

Mission Statement

The Legal Resources Centre is an independent, client-based, non-profit public interest law centre which uses law as an instrument of justice. It works for the development of a fully democratic society based on the principle of substantive equality, by providing legal services for the vulnerable and 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.

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

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

To achieve its aims, the Legal Resources Centre 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 and outside South Africa.

Chairman's Report,

1998–1999

Legal Resources Trust

While our Constitution holds out the promise of eradicating poverty and injustice caused by years of apartheid, there remain fundamental challenges for a public interest law organisation like the Legal Resources Centre. In a sense, our greatest challenge is to use the law to help fulfil the promise of the Constitution. How have we addressed this challenge as an organisation?

The LRC has realigned its outlook and strategy in fundamental ways. We adopted a new mission statement; we started working in projects linked to certain rights contained within the Constitution; we established a unit within the organisation to undertake litigation in the Constitutional Court. We have refocused and strengthened our interventions in the land, housing and development sectors as part of a poverty alleviation strategy. These are significant shifts in our approach to the practice of public interest law in post-apartheid South Africa.

Internally, as well, the LRC has undertaken a number of strategic steps intended to make our service delivery to vulnerable people more effective and efficient. The LRC has embarked on an upgrade of our information technology systems to equip our lawyers with the basic tools they need to practise law. We have created new posts in the areas of fundraising, communications, and human resources, and we have begun to explore changes to our legal status and structure in order to facilitate our long-term sustainability.

Since the start, the Legal Resources Trust has served as the principal entity which sets policy, approves the budget, raises money, and appoints the senior staff of the Legal Resources Centre. Over the past year, the Trust itself has embarked on a number of changes to our composition and membership. The term of office of several trustees came to an end. Judge Jeremy Pickering, Ismail Ayob, Judge Navi Pillay, and

Tiego Moseneke ceased to be trustee at the 1999 Annual General Meeting. The term of office of Judge Johan Froneman and Dolly Mokgatle came to an end at the Annual General Meeting of 1999, and at the same time, two new appointments were made to the Board of Trustees: Jody Kollapen and Judge Lex Mpati.

I, too, decided to step down as Chairman of the Trust. I am happy to say that I have been asked to stay on as a trustee of the Legal Resources Trust. My reasons for retiring as chairman will be part of a special report annexed to the 1999-2000 annual report together with an account of a banquet held at the 1999 AGM, and a brief journey to the Makuleke in the northeastern corner of the Kruger National Park undertaken by members of SALSLEP and LAT, and organised by Moray Hathorn and Tom Winslow immediately after the AGM. I would like to thank both Moray and Tom for making that most interesting journey possible.

At the trustees meeting of May, 1999, Judge Basil Wunsh agreed to be Acting Chairman while the search for a new Chairman continued. The search not having yet borne fruit, he is now the Chairman. I thank him and wish him well in this endeavour. The Trust is going through the travails of all older organisations that have to change with the times and there are still many issues still to be addressed.

The Trust also took the decision spurred on by the directors themselves that regional directors shall no longer be trustees. They will no longer have a vote at trustees meetings, but will be invited and expected to attend such meetings. The National Director remains an ex officio trustee. I am happy to say that the trustees and directors of both the Legal Assistance Trust and SALSLEP are invited to attend trustees meetings when possible.

The LRT has made changes to the financial management of the organisation, too. We co-opted additional members to our subcommittee on finance and governance, Hugh Herman and Zakhele Sithole, whose skills and voluntary services are most appreciated. We appointed new asset managers, the Board of Executors and Investec Bank. We decided to appoint new auditors during the 1999-2000 financial year. We are also considering making amendments to the deed of trust which would permit cost recovery in certain instances. This is intended to boost the long-term financial sustainability of our non-profit enterprise. And finally, we are in the process of registering the Legal Resources Trust in terms of the Non-Profit Organisations Act 71 of 1997 – a voluntary step to comply with the prevailing norms of good governance for civil society organisations in terms of recently-enacted legislation.

The Legal Resources Trust is doing what it can to enable the Legal Resources Centre to meet the challenges of our new constitutional order based on fundamental rights. I think we are meeting those challenges, and I want to express my appreciation to the staff and trustees who work on behalf of our clients all across the country. I want to thank our donors both domestic and abroad who have contributed income of more than R15 million to the LRT in the past financial year. And I want to thank our special friends – the Legal Assistance Trust (LAT) in the United Kingdom and the Southern African Legal Services and Legal Education Project (SALSLEP) in the United States - for the unique role they continue to play as our international partners in public interest law. It is invidious to mention some but not all the donors who have consistently assisted the LRC over the years, but I would especially like to thank the Canadian Bar Association for its invaluable support of our Constitutional Rights Programme, both in terms of practical legal assistance to our litigators and in terms of our partnership with the Canadian International Development Agency.

To meet the challenges of our new legal order, to better serve our client communities, and to strengthen our long-term sustainability, both the Legal Resources Trust and the Legal Resources Centre have adapted and changed to new circumstances. We have not yet completed the task. But we have completed the beginning of our process of transforming the organisation to meet the new and

heavy demands placed upon it. I am confident that the Legal Resources Centre and the Legal Resources Trust will meet those challenges as well now as they have done in the past.

Felicia Kentridge
Chairman, Legal Resources Trust

National Director's Report, 1998–1999 Legal Resources Centre

As we produce this last annual report before start of the next millennium, we are confronted with many issues and challenges that constrain us to look back and take stock before we set our sights ahead into the next millennium.

The Legal Resources Centre (LRC) was born 21 years ago at the height of apartheid oppression. At that time black people were chattels with no citizenship and no rights. Parliament was sovereign, the executive was untouchable, and the judiciary was liberally peppered with executive-minded judicial officers, especially in its lower ranks. The predictable findings of inquest magistrates in cases of police killings of political detainees and activists are examples of such judicial executive-mindedness. Legal representation was reserved only for those who had financial means and could therefore pay for it. For the poor, the state's legal aid system was both inadequate and highly inefficient. The Legal Resources Centre's mission was to provide free but effective legal services to the poor and the marginalised, and to use the law as an instrument of justice.

In the 21 years of its existence, the LRC succeeded in providing protection to millions of black people who were victims of apartheid oppression. The organisation used the law under apartheid, with all its limitations, to bring urgent and, at times, long-term relief to the homeless, the landless victims of bureaucratic indiscretion and the abuse of power by the state. In spite of the limitations of law under apartheid, the work of the LRC dealt a severe blow to the infamous pass laws system, forced removals, police brutality, employment malpractices, consumer oppression, and many others. During most of those years the struggle was to establish respect for civil and political rights. However, since the governments of the time did not recognise human rights, the struggle was limited to ameliorating the harshness of the oppression and the violations of basic rights of black people. At the beginning of the 1990s, great strides were achieved by the country in bringing about respect for human rights. This was largely through political dialogue and negotiations. At the end of those political negotiations, democracy was introduced in South Africa. A supreme and democratic constitution with an entrenched bill of rights was also adopted.

What role for the LRC in post-apartheid South Africa?

The advent of democracy raised questions regarding the need for the continued existence of and the role of public interest law and human rights organisations like the LRC in the democratic South Africa. What is the new role of the LRC in the present and future South Africa? This is one of the many questions that the organisation sought to answer in its recent strategic planning.

When democracy came to South Africa in 1994, it found a devastated country. This immediately placed the reconstruction and development of the country on the agenda of all South Africans. The new Constitution creates a framework within which

civil and political rights can be protected. It also creates a framework for tackling the desperate challenges facing the country by entrenching social and economic rights. Those challenges include the ever-increasing rate of unemployment, social and economic inequality, illiteracy, inability of the majority South Africans to access resources, the inability of many to access justice, and the lack of security of person for all. Perhaps the greatest challenge facing not only South Africa, but the world at large, is the need to alleviate poverty. Apartheid South Africa created massive poverty as a deliberate strategy to entrench and maintain the privileged status of its minority white population. That poverty is the legacy that the new South Africa has to tackle. The new government responded to the challenge by launching the Reconstruction and Development Programme in 1994.

Free legal services for the poor promote development

The experiences of the LRC especially since 1994 have clearly shown that the success of development initiatives, at least in this country, depends, in many instances, on the provision of free legal services to the poor. The LRC continues to provide legal back-up and support to initiatives relating to the provision of housing, education, health, welfare, access to water, and access to land. It has also contributed to the strengthening of constitutional democracy and the promotion of respect for the rule of law. Economic growth requires a stable, democratic environment. This promotes investments, job creation, and the reduction of poverty. The role that our organisation plays is complementary to economic growth, development, and the resultant alleviation of poverty.

Many who view the political changes in South Africa conclude that all is well. It is not. In spite of the adoption of a democratic Constitution and the election of a democratic government, the legacies of apartheid still plague the poor and disadvantaged people of this country. The 1998 'Speak Out on Poverty Campaign' of the South African NGO Coalition highlighted that access to land, housing, infrastructural services, social security, health services, education, employment and environmental justice are the greatest needs of the poor people of this country.

The experiences that the LRC has acquired while working with poor communities confirm these as the most immediate challenges that the new and democratic South Africa faces. Our projects, organised under two programmes, the Land, Housing and Development Programme and the Constitutional Rights Programme, are aimed at contributing to national efforts to meet these challenges and alleviate poverty. In short, the work of the LRC is forward-looking in that it promotes development initiatives, but it is also backward-looking insofar as it tries to deal with the many legacies of apartheid.

Economic empowerment through land reform

During the past year, the LRC impacted strongly on efforts to provide access to land for and the economic empowerment of poor communities. Our organisation continued to assist communities that had been forcibly removed from their land to regain the land or obtain fair compensation. Land claims are involved, and take a long time to finalise.

The LRC continued to assist the Makuleke community, for example, with its land claim. This is a landmark case in which the organisation was successful in assisting the community reclaim its land. In terms of the settlement, which our lawyers negotiated on behalf of the Makuleke community, the ownership of the Pafuri region of the famous Kruger National Park will be transferred to the community. The land

will be managed jointly by the South African National Parks and the Makuleke community as a conservation area in which the community will enjoy exclusive commercial rights. Our efforts in not only ensuring the return of dispossessed land but also in bringing about economic empowerment one day will make a significant contribution to the development of this community. The Makuleke now have access to resources that may bring about development in the form of the supply of basic, clean water and electricity, the provision of employment, health clinics, roads and new schools.

The LRC successfully deployed similar efforts in the Mier case and obtained not only the return of land to the San people, but also a commercial interest in a part of the Kalahari-Gemsbok National Park. In the North-West Province, too, the LRC assisted the Barolong community to reclaim their land from the South African National Defence Force. It had been forcibly taken away by the apartheid government in order to be used for military exercises and training. The LRC negotiated a settlement that returned the land to the Barolong community and won certain mineral rights therein.

Promoting gender equality

Efforts of the LRC to assist communities to secure land, land rights and security of tenure are designed to address other social and economic needs where possible. Among others, the LRC has been able to put the issue of gender equality on the agenda of rural communities that it assists. Our assistance to clients is made available on condition that women are given substantively equal representation in communal property associations and are given opportunities to play meaningful roles in these associations and communities. In a way this raises awareness among rural communities on the status and plight of women, and it emphasises the need for treating them as equals.

Wide inequalities characterise the difference in the lives of men and women in South Africa. The discrimination meted out by law – particularly African customary law and Muslim personal law – to women on a daily basis has led the Legal Resources Centre to establish a Women's Rights Project to tackle some of the problems head on. The objective of this project is to challenge discriminatory practices and policies in our law and to contribute to national efforts to eliminate the unequal status of women in the country. The project has started with a number of cases in this regard including cases of domestic violence, intestate succession by women under customary law, and issues of family maintenance.

Social welfare for the elderly and disabled

Many elderly and disabled South Africans depend upon social welfare and disability grants from the state for their subsistence on a month to month basis. The receipt of these grants often determines whether a disabled or an old person has food or not, whether she has water and lights in the house, and whether he or she can get medical assistance when ill. Loss or termination of the welfare grants therefore has dire consequences for most. The inevitable consequence of not receiving these grants is greater poverty and much hardship.

Although section 27 (1) c of the South African Constitution guarantees social security and imposes an obligation on the state to support those that cannot support themselves, government officials have continued in some provinces to deny this right to many deserving cases. In some instances old age and disability grants are cancelled for no apparent reason. In other cases decision-making on applications is delayed for inordinately long periods of time. And in some particularly tragic matters,

the applicants even have died before they received an answer from the Department of Welfare regarding the restoration of cancelled grants.

Our interventions sought to change this unfortunate state of affairs. In the past year, the organisation undertook a tremendous amount of work in this area and has already registered a number of significant successes for the aged and disabled poor. In a small way, this has motivated some government departments to deal with welfare matters in a more humane manner. It has also served as an educational tool through which both government officials and members of the community have learnt about human rights and our Constitution.

Partnerships in civil society

The complexity of South Africa's apartheid legacies and the demands of modern day development stress the importance of working in partnership with other agencies. There is general acceptance in this country that the success of the government's Reconstruction and Development Programme depends on the extent to which the government works in partnership with civil society organisations. At the same time, the work of civil society organisations that do development work requires the provision of legal services on a continuous basis. It is for this reason that the LRC continued to work in a constellation of partnerships with many development agencies including the Surplus People's Project, Farm Africa and others.

In order to meet the demand by civil society organisations for legal services and to contribute to their long-term sustainability, the LRC adopted the Non-Profit Organisations Legal Services Project during the past year. The aim of this project is to provide legal assistance and advice to non-profit organisations on a national basis. In addition, the project also runs training and education workshops in order to build capacity within non-profit organisations to enable them to handle and solve simpler legal issues that confront them in their work. Our intervention is intended to help especially those non-profit organisations that are too poor and cannot afford to pay for the services of private lawyers. This is another unique way in which the LRC can use its particular expertise to strengthen the fabric of civil society in South Africa.

Looking to Southern Africa

The LRC also strengthened its partnerships with legal aid and human rights organisations in countries within the Southern African Development Community (SADC). In addition to rendering service as the secretariat of the Southern African Legal Aid Network, the LRC continued to provide placement positions in its regional offices for interns from organisations located in other Southern African countries. The aim of the internships is largely capacity-building and training. These internships foster learning experiences for both the visiting interns and our organisation.

Another issue in respect of which the LRC needs to work in partnership with other agencies is that of refugees. The LRC litigated a number of test cases on the rights of refugees during the past year and brought relief to thousands of refugees against the arbitrary and sometimes xenophobic decisions of some of our government departments.

The issue of refugees that flock to South Africa by the thousands illustrates the importance of and the inter-relationship between economic growth and stability in a country where democracy, human rights and the rule of law are practised. The solution lies in part in greater co-operation with Southern African countries to ensure stability and economic development in those countries. It is for this reason that the LRC uses its experiences and expertise in its network and co-operation with human rights organisations in the SADC countries. We strive to develop strong partnerships

through which to continuously explore ways of collaborating to develop a human rights culture in Southern Africa.

Strengthening respect for rights

One of the biggest challenges that faces the nation, and indeed the LRC and other human rights organisations in South Africa, is how to bring about the enforcement of socio-economic rights. The South African Constitution entrenches the right of access to sufficient food and water, health care services and social security. The progressive realisation of these rights is one of the key factors in the fight against poverty. The organisation and others that work in this area in South Africa have not made any major break-throughs in enforcing social and economic rights. Together with its partners, the LRC continues to look for ways of enforcing these rights, including judicial enforcement and other forms of compliance. During the year, the LRC co-hosted a conference on the enforcement of socio-economic rights in partnership with the Community Law Centre of the University of the Western Cape. We are now collaborating with the Community Law Centre to produce a book on the enforcement of socio-economic rights.

Although the focus of our work has been on those rights that bring about change in the social and economic lives of the poor, the LRC also continued to contribute to the strengthening of respect for civil and political rights. During the year, the Johannesburg High Court asked the LRC to represent a poor person to challenge the constitutionality of Section 37 of the General Laws Amendment Act. This law ignores the provisions of the Constitution which state that an accused person is presumed innocent until proven guilty by the state, by placing the onus on the accused to prove his innocence.

There were other initiatives aimed at strengthening civil and political rights. Among them was the attempt to limit the police powers of arrest that allowed them to kill a suspect who flees or resists arrest. We also continued to represent families of victims of apartheid's gross human rights violations in amnesty hearings before the Truth and Reconciliation Commission. Among them is the amnesty application of the Cradock Four, in which we represented the widows of four slain Eastern Cape activists.

Ensuring the LRC's future financial sustainability

Especially for public interest law and human rights organisations, foreign donor funding has continued to decline while local funding has not shown any increase. This development puts an unequivocal demand on civil society organisations to confront the issue of sustainability. The slow establishment of the National Development Agency may signal the start of that agency giving financial assistance to civil society organisations in the near future. In the meantime, the non-profit sector continues to function under severe financial constraints. The South African NGO Coalition and the Non-Profit Partnership – assisted by the LRC - have spearheaded a campaign to bring about a more favourable tax regime for the non-profit sector. In addition to making contributions to this campaign the LRC has restructured its programmes and projects and is continuously exploring alternative means of raising income. Among others, its governing body, the Legal Resources Trust, is in the process of amending its Trust Deed to facilitate the LRC's sustainability through income-generation.

The decline in income continues to place the work of the organisation in jeopardy. On the one hand, attractive salaries that are offered in the commercial market expose the LRC to continuous loss of experienced lawyers and other essential staff. Because of the comparatively low salaries that the LRC and other human rights

organisations pay, efforts to recruit and replace our most experienced lawyers have largely ended up in failure. Concurrently, some donors are giving warnings that they will not support organisations that pay what the donors perceive to be high salaries.

Growing pressure for state legal aid

Another parallel development is that the cost of providing efficient and effective legal services has continued to rise. This is making it increasingly difficult to achieve the objective of providing quality legal services to the poor, and thereby enhance their access to justice. On the side of the state, the Legal Aid Board has been struggling to meet its mandate of assisting those who cannot afford lawyers to gain access to justice. By the end of the last financial year, there was grave doubt regarding the Legal Aid Board's ability to discharge its mandate. It seems that in the near future poor people will end up not getting the legal services that our Constitution so eloquently guarantees.

In spite of financial constraints, the Legal Resources Centre did outstanding work delivering legal services to the poor during the last financial year. This was made possible largely because of the generosity of foundations, foreign governments, development agencies, corporations, and individual benefactors. None of the LRC's achievements would have been possible were it not for the dedication of our staff and their commitment to help the poor and the marginalised. The founders of the LRC were conscious of the limitations of the country's legal aid system when they started it. They sought to provide quality legal services to the poor. In the 21 years of its existence, the organisation has zealously carried the tradition of providing such service to the poor. The LRC is therefore justly proud to have made another modest contribution to development and the alleviation of poverty, to the strengthening of constitutional democracy in this country, and to the promotion of human rights inside South Africa and beyond its borders.

We are conscious of the fact that our tasks and challenges remain daunting and awesome. As we get consumed with the uncertainty that we fear the new millennium may bring, we remain certain of one thing: poverty and other legacies of apartheid will be with us even in the new millennium. The challenge is to never stop striving for their eradication.

Bongani Majola
National Director

Report on the Constitutional Rights Programme

'The crisis of constitutionalism is to reconcile [our] passionate faith in the normative power of constitutionalism with the intense scepticism and even cynicism arising from the failure of constitutions in many societies to uphold human rights or democratic values, and the appalling disparity between constitutional theory and constitutional practices.'

Neelan Tiruchelvam presented this challenge to legal activists in a paper entitled 'Constitutionalism and Diversity' delivered two days before he was killed by a suicide bomber on 29 July 1999, in Sri Lanka. His words were repeated by Uganda's distinguished legal activist Joe Oloka-Onyango at the opening of the International Conference on Constitutionalism in Africa held in Kampala in October, 1999.

Across Africa, Oloka-Onyango told the conference, there is 'a trend fired by an intense faith in the capacity of modern constitutions to enthrone popular sovereignty, empower disadvantaged groups and individuals, and fashion institutions of democratic accountability'.

Our response to those challenges has been the Constitutional Rights Programme.

Since the LRC adopted its strategic plan and embarked upon establishing the Constitutional Rights Programme, we have been developing projects which hopefully will meet those objectives and in the words of the Constitution of the Republic of South Africa ensure that 'the state must respect, protect and fulfil the rights in the Bill of Rights'. Much of the work during the last year has been spent trying to narrow our focus so as to ensure real impact for large numbers of people. We are currently defining the project outlines and constituting the project teams so as to ensure that the gains made in the new constitutional state become part and parcel of the everyday rights and existence of the LRC client community on a national basis.

This report looks briefly at some of the projects and advances achieved by litigation, negotiation, advocacy and education.

Equality under the law

Shortly before the second national election the Constitutional Court ruled in a matter brought by the LRC on behalf of prisoners that the Independent Electoral Commission (IEC) was to make all necessary arrangements to enable prisoners both convicted and awaiting trial to vote. Here the Constitutional Court reversed a contrary decision by Judge Johan Els in the High Court in Pretoria. The claim was based on the constitutional rights to vote, to equality, to dignity and the statutory and constitutional obligations of the IEC to make such arrangements. Government did not oppose the application. But the IEC – while not disputing prisoners' right to vote – opposed the application on the basis that it was not obliged to make special arrangements for the registration and voting of prisoners who are precluded from voting because of their incarceration and a predicament of their own making (now reported as *August and others vs Independent Electoral Commission and others* 1999(3) SA 1(CC); 1999(4) BCCR 363 (CC)).

This tendency by government departments not to directly oppose in constitutional rights matters, but instead to justify non-compliance with those rights, was also seen in the LRC's Equality Project. Here the LRC successfully challenged the constitutionality of Section 25 of the Aliens Control Act, which was being used against lesbian and gay aliens who are partners of South African citizens. Our clients alleged that they were being discriminated against in terms of the refusal to provide residency rights to partners in gay relationships; they maintained that partners in heterosexual relationships were not disqualified from obtaining residency permits

and that the Department of Home Affairs discriminated against them on the basis of sexual orientation. The Cape High Court held the offending provisions of the Aliens Control Act to be unconstitutional and referred the matter to the Constitutional Court for ratification. The case was particularly notable in that the Department of Home Affairs failed to file opposing papers at the High Court (now reported as National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others 1999(3) SA 173 (C)).

The Governance Project challenged the constitutionality of the Transkei Regional Authority Courts, where thousands of people in the apartheid days had been charged and convicted, and where today numerous clients face penalties, without legal representation. In terms of the Governance Project, the Constitutional Litigation Unit represented member of Parliament Patricia de Lille, who successfully challenged her suspension from Parliament in the Cape High Court (reported as de Lille v. Speaker of the National Assembly, 1998 (3) SA 430 (C)). The Speaker of Parliament subsequently lodged an appeal to the Supreme Court of Appeal [now reported as Speaker of the National Assembly v. de Lille and Another 1999 (4) SA 863 (SCA)].

Tens of thousands of pensioners have not been receiving their state pension regularly. In the Northern and Eastern Cape provinces, provincial welfare departments acknowledged this in court papers which challenged this practice. In the Northern Province, for instance, the LRC challenged a decision taken by the Welfare Department to stop or suspend the payment of social assistance grants to some 92,000 beneficiaries. A similar case was brought in the Eastern Cape, where the court held the Provincial Minister of Welfare – the public official responsible for this state of affairs – in contempt of court in more than 40 individual cases. Similarly, in the Northern Province, the Welfare Department's decision to suspend the payment of pensions to the elderly was held to be unlawful and invalid before the High Court in Pretoria. In that case, unfortunately, relief was only granted to the applicant herself and not to the others who had been disadvantaged by the suspension of their pensions. Cases enforcing welfare rights continue in both the Pretoria and Grahamstown LRC offices, and will be a central part of their practices during the 1999/2000 year [now reported as Maluleke v MEC, Health and Welfare, Northern Province 1999 (4) SA 367 TPD].

The Non-Profit Organisation Project – aimed at empowering community organisations to properly constitute themselves in legally recognisable tax-efficient vehicles – set up and started advising community organisations across the country. The project also contributed significantly to submissions made by NGO partners to the Katz Commission report on the taxation of non-profit organisations.

The Women's Rights Project has seen an array of cases protecting clients against abuse and challenging the lack of maintenance payments. In addition, staff working in this project initiated several cases dealing with inequalities arising out of both Muslim personal law and African customary law regimes. These various cases will help inform LRC representations to the South African Law Commission, which has been seized with the responsibility for assessing marriage regimes in terms of the equality provision in the Constitution.

Fighting for legal representation at state expense

The Criminal Justice Project is an area of limited activity for the LRC in that we do not involve ourselves in cases on behalf of criminal suspects. We do believe, however, that the state is under a constitutional duty to provide legal representation to indigent accused at state expense, irrespective of the charge. Our task is to find the right case to properly explore that duty in the higher courts. In the matter of the Hlantlalala brothers, for instance, the LRC represented clients who were found guilty

in a magistrate's court on a criminal charge. At the outset they had been asked whether they were legally represented and they replied that they were not because they could not afford to hire a lawyer. The magistrate made no response and the trial proceeded. The LRC represented the accused brothers on review before the Transkei Division of the High Court. That court held that the magistrate indeed failed to comply with the right of each accused to have legal representation assigned to him at state expense and further that she had failed in her constitutional duty to inform them of the existence of that right. The court, however, held that the accused did not suffer any prejudice as a result of the failure. In spite of the fact that the Interim Constitution guaranteed accused persons the right to legal representation, the court reasoned that there was no administrative infrastructure operative in the former Transkei to secure that right for accused persons. The LRC has been granted leave to appeal the matter before the Supreme Court of Appeal in March, 1999 [since reported as *Hlantlalala & Others v. Dyantyi NO & Attorney General Transkei* (Case no. 411/96)].

Also in the Criminal Justice Project, LRC lawyers represented numerous people opposing amnesty applications to the TRC. The most significant of these have been the family of the late Steve Biko where amnesty was denied to the applicants as the TRC Amnesty Committee was not satisfied that the applicants had made full disclosure about their involvement in the late activist's torture and death.

In another key contribution to criminal law jurisprudence, LRC lawyers also argued successfully that the statutory reverse onus in dealing with stolen property in terms of Section 37 of the General Laws Amendment Act 62 of 1955 was unconstitutional. This case, too, has been forwarded to the Constitutional Court for confirmation [see *S v Manamela* and another 1999 BCLR Sept].

The Constitutional Rights Programme has also been actively involved in various law reform and advocacy initiatives during the year. Our staff have made representations to Parliament on the Refugee Bill, the National Environmental Management Bill, the Bill on Domestic Violence, the Maintenance Bill and the Bill on Customary Marriages. LRC lawyers have also participated in various fora discussing the forthcoming constitutionally-required legislation on rights to administrative justice, information and equality. In the Environmental Justice Project, for instance, significant impact was achieved in representations in respect of the National Environmental Management Bill which was passed into law in January, 1999. LRC lawyer Angela Andrews has since penned the user-guide to this Act issued by the Department of Environmental Affairs.

Further in the Environmental Justice Project, the slow government reaction to recommendations and findings of the Desai Commission of Enquiry into the fire at Macassar, outside Cape Town, has been disappointing. Nor has there been progress in receiving the Commission's findings into toxic wastes held at the site, where the LRC was instrumental in ensuring the enquiry. In KwaZulu-Natal, LRC lawyers advised communities concerned about a strategic environment assessment of the South Durban basin. A proposal to move the Durban airport and use the land either for a petro-chemical site, light industry, or a major extension to the harbour, was under consideration. As a result of LRC input questioning the credibility of the impact assessment reports, the Durban Metropolitan Council asked LRC clients to suggest a new air quality management system for Durban. This project will engage scientific advisors for many years and is hopefully one of the first of its kind in the country. LRC lawyers have also played a small part in the work being done by attorneys Leigh Day in the United Kingdom, where attempts are being made to hold multi-national corporations liable for delicts committed in the developing world. This environmental protection role via constitutional provisions is also finding expression at Kagiso where Pretoria LRC lawyers have brought an application to compel mines to stop the

ongoing dust pollution affecting Gauteng communities.

These briefly are some of the litigation and legislative advances brought about by lawyers working within the LRC Constitutional Rights Programme.

The Access to Justice Project still sees thousands of people across the country who are advised by lawyers in each of our offices. Project members regularly visit dozens of advice offices in remote and rural areas to assist in a myriad of matters which do not necessarily go to litigation. Workshops were held with schools in relation to children's rights and there was a further array of workshops, training sessions and networking ensuring that we take the objectives of constitutionalism to our brother and sister NGO's, communities and other lawyers.

Intense faith in modern constitutions

The LRC mission statement identifies as our client base the vulnerable and marginalized, which includes the poor, homeless and landless. In our offices and as these projects develop we learn much from these communities of people who show what Oloka-Onyango called the 'intense faith in the capacity of modern constitutions'. Perhaps if we succeed in making these constitutional rights living parts of all our lives, the scepticism need never overcome us.

The time spent in developing these projects confirms the comments made by Joe Oloka-Onyango and Julius Ihonvbere at the conference mentioned at the start of this report:

'Part of the struggle for constitutionalism in Africa has assumed dimensions that relate to statecraft, to the intricacies of government, to the relationship between those who are governed and those whom they are governed by. However, the state, we must remember, is only one actor. There are numerous others: the family, the community, multi-national corporations, guerilla movements, and arms dealers. All these various actors impinge upon the realisation of constitutional rights and freedoms in one way or another... Constitutionalism cannot be presumed to stand above the fray of politics and economic interests. The task is to ensure that at a minimum, dominant political and economic forces - forces that have been largely responsible for the contemporary African predicament - do not have a more advantaged and dominant position merely on account of that fact.'

Steve Kahanovitz
Acting Constitutional Programme Co-ordinator

The right to vote

Universal adult suffrage tested in key Constitutional Court case

In South Africa's first democratic elections in 1994, special arrangements were made to allow convicted, detained, and awaiting trial prisoners to vote in the country's first non-racial, all-inclusive poll. In preparations for the second national elections scheduled for June, 1999, however, their constitutional right to vote was almost extinguished a few weeks prior to election day – save for a last-ditch appeal by the LRC to the Constitutional Court.

The long and winding road to the Constitutional Court began in the Cape Town office of the LRC in September, 1998, when attorney William Kerfoot wrote a letter to the IEC's chief electoral officer enquiring whether prisoners would be allowed to vote in the 1999 general elections. In reply to Kerfoot's letter, the chief electoral officer explained the role, functions and duties of the IEC – but neglected to answer the question posed. The LRC sent further correspondence to the IEC, and only received a reply in December, 1998. The chief electoral officer explained in a letter that the Commission had taken no steps to register or allow prisoners to vote in the general elections.

In fact, the IEC maintained that while it would permit special voting under certain circumstances, the process of registering and allowing prisoners to cast ballots would pose immense logistical, financial, and administrative difficulties.

The LRC's lawyers immediately realised the implications of the IEC's response. After just five years of constitutional democracy, it appeared that the IEC was prepared to turn the clock back on universal adult franchise by failing to make necessary arrangements for prisoners to vote in the forthcoming elections. Under the previous regime, the rights of certain groups of prisoners to vote had been circumscribed by the Electoral Act of 1993. Later, however, Parliament granted the vote to most prisoners for the first democratic elections of 1994. Subsequently, in terms of the new Constitution, universal adult franchise was entrenched in Section 19 (3): 'every adult citizen has the right to vote in the elections for any legislative body established in terms of the Constitution and to do so in secret.' It seemed as if the IEC was prepared to erode the hard-won rights to vote for all adult citizens in South Africa.

Building an effective legal challenge

With little time to spare before the general elections scheduled for June, 1999, the LRC mounted a legal challenge to the IEC's stance on prisoners' voting rights. The Cape Town office joined forces with the Constitutional Litigation Unit, a team of advocates and attorneys within the LRC based in Johannesburg that specialises in bringing test cases to court. Together, these two offices within the LRC but located in different parts of the country began formulating their strategy and approach to the case.

Their first hurdle to overcome was finding an appropriate client on whose behalf the LRC could litigate. Attorney Miriam Wheeldon of the Constitutional Litigation Unit contacted the South African Prisoners Organisation for Human Rights - a non-governmental organisation that works with prisoners nation-wide and shared the LRC's concerns about the elections – to find a convicted prisoner and an awaiting trial prisoner who would be suitable for a test case. After some searching, they found their clients in the Johannesburg Prison: Arnold August, a convicted prisoner serving a long sentence for fraud and forgery; and Veronica Mabutho, a businesswoman who was an awaiting trial prisoner.

Next, the LRC sought advice from Advocate Karel Tip, and then briefed advocate

Janet Kentridge in December, 1998. Kentridge launched a petition in the Pretoria High Court seeking a court order to compel the IEC, the Department of Home Affairs, and the Department of Correctional Services to make all the necessary arrangements to enable our clients and other prisoners to register as voters in the election. In the court application, the LRC argued that the government's election registration and voting policy as it pertained to prisoners could potentially violate their constitutional right to vote, the right to equality under the law, and the right to dignity – contained in Section 19 (3), Section 9 (1), and Section 10 of the Constitution, respectively.

In an affidavit submitted to the High Court in this case, the former head of the IEC, Judge Johan Kriegler, argued that in terms of the Electoral Act No. 73 of 1998, the citizen applying for registration as a voter had to do so in the voting district in which the person was ordinarily resident. In the case of prisoners, Kriegler argued, it would be 'enormously costly and time-consuming' to allow prisoners to vote in their prisons and then to transport their ballot papers to the various polling stations around the country where they would normally vote. There was no obligation on the IEC, Kriegler argued, to make special arrangements for prisoners that would differ from arrangements made for the rest of the country's voters.

The prisoners argued that the Electoral Act empowered the IEC to make regulations it considered 'necessary or expedient in order to achieve the objectives of the Act. They contended that the IEC made special voting arrangements for those unable to vote in their places of residence in certain circumstances – such as physical infirmity, pregnancy, disability, or travelling outside of the country on government business.

'A predicament.... of their own making'

The Pretoria High Court rejected the prisoners' application on February 23, 1999, ruling that the IEC would experience 'insurmountable logistical, financial, and administrative difficulties' if it were required to provide voting facilities for the nation's approximately 140,000 prisoners. Judge Johan Els said that prisoners' incarceration did not deprive them of the right to vote, but that their voting rights were limited because they could not register in the districts in which they were normally resident.

'The predicament in which the first and second applicants and all other prisoners, sentenced or unsentenced, find themselves is of their own making. They have deprived themselves of the opportunity to register or to vote,' Judge Els argued in his decision.

The LRC petitioned the judge for leave to appeal the decision to the Constitutional Court, but Els refused to grant leave to appeal on the basis that although the matter was in the public interest and there was sufficient evidence on which to base a decision, there were no reasonable prospects that the Court would arrive at a decision that differed from his own.

Nevertheless, the LRC appealed directly to the Constitutional Court, which agreed to hear arguments on the matter on an expedited basis in lieu of the forthcoming elections on March 19, 1999. The LRC briefed advocates Janet Kentridge and Gilbert Marcus, SC, to argue the case on behalf of the applicants. The appeal was not opposed by either the Department of Home Affairs or the Department of Correctional Services, but was opposed by the Chairperson of the IEC and the IEC itself.

The Centre for Applied Legal Studies at Witwatersrand University filed an amicus curiae in this case, introducing an innovative new argument into the debate. CALS contended that a significant number of South African prisoners were incarcerated as a direct result of poverty – either they were unsentenced awaiting trial prisoners who could not afford bail or they were convicted prisoners who could not afford to pay

ines. Either way, the attempt to disenfranchise these prisoners was potentially discriminatory on the basis of socio-economic status, and therefore, in violation of the equality provisions of the Constitution.

The Constitutional Court delivered its judgement on 1 April 1999 – less than four months after the LRC initiated litigation and only two months before South Africa's second national elections – overturning the decision of the Transvaal High Court. The Court ordered the respective government agencies to register, on a common voters' roll, all prisoners who had been incarcerated during the period of registration, and to make the necessary arrangements for registered voters in prison to cast their ballots in the June 2, 1999 elections. The Court retained supervisory jurisdiction, requiring the IEC to report back on how it was going to comply with the court order. The Court also decided that only Parliament could pass a law to remove citizens from the voter roll – neither the Commission nor the Court had the power to disenfranchise anyone.

'The vote of each and every citizen is a badge of dignity and of personhood,' Judge Albie Sachs wrote in the Constitutional Court's decision, adding:

Quite literally, it says that everybody counts. In a country of great disparities of wealth and power, it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity.

The case is now reported as August v. Independent Electoral Commission, 1999 (3) SA 1 (CC) in the South African Law Reports.

The Court's decision provoked a critical response from various political parties and the media who interpreted the verdict narrowly as a victory for convicted criminals rather than as an assertion of parliamentary supremacy in determining voting rights.

There were other legal challenges to the Independent Electoral Commission, too, at this time. The Democratic Party and the New National Party, for instance, brought legal action against the government over the controversial method of bar-code registration, arguing that large numbers of potential voters were excluded from the process. Both parties lost their court battles.

Miriam Wheeldon,
attorney in the Constitutional Litigation Unit:

'This case clearly demonstrates that even classic civil rights - such as the right to vote - require positive action from the state, which the Court will order despite financial and logistical difficulties. This decision affirms that the state has an obligation to promote and fulfill all rights in the Constitution, and the objections to the inclusion of socio-economic rights on the assumption that they require more than protection, unlike civil and political rights, are untenable.

'This case also affirms that everyone is entitled to all of the rights in the Constitution and that rights are only limited in laws of general application to the extent reasonable and justifiable in an open and democratic society.

'The Constitution is most under attack by those sectors of our society that believe that some groups - particularly the most marginal and vulnerable - are not entitled to this protection.

The right to access courts

Limited rights for victims of human rights violations in the amnesty process

The legislation which established the Truth and Reconciliation Commission in 1995 placed certain limitations on the constitutional rights of survivors of human rights violations and their families. There are two main areas in which the Promotion of National Unity and Reconciliation Act of 1995 curtailed their rights. Firstly, the Act effectively prevented survivors and their families from seeking recourse in the criminal justice system against perpetrators of human rights violations who have been granted amnesty. Secondly, the Act blocked survivors and their families from seeking civil damages arising out of human rights violations in instances where amnesty had been granted to the perpetrators.

In both instances, the constitutional rights of survivors and their families to access the courts were weighed up against the national interest in exonerating those who qualified for amnesty from criminal and civil liability. Curtailing these legal rights, the proponents of the bill argued at the time, was necessary and justified in order to promote 'national reconciliation and unity'.

In a landmark case before the Constitutional Court, the Azanian People's Organisation and representatives of the Biko, Ribeiro, and Mxenge families challenged the constitutionality of the entire amnesty process. Specifically, the applicants in this case claimed that amnesty would create unconstitutional consequences for victims and their families by denying them access to courts for criminal prosecutions and by preventing them from obtaining civil damages either from individual perpetrators or the state.

At one level, the Constitutional Court agreed with their arguments: 'An amnesty to the wrongdoer effectively obliterates such rights,' Judge Ismail Mohamed wrote in the Court's decision. But at another level, the Constitutional Court acknowledged that these fundamental rights of victims and their dependants were limited by the amnesty provisions contained within the epilogue of the Constitution – without which South Africa's democracy would not have come into being. In a sense, there was a trade-off implicit in the negotiated settlement: amnesty for perpetrators in exchange for full disclosure of the truth for victims.

The Court's decision in this key test case paved the way for the Truth and Reconciliation Commission to begin the amnesty process. Although the rights of victims and their families had been effectively curtailed both by the legislation creating amnesty and by the decision of the Constitutional Court, their rights were not extinguished entirely.

Hearing victims' voices in amnesty applications

Section 4 of the Promotion of National Unity and Reconciliation Act created an obligation on the Amnesty Committee of the TRC to inform victims and their families of their 'right to be present and testify, adduce evidence and submit any article to be taken into consideration' at hearings where amnesty applications are to be considered. This would allow victims to be present at these hearings, and more importantly, to challenge evidence that may be used in decisions to grant or refuse amnesty. In fact, many victims appointed lawyers to represent their interests and defend their rights in these proceedings.

As a result of the Constitutional Court's decision in *AZAPO and Others v. President of the Republic of South Africa and Others* (CTT 117/96) the LRC focussed on the compelling need to defend the legal rights of survivors and their families searching

for justice in the often-complex legal processes established by the Truth and Reconciliation Commission.

The LRC agreed to represent clients who wished to oppose amnesty being granted to perpetrators of gross violations of human rights. In this way, the LRC hoped to safeguard the rights of victims by ensuring that amnesty applicants comply with the specific legal conditions laid out in the legislation – briefly, that perpetrators make full disclosure of their participation in human rights violations, that their actions were associated with political objectives, and that they show that their actions were proportionate to their political objectives.

Over the past two years, the LRC has represented several families in opposing the grant of amnesty to perpetrators - the most notable of these cases being the amnesty application related to the torture and death in detention of Black Consciousness leader Steve Biko, who was killed in September, 1977.

Representing the Biko family in opposing amnesty

The Biko family approached the LRC to represent them at the amnesty hearings. Advocate George Bizos of the LRC's Constitutional Litigation Unit assisted the family in opposing the amnesty applications made by the security policemen accused of Biko's torture and death. It was Bizos who had assisted Sydney Kentridge, SC, at the Biko inquest in 1977. This time, more than 20 years later, it was Bizos, assisted by attorney Miriam Wheeldon, who took up the case before the Amnesty Committee of the TRC.

At the hearings convened in Port Elizabeth in September, 1998, Bizos argued before the Amnesty Committee that the five policemen did not qualify for amnesty in terms of the legislation:

'As at the inquest in 1977, the applicants have closed their ranks, entered into a conspiracy of untruths, and failed to reveal to this Committee the truth of Mr. Biko's death. They have attempted to use this Committee for their own personal advantage in order to attempt to clear their names without revealing or taking any personal responsibility for the death of Mr. Biko or for the brutal, inhumane, and callous treatment to which he was subjected while in their custody.'

Ultimately, Bizos' arguments persuaded the Amnesty Committee to withhold amnesty from the five security branch members. The Amnesty Committee denied their amnesty application in two separate judgements. The basis for their decision was the applicants' failure to make full disclosure and their inability to demonstrate that they acted in pursuit of a political objective. For the Biko family and their lawyers, the Amnesty Committee's decision confirmed their belief that the whole truth about the tragic death of Steve Biko still remains unknown.

Other matters related to the TRC over the past year

The Biko matter is not the only case in which the LRC has intervened either in amnesty applications or in other processes created by the Truth and Reconciliation Commission. In fact, various offices of the LRC have been involved in a number of cases arising out of the TRC.

- Attorney Achmed Mayet in the Johannesburg office helped Fatima Haffejee, the mother of Dr. Hoosen Mia Haffejee, who was killed in detention, win an insurance claim against the Professional Provident Fund worth R850,000. The case arose after more than 20 years as a result of an affidavit received by the TRC in which a former security policeman applying for amnesty confessed to his role in the murder of Dr. Haffejee. Prior to this admission, the Professional Provident Fund had accepted the

inquest's finding that Dr. Haffejee committed suicide, and declined to pay out his family.

- Attorney Ellem Francis from the Johannesburg office assisted Sandra Mama in opposing the amnesty application of hit squad commander, Colonel Eugene de Kock, for the killing of her husband in March, 1992.
- In the Cape Town office, attorney Vincent Saldanha represented the family of the late Ashley Kriel in opposing the amnesty application of a notorious Western Cape security policeman, Warrant Officer Geoff Benzien. Benzien applied for amnesty in respect of Kriel's death and the torture of other Cape Town activists. The committee granted Benzien amnesty and our client is considering taking the decision on appeal to the High Court.
- George Bizos and Miriam Wheeldon of the Constitutional Litigation Unit appeared on behalf of the families of the Cradock Four – Matthew Goniwe, Fort Calata, Sparrow Mkonto, and Sicelo Mhlawuli – in opposing the applications of the five security policemen responsible for their deaths. The CLU represented the wives of the deceased activists. Amnesty has subsequently been refused to the applicants.
- George Bizos appeared on behalf of the families of the late Ruth First and Jeanette Schoon in opposing the amnesty application of notorious apartheid-era spy, Craig Williamson. Amnesty has subsequently been granted in this case.
- The LRC represented the family of Janet Bellingan, who was murdered by her husband, Michael Bellingan, a security policeman, in September, 1991. Appearing at the amnesty hearings on behalf of the deceased's family were advocates Wim Trengrove and Gys Rautenbach, instructed by attorney Miriam Wheeldon. Amnesty has subsequently been denied to the applicant.
- Johannes Shabangu's life was thrown into despair when security policemen bombed his shop and abducted his eldest son, George. The policemen later returned to say that George had 'escaped', but he has never been seen since. Charles Pillai of the Pretoria office is opposing the amnesty applications for five security policemen for the bombing of Mr. Shabangu's shop. He is also bringing landmark proceedings to challenge the prescriptions of a claim for damages for George's death on the grounds that the claim prescribed through the fraud of the police who lied in saying that George had escaped. In this way, new avenues for civil damages claims arising from police misconduct may be established.

Throughout the life of the TRC the LRC has played an important role in ensuring that the constitutional rights of survivors and their families have been protected - particularly in the process of granting amnesty to alleged perpetrators. But even after the TRC has completed its work, there will still be a host of unresolved legal issues facing survivors and their families – from legal indemnity to reparations for victims, from access to records about human rights violations to prosecutions of perpetrators who never applied for amnesty. For these reasons, there will undoubtedly be a continued need for the skilled services of public interest lawyers representing survivors and their families in matters related to the Truth and Reconciliation Commission.

**Nobel laureate Nadine Gordimer
writing about advocate George Bizos
in the Los Angeles Times on December 9, 1998:**

'[Bizos became] a South African civil rights lawyer of international standing, a devastating cross-examiner of apartheid's torturers and killers. When George Bizos won a case during the apartheid era, during the transition after its end in the early 1990's, and now as we approach our second universal franchise election, it was not,

and is not, just a professional victory, but an imperative of a man whose deep commitment to human rights guides his skills and directs his life.

'... Long before the Truth and Reconciliation Commission was visualised, he pursued relentlessly in the courts the truth of what was being done to those who suffered under and had the courage to oppose a tyrant racist regime.

'... Bizo's contribution to the legal foundations to ensure human rights in a new South Africa moves far and wide into our national reconstruction, with membership of the ANC's Legal Constitutional Committee, later advisor to the negotiating team in drawing the interim Constitution and Bill of Rights, then his appointment by President Mandela to the Judicial Services Commission for reform of the judicial system to eradicate the travesty of justice that was its apartheid past.

The right to just administrative action Different legal strategies to reinstate cancelled pensions and disability grants

The National Department of Welfare inherited a system of administering social welfare grants from the previous government that was constructed on the foundations of apartheid – in other words, each section of the population and each homeland in the country had its own welfare system, replete with its own legislation and administration. The new government has done away with this fragmentation both legislatively and administratively. There is now one Act that applies to all social welfare recipients – the Social Assistance Act of 1992 – and a centralised database for the whole country. The administration of this Act, however, has been left to the provincial governments to sort out; this has been particularly problematic in provinces like the Eastern Cape and Northern Province which inherited one or more of the former homelands.

Towards the end of 1997, the National Department of Welfare issued instructions to the provincial departments to review and re-register every grant beneficiary in the country. The reason was that the National Department had discovered that the newly-amalgamated system contained deficient information that required verification. In fact, the Department found out that a number of recipients had been claiming from different welfare systems simultaneously and launched a campaign to eliminate 'dubious records' in the administration of the social welfare system. The Department alleged that thousands of people were receiving pensions, child support grants, and disability grants fraudulently and costing the state millions of rands each year.

In executing the national Department's instructions to uncover and eliminate these 'ghost' claimants, the provincial departments 'suspended' grant payments of R500 per month to more than 150,000 people nation-wide. Welfare recipients were suspended without warning or hearing, and were required to reapply for their grants. In doing so, the state shifted the onus to the welfare recipients to prove that they were in fact entitled to these grants. Even where welfare recipients resubmitted documentation to prove that they did qualify, they were not reinstated on the system because their applications either were lost without trace or simply were not processed. Nor were they paid arrears for grants which they had lost in the process. In most instances, no reasons were given for the cancellation of their welfare grants or the rejection of their new applications.

The arbitrary cancellation of social welfare grants breached the applicable legislation – the Social Assistance Act – and is contrary to Section 33 (1) of the Constitution, which states that 'everyone has the right to administrative action that is lawful, reasonable, and procedurally fair'. Furthermore, the Constitution guarantees in Section 27 (1) that everyone has the right to access social assistance if they are unable to support themselves or their dependants.

The government's attempt to eliminate fraudulent welfare claims has caused immense suffering and hardship for thousands of the most destitute and vulnerable people who depend on these grants for basic survival. During 1998 and 1999, the LRC was inundated with hundreds of requests from welfare recipients whose grants had been terminated and who now sought legal relief. This article looks at the ways in which two LRC regional offices – in Pretoria and Grahamstown – responded to the nation-wide crisis resulting from the cancellation of social welfare grants.

Class action suit in the Northern Province

Mujaji Gladys Maluleke is a 61-year old widow whose pension was suspended without notice in February, 1998. A resident of Mambedi village in the Northern Province, Maluleke told the LRC that she was dependent upon her monthly pension (then R470 per month) to support her six orphaned grandchildren. To supplement her meagre income, Maluleke sells home-made beer from her house, earning an extra R120 per month.

The cancellation of her old-age pension had catastrophic effects on her family. 'My grandchildren and I now live on mealie meal except that I manage now and then to buy chicken feet which I cook with mealie meal.' Maluleke says she is unable to afford school fees for two of her grandchildren: 'Mhloti's school fees are R70 per year and, because I was unable to pay it, she has had to drop out of school. I have also not been able to pay Tshipo's school fees, but her school has allowed her to stay on.' Maluleke is one of 92,000 welfare recipients whose pensions or disability grants were arbitrarily terminated by the Northern Province Welfare Department in February, 1998. The Department claimed that the suspensions were necessary because they believed that at least two-thirds of the payments were going to 'ghost pensioners' to the value of R44.5 million per month. The Department said it would be a temporary measure. 'The affected people are those whose details are not complete in the files – because of old identity documents, and ages younger than the qualifying ages of 65 for men and 60 for women,' Department spokesman Tshepo Moshima told the Mail and Guardian newspaper. 'The department anticipates completing the process by the end of March.'

When her grant had still not been paid by July, 1998, after six months of waiting, the LRC took action on behalf of Maluleke and 200 other welfare recipients whose grants had been suspended. 'It was such a blatant abuse of power by the state that we just couldn't ignore it,' according to Nick de Villiers, an advocate in the LRC's Pretoria office.

Working in partnership with Lawyers for Human Rights and the Elim-Hlanganani Society for the Care of the Aged, De Villiers filed a class action suit against the Northern Province Member of the Executive Council for Health and Welfare, Dr. Hunadi Mateme, for the reinstatement of these 200 pensions and disability grants. In the application – one of the first class-action suits undertaken by the LRC in terms of Section 38 (c) of the Constitution – de Villiers petitioned the Court to take an overseer role in monitoring the administration of pensions in the Northern Province. The case was heard on 15 March 1999, and the Court held in favour of Gladys Maluleke. The case established an important precedent for the administrative resolution of these cases. The Court declined, however, a class action on the grounds of inadequate information to justify such far-reaching results.

In response, the LRC Pretoria office launched a campaign of related cases to establish the principle on a wide basis. More key precedents followed: in the case of Helina Mujaji Rangani, a grand mal epileptic whose only income terminated when she lost her grant, the principle was extended to disability grants; and in the case of Hlengani Samson Sithole, a man with only one functioning lung, the Court extended the principle to cover disability grants where the state subsequently decided without proof that the grantee was not sufficiently disabled. After being subjected to this intensive litigation campaign, the state finally agreed to settle all such cases excluding those where fraud was suspected.

During these suits, the LRC held a series of meetings with national and provincial welfare officials. The upshot of these initiatives was that the Department accepted the LRC's arguments in the case – and all but approximately 9,000 of the 92,000 suspended welfare grants in the Northern Province were reinstated administratively. In further litigation, the LRC is seeking interest on arrear grant monies for the pensioners whose grants were 'suspended' in this way.

In the course of this campaign, the LRC Pretoria office launched approximately 40 review applications to overturn the cancellations of individual pensions and nearly 100 summonses in the Magistrate's Court for payment of arrears and interest on cancelled pensions.

Litigation campaign in the Eastern Cape

For many years, the Eastern Cape region has been plagued by inordinate delays in the processing of social welfare grant applications – primarily because of the inefficient and corrupt bureaucracies in the former Ciskei and Transkei homelands. The condition worsened after the collapse and integration of the homeland welfare bureaucracies to such an extent that pensioners have had to wait more than a year before they receive any financial assistance from the state at all.

In most instances, applications for social welfare are lost without any trace and are never processed. The Grahamstown office of the LRC conducted an investigation based on complaints received from advice offices in the Eastern Cape, and discovered that one in every three clients reported that their receipted applications had been lost by the provincial Department of Health and Welfare.

After numerous attempