April 2017 as the Openness and Accountability (O&A) researcher focusing on protest and policing, and information rights. One of the first projects I was able to work on was the *amicus curiae* intervention,

Tsanga Mukumba

where the LRC represents the Right2Know Campaign, into amaBhungane's challenge to the Regulation of Interception of Communications and Provision of Communication Related Information Act.

This law dictates the lawful interception criteria to be applied by the State when seeking to intercept digital and other communications. The dynamic interplay between privacy and legitimate national security or crime control, in the realm of lawful interception, has really fascinated me. I hope that the research I have done into matters, such as mandatory SIM card registration and mass surveillance, will eventually contribute to a more balanced and regulated surveillance framework in South Africa.

PARTNER PROFILE

The Shukumisa Coalition

The Legal Resources Centre is a member of the Shukumisa Coalition, a group of NGOs, community-based organisations, research institutions and legal service providers that are working in South Africa to tackle the problem of sexual violence. We spoke to **Aniela Batschari**, the current coordinator, about the history and work of the Coalition.



What is the history of the Shukumisa Coalition?

Shukumisa's history is rooted in the formation of the National Working Group on Sexual Offences (NWGSO) in 2004. Their aim was to use broader and more inclusive strategies for targeting the State to ensure rights for sexual offences survivors. After many years of activism and legislative amendments, the Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act 32 of 2007) was signed by the President in 2008. The members of the NWGSO turned their focus towards the implementation of the new law. The name "Shukumisa Campaign" was chosen to represent the desire of member organisations to shake up public and political will to develop and implement policies and strengthen laws related to sexual offences in South Africa. In 2017, the Shukumisa Campaign changed to the Shukumisa Coalition, reflecting more accurately the work of a coalition made up of different projects that include advocacy campaigns, capacity building and network administration.

Who do the Shukumisa organisations help and what is the importance of that help?

Shukumisa members help in different ways – some provide counselling, some legal advice, others conduct research. Some organisations provide very specific support to a certain group like children, the LGBTI community or sex workers. The commonality of all our members is to provide help, support, advice and information for people who experience sexual violence. This help is very important because people who experienced or still experience sexual violence are often not getting the help, support and advice that they need in order to recover and heal. Some of our members are from academic institutions and their work provides insight into research and statistics around sexual violence and the role of the State, and presents recommendations of how things can change to improve services to survivors of sexual violence.

What is the role of Shukumisa in supporting these organisations?

Shukumisa's role is to share information on anything relevant to the work around sexual violence. This also includes funding opportunities, as all our members are non-profit organisations that depend on external funding to continue offering their services. Its role is also to bring members together on an annual basis to discuss how best to move forward in ensuring that laws and policies related to sexual offences are relevant for survivors of sexual violence and that they are implemented properly. It also plays a role of referring cases to members who are best placed to assist a survivor. Most importantly, Shukumisa brings organisations together that work towards the same goal. It gives weight to any cause that is being picked up by a members because there will be all the other members supporting that cause.

What have been some of the highlights of the Shukumisa Coalition since you have been coordinating it?

The collaborative work to amend Section 15 and 16 of the Sexual Offences Act in 2015, the annual members meetings where members gather to share, inform and plan together, funders believing in Shukumisa and providing the necessary funds to carry out our work, members initiating and leading actions such as submissions and advocacy initiatives, being able to help organisations and individual people to receive the services they needed, either through direct advice or referring them to the right people, the recognition of Shukumisa from within the sector and strategic partners. The most recent highlight has been the updated website and a communications and social media strategy in the making.

In what ways has the LRC been important to the coalition?

The LRC has been initiating and leading some actions like the Shukumisa submission to the Universal Periodic

Review on Gender-Based Violence in South Africa. The LRC has always been an active member of the Law & Policy task team, contributing to planning the strategic directions and relevant activities. The LRC has also been actively involved in the Shukumisa's "Strengthening Voice & Visibility Project" as part of the communication task

team and contributed to the development of the updated website. It is this active involvement of a member that makes the Shukumisa Coalition strong and relevant! Thank you LRC! And a special thank you to Claire Martens and Mandy Mudarikwa!

Visit their website: <http://www.shukumisa.org.za/>

TAKING THE LEGAL RESOURCES CENTRE FORWARD

Designing a Communications Strategy with Ellen Sprenger

The Legal Resources Centre had the unique opportunity to work with a financial resilience and communications specialist, Ellen Sprenger from Spring Strategies, in the development of the first stages of a communications strategy for the organisation. This strategy process was supported by the Ford Foundation's Global Programme.



From the 4-6 July 2016, a representative group of LRC staff joined Ellen and Ann Pettifor, an influential external communications expert, to workshop the first draft of a communications strategy. The purpose of the strategy is to enhance the external communications of LRC in order to strengthen its ability to realise strategic goals in pursuit of its mission.

It was an invigorating three days where the participants were all able to contribute their thoughts and experiences of communicating. We touched on the purpose of external communications, existing experiences and practices, the LRC's long-term advocacy objectives and the long-term, medium-term and short-term advocacy commitments. We

then did an exercise to identify audiences and targets for LRC communications, and develop a calendar of events. After this, the practical aspect of the workshop culminated in a draft communications strategy and plan, as well as recommendations on how to best implement the plan.

The OMT BUILD process with Ford Foundation

The Legal Resources Centre is grateful to have received another unique opportunity to grow the organisation and improve our experience of working for human rights in South Africa. We were one of just a few organisations from across the world chosen to undergo an organisational strengthening process through a BUILD grant from the Ford Foundation.

BUILD grants enable organisations and networks to strengthen their leadership, management, and strategic development. A significant portion of each BUILD grant is intended as unrestricted operating support. However, a majority of the funds provided under BUILD are supposed to support "institutional strengthening". This gives us an

exciting opportunity to learn, change and grow; as people and as an organisation.

As a step towards implementing the BUILD grant, on 3-4 October 2017, a representative portion of staff met in Johannesburg to workshop the organisational challenges and strengths. We formed three working groups focusing on organisational culture, fundraising and human resources. These working groups will be developing action plans to improve these areas of the organisation during 2018. We are looking forward to working with the Ford Foundation to implement the BUILD grant and benefit from its support.

Supporting Transformation in the Legal Sector

In 2016, the LRC implemented two initiatives to assist with supporting the transformation of the legal sector. The first was the Arthur Chaskalson Fellowship, an overview for which is provided in the "Fellowships at the Legal Resources Centre" section of this report. The Fellowship provides an opportunity for people from a historically disadvantaged group to undertake their pupillage with the internal counsel of the LRC. The second initiative was the drafting and adoption of a briefing policy, which determines choices for briefing counsel.

Notably, the LRC has endeavoured to develop the expertise and experience of in-house counsel and to brief our in-house counsel in a majority of matters



where only one counsel is briefed. Secondly, the LRC has endeavoured to contribute to the transformation

of the legal profession by taking into account the need for lead counsel on matters to be representative of the demographics of the LRC's clients and by increasing the pool of counsel with expertise in public interest litigation, especially black and female counsel. In this regard, the LRC's policy dictates that, unless there are exceptional circumstances that justify departing from this rule, it shall not be permissible to brief a team of counsel consisting only of white advocates, whether internal or external counsel. This rule shall apply to any matter in which more than one advocate is briefed on a matter. Furthermore, each individual attorney and each regional office should ensure that, over the course of a year, at least 50% of



external counsel that are briefed are black advocates and at least 50% of external counsel are female advocates.

ALLIED ORGANISATIONS

Friends of the Legal Resources Centre of South Africa

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

Canon Collins Trust

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

PATRONS AND TRUSTEES: DECEMBER 2016

Patrons

Sir Sidney Kentridge QC, SC

Most Honourable Reverend Desmond Tutu

Trustees

Ms Thandi Orleyn (Chairperson)

Professor Harvey Dale

Mr Ezra Davids

Mr Thabani Jali

Professor Michael Katz

Justice Jody Kollapen

Ms Joy-Marie Lawrence

Ms Janet Love

Justice Dunstan Mlambo

Ms Lumka Mlambo

Justice Lex Mpati

Justice Mahomed Navsa

Ms Marjorie Ngwenya

Mr Taswell Papier

Mr Richard Rosenthal

Ms Tshepo Shabangu

Judge Mahendra Chetty

INDIVIDUAL GIVERS

Thank you to all who supported us during the 2016-2017 financial year.

PC Pauw	Strat Align	M Modisaesi	Matthew	S Le Roux
Rabinowitz	M Hathorn	MS Navsa	Claire Martens	ZK Seedat
J C Kriegler	HM Corder	Bongani Majola	Martinette	M Wegerif
MS Stegmans	D Weah	HJ Barker	Margie	N Greve
Adv. Nelson	GivenGain	Fasken Maartineau	David Fig	Slypers
H Gilfillan	NA Matshaya	Ezra Davids	Jackson	Slypers
M Kunene	M Yves Laurin	R Moultrie	B Majola	W Kentridge
K Reinecke	J Love	Ryan Kitkat	MB Gevisser	Teresa Yates
AJ Freund	N Tiba	Manchadi Kekana	Morten Darley	Joe Kurk Strauss
L Modise	N Mvelase	ZK Zeedat	Jacob van Garderen	Naseema Fakir
S Makabeni	S Sonn	Elinor Kenn	Le Roux	Royal Institute
T Orleyn	V Fletcher	Avril Mofokeng	John Stephens	

LEGAL RESOURCES TRUST

ABRIDGED VERSION OF THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2017

Statement of financial position at 31 March 2017

LEGAL RESOURCES TRUST (Trust no. IT 8263) PBO reference no. 93002175 NPO registration no. 029 - 336 NPO

	2017 R	2016 R	2015 R	2014 R
ASSETS	35,637,889	41,782,697	36,330,498	32,533,888
Non - Current assets	30,498,098	41,684,305	35,913,896	29,445,360
Tangible assets	1,927,790	2,014,316	2,100,842	2,180,233
Investments	28,570,308	39,669,989	33,813,054	27,265,127
Current assets	5,139,791	98,392	416,602	3,088,528
Distribution in advance	-	-	-	2,000,000
Cash and cash equivalents	5,139,791	98,392	416,602	1,088,528
TOTAL ASSETS	35,637,889	41,782,697	36,330,498	32,533,888
RESERVES AND LIABILITIES	35,637,889	41,782,697	36,330,498	32,533,888
Equity and reserves	24,601,020	22,841,708	22,367,547	22,295,161
Initial trust capital	250	250	250	250
Revaluation reserve	2,272,206	2,272,206	2,272,206	2,272,206
Scholarship reserve	644,780	616,634	589,717	589,717
General reserve	21,683,784	19,952,618	19,505,374	19,432,988
Current liabilities	11,036,869	18,940,989	13,962,951	10,238,727
Deferred grant income	11,036,869	14,941,074	13,962,951	10,238,727
Distribution payable	-	3,999,915	-	-
TOTAL RESERVES AND LIABILITIES	35,637,889	41,782,697	36,330,498	32,533,888

Statement of comprehensive income for the year ended 31 March 2017

LEGAL RESOURCES TRUST (Trust no. IT 8263) PBO reference no. 93002175 NPO registration no. 029 - 336 NPO

	2017 R	2016 R	2015 R	2014 R
Income	63,330,807	53,490,387	44,197,771	42,960,704
Grants and donations	61,834,113	51,646,909	40,880,732	40,049,219
Dividend revenue	434,983	598,273	479,960	311,960
Fair value adjustment on investments	-	-	200,135	(1,108,224)
Gain on disposal of investments	344,886	-	1,592,360	3,074,854
Interest received	1,201,303	1,245,205	1,044,584	632,895
Expenditure	965,473	2,876,689	545,863	642,601
Investment managing fees	122,701	146,594	122,060	71,023
Audit fees	80,233	76,290	74,987	67,383
Bank charges	11,631	16,133	10,365	8,439
BEE rating	-	-	-	36,245
Depreciation	86,526	86,526	79,391	91,973
Fair value adjustment on investments	484,478	1,301,877	-	-
Loss on disposal of investments	-	70,136	-	-
Printing, postage and stationery	-	10,567	5,715	11,662
Repairs and maintenance	20,966	-	-	11,869
Secretarial services	29,450	112,982	96,064	-
Staff Wellness Programme	83,250	-	-	-
Travelling and accommodation - trustees	46,237	1,055,584	157,281	344,007
Surplus for the year	62,849,812	50,613,698	43,651,908	42,318,103
Distribution to Legal Resources Centre	(61,118,648)	(50,166,454)	(43,579,522)	(42,216,592)
Surplus for the year	1,731,164	447,244	72,386	101,511
Net transfer from reserves	344,416	-	-	-
Balance at beginning of the year	19,952,618	19,505,374	19,432,988	19,331,477
	22,028,198	19,952,618	19,505,374	19,432,988

Detailed schedule of grant and donation income for the year ended 31 March 2017

LEGAL RESOURCES TRUST (Trust no. IT 8263) PBO reference no. 93002175 NPO registration no. 029 - 336 NPO

	2017 R	2016 R	2015 R	2014 R
Foreign funders	37,621,218	34,705,518	28,625,095	29,348,618
Alliance for Open Society International	-0	2,000,000	-	-
Anonymous	697,790	720,214	-	-
Bread for the World	5,615,383	3,659,902	-	-
C S Mott Foundation	215,373	1,601,223	264,250	493,845
Canon Collins Trust	-	200,000	250,000	630,000
Comic Relief	2,238,867	2,828,596	2,574,423	6,750,611
Dutch Embassy	1,321,241	307,997	-	-
EIDHR	-	-	-	375,461
Embassy of Finland	-	-	-	21,978
Evangelische Entwicklungsdienst (EED)	-	-	3,151,548	3,114,020
Freedom House	246,756	361,699	871,804	857,340
OXFAM	180,969	-	-	-
Open Society Institute	1,099,442	259,946	-	-
SALS - S A Legal Services	3,226,733	1,659,067	736,985	-
Surplus People's Project - T.Amakhaya (EED)	435,772	420,571	737,908	162,053
Swedish Society for Nature Conservation	902,215	1,038,146	451,759	-
The Atlantic Philanthropies	-	-	4,000,000	5,000,000
The ELMA Foundation	2,000,000	2,000,000	-	-
The Ford Foundation	19,440,677	17,648,157	15,586,418	11,587,716
Local funders	24,212,895	16,941,391	12,255,637	10,700,601
Bertha Foundation	8,867,315	4,594,297	1,580,798	-
Bertha Foundation - LDSF	1,000,000	-	-	-
Claude Leon Foundation	1,500,000	1,500,000	1,500,000	1,000,000
Cliffe Dekker Hofmeyr Inc	-	-	-	20,000
EU - Foundation for Human Rights	-	217,000	17,500	469,775
ELMA Foundation	2,600,000	2,450,000	4,016,399	5,693,681
Former Chief Justice A Chaskalson	-	-	-	173,875
Millenium Trust	720,000	600,000	-	-
National Lottery Distribution Trust Fund	-	1,000,000	-	340,775
ND Orleyn	50,000	25,600	27,500	40,000
Open Society Foundation for Southern Africa	3,200,000	2,900,000	1,204,167	544,183
Other donors	369,672	715,994	460,065	200,973
RAITH Foundation	5,905,908	2,828,500	3,339,208	2,107,339
South Deep Education Trust	-	110,000	110,000	110,000
	61,834,113	51,646,909	40,880,732	40,049,219

LEGAL RESOURCES CENTRE

ABRIDGED VERSION OF THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2017

Statement of financial position at 31 March 2017

LEGAL RESOURCES CENTRE NPO NUMBER: 023 - 004 PBO NUMBER : 930003292

	2017	2016	2015	2014
	R	R	R	R
ASSETS				
Non current assets	2,098,143	1,643,938	1,077,511	641,338
Equipment	2,098,143	1,643,938	1,077,511	641,338
Current assets	9,670,784	7,601,545	3,938,849	3,062,408
Trade and other receivables	2,808,160	1,167,440	864,953	1,145,905
Distribution in advance	0	3,999,915	-	-
Cash and cash equivalents	6,061,462	1,908,538	2,397,619	1,497,532
Client trust bank accounts	801,162	525,652	676,277	418,971
Total assets	11,768,927	9,245,483	5,016,360	3,703,746
RESERVES AND LIABILITIES				
Reserves	3,809,971	1,346,049	1,104,928	(2,157,617)
Accumulated funds	3,809,971	1,346,049	1,104,928	(2,157,617)
Current liabilities	7,958,956	7,899,434	3,911,432	5,861,363
Trade and other payables	5,572,299	5,901,370	2,220,460	2,384,733
Cash and cash equivalents	14,518	42,353	-	1,057,659
Provisions for leave pay	1,570,977	1,430,059	1,014,695	2,000,000
Client trust funds	801,162	525,652	676,277	418,971
Total reserves and liabilities	11,768,927	9,245,483	5,016,360	3,703,746

Statement of comprehensive income for the year ended 31 March 2017

LEGAL RESOURCES CENTRE NPO NUMBER: 023 - 004 PBO NUMBER : 930003292

	2017 R	2016 R	2015 R	2014 R
INCOME	66,680,831	56,236,787	47,486,626	44,509,105
Cost recovery	2,572,182	1,523,275	1,498,879	1,534,496
Distribution from Legal Resources Trust	61,118,648	50,166,453	43,579,522	42,216,592
Donation income	572,790	3,382,881	-	-
Fundraising events	-	669,615	2,058,034	-
Sundry income	2,032,402	420,079	310,136	712,073
Profit on disposal of assets	96,910			
Interest received	287,899	74,484	40,055	45,944
OPERATING EXPENDITURE	64,216,908	55,995,667	44,224,081	44,520,523
Salaries and contributions	13,372,734	12,362,216	10,319,672	9,885,411
Office expenses	10,918,309	8,944,700	7,101,992	7,044,481
Administrative costs	1,273,140	1,187,195	790,944	792,330
Irrecoverable VAT written off	772,614			
Books and periodicals	734,408	624,423	557,710	374,766
Computer expenses	1,245,086	557,300	450,846	629,955
Consulting and professional fees	78,749	136,133	179,431	247,624
Depreciation	641,688	439,905	403,901	282,833
Lease rentals on operating lease	4,925,601	4,390,386	3,571,317	3,645,909
Printing and stationery	517,662	651,358	365,576	252,319
Telephone and fax	459,835	651,012	473,158	519,924
Travel - local	269,526	306,988	309,109	298,821
Project expenses	39,925,865	34,688,751	26,802,417	27,590,631
(DEFICIT)/SURPLUS FOR THE YEAR	2,463,923	241,120	3,262,545	(11,418)
BALANCE AT BEGINNING OF YEAR	1,346,048	1,104,928	(2,157,617)	(2,146,199)
BALANCE AT END OF YEAR	3,809,971	1,346,048	1,104,928	(2,157,617)

a Donation income incorrectly treated as vatable supplies by SARS. Prudently expensed and referred to Tax Ombudsman.

b Fixed assets falling below the SARS write-off limit to capitalised expensed in year of purchase R 417,714.

HARRY JAMES BARKER TRIBUTE

Active and working until his admission to hospital at 99, Harry James Barker died on 17 August 2006 after undergoing elective surgery. Harry left a bequest to the Legal Resources Centre, among other worthy causes. He had practised law for more than 60 years.

Harry was born in Headly, Hampshire in England in 1907, the son of a police officer and a midwife. His father died when he was six. Unable to support all her four children, his mother sent Harry and his 8-year-old sister to an orphanage.

While his friends became mostly labourers and farmworkers, Harry was allowed to study further, and wrote matric in London in 1924. He was untutored, but graduated with an honours degree in history and Latin from London University and a teaching qualification from Winchester. He taught until leaving England for South Africa in 1931. He taught in Johannesburg for a while, but studied law through the University of South Africa.

Before he could practise, World War II broke out, and after marrying Margot Haddon McGregor, his wife of more than 40 years until her death in 1977, he joined up and was sent north, only to contract amoebic dysentery in East Africa. He was sent back home and served out the war as an intelligence officer.

Margot bore him two sons, Oliver in 1944, a geologist, and William, in 1946, who became a journalist.

Harry was one of the Transvaal Section of the Mountain Club's oldest members, and climbed all over South Africa. In the Magaliesberg, many kloofs still bear names he gave them. On Table Mountain, in the 90s, he loved rock climbing with Supreme Court judge Denys Williamson, although, he said, he despised some of that man's political views. Other friends included writer and Nobel



Harry James Barker

Prizewinner Nadine Gordimer, Judge Issy Maisels, Sir Sydney Kentridge, SC, QC, and Bram Fischer.

HJ Barker was a "greatly respected lawyer all his life." Dairmuid Short, a colleague who works at Webber Wentzel, remembers his great passion for his work: "I met [Harry] in 1984 when I joined Bowens. What I remember most clearly about him was the passion and commitment he brought to everything he did, whether in connection with his profession or one of his many and varied hobbies and interests."

Harry promoted simple language in the Law. In 1989, at 82 years old, he won the Digma Prize for his writings in *De Rebus*. His book on the drafting of Wills was published by Juta when he was 95 years old.

He composed hundreds of songs and poems, the best of which were condensed into a book, "Here on the Rock", which sold out. All proceeds from the sale of this book went to build several homes for Habitat for Humanity. The book was published on what would have been Harry's 100th birthday.

Harry was active in protest politics in the far left all his life, a supporter of the Legal Resources Centre and the Defence and Aid Fund, and was a prolific writer of letters to many newspapers.

Oliver, his son, too has worked with the LRC on cases regarding mineral rights and asbestos. "Dad was a long-time supporter of the LRC and did much work for the

Centre and was an ardent admirer of George Bizos, as were all of us".

It is an honour to talk of family when referring to an organisation. The story of HJ Barker brings to life the notion of family: someone who supported the LRC due to his unrelenting belief in the notion of social justice, and who passed this passion to his son. We are deeply grateful to his contribution to the LRC, but also to have counted him as one of the family.

Read more about HJ Barker in his memoir, "**Harry James Barker: An Autobiography**", published by Webber Wentzel.

GET INVOLVED

Be part of our ongoing battle for justice and human rights

Donate

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

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

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

Account Name: Legal Resources Trust

Account Number: 2957333716

Bank Name: Nedbank

Account Type: Savings

Branch Code: 198765

SWIFT Code: NEDSZAJJ

Reference: Your Name and Contact Number

For Standard Bank clients, please use Branch Code: 19876500

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

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

Make a bequest

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

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

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

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

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

Or email us on donation@lrc.org.za

Join the conversation

website: www.lrc.org.za

Twitter: @LRC_SouthAfrica

Instagram: LRC_SouthAfrica

Facebook: <https://www.facebook.com/LRCSouthAfrica/>

Blog: <http://realisingrights.wordpress.com>

LinkedIn: <https://www.linkedin.com/company/legal-resources-centre>

YouTube: <https://www.youtube.com/user/TheLRCSouthAfrica>

Come to an event

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

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

RIDE FOR JUSTICE

In November 2013, a team of seven cyclists taking part in the Momentum 94.7 Cycle Challenge in Johannesburg joined the LRC's Ride for Justice Campaign. Although a small team initially, their commitment has been the impetus to start a dedicated campaign in support of the LRC.

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

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

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

To join the Ride for Justice Campaign please contact donation@lrc.org.za, phone 011 838 6601 or like our Facebook page: <https://www.facebook.com/RideforJusticeLRC/>

COMMUNICATIONS AND PUBLICATIONS

The Legal Resources Centre is proud to present the following new websites, apps and publications, developed over the course of 2016-2017.

New LRC websites

Main website: We have completed a fresh and exciting new website. <http://lrc.org.za/>

Resources website: We have completed a brand new “sister website”, named the “Resources website”, which hosts the online publications of the Legal Resources Centre. This website can be used by legal scholars, practitioners and activists who would like to easily access and interact with content and related documents attributed to the work of the LRC. <http://resources.lrc.org.za/>

EduInfoAfrica website: This blog is a sharing platform, dedicated to the exchange of knowledge about education and education rights across the African continent. We hope it will be used as a resource for civil society organisations, legal practitioners, researchers, academics, activists, business people, advocacy managers and development workers to access documents, make links to relevant partner organisations, and share insights on our EduInfoAfrica homepage. <https://eduinfoafrica.org/>



Apps 2016

The LRC is in the process of developing two new apps which were conceptualised through hackathons conducted in 2015/6. The first is “Amanzi Ngawethu”, an app that provides users with information on their rights to water. The second is a case management system that will provide paralegals and community advice offices with the tools to easily manage and update their cases. We look forward to launching them in 2018.

Publications 2016-2017

We have developed the following publications during 2016-2017:

- **Land Restitution in 2016: Where to from here? (2016)**

This publication gives an overview of the LAMOSA judgment, which declared the Land Restitution Amendment Act unconstitutional, as well as providing thought pieces and resources for communities and NGOs.

- **Handbook on the Rights of Informal Trade Workers (2016)**

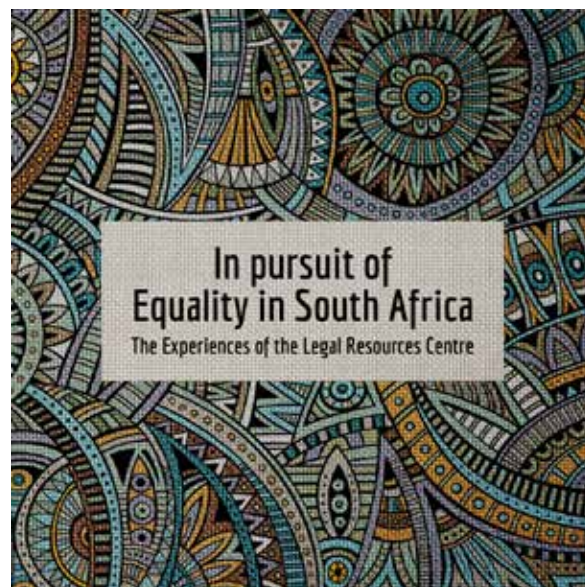
Produced in the LRC's Durban Regional Office, this book provides an overview of the rights of informal traders.

- **In Pursuit of Equality in South Africa (2017)**

This publication provides insights into some of the work in which the Equality and Non-discrimination Project of the LRC has been involved, and reflects on the role of the LRC in upholding the fundamental constitutional rights to equality and non-discrimination.

- **Realising Every Child's Right to Nutrition: An analysis of the National School Nutrition Programme in the Eastern Cape (2017)**

This booklet and larger research report details the outcomes of an investigation into the implementation of South Africa's National School Nutrition Programme (NSNP) in schools in the Eastern Cape, South Africa. The Legal Resources



Centre hopes that the information contained in this report can be used by civil society, policy makers and departmental officials to continue to improve the functioning of the National School Nutrition Programme and, by doing so, support the full realisation of every child's right to food and nutrition in South Africa.

We also contributed chapters for the following publications, produced by the International Network of Civil Liberties Organizations (INCLO):

- **Surveillance and Democracy: Chilling Tales from around the World (2016)**
- **Lethal in Disguise: The Health Consequences of Crowd-Control Weapons (2016)**

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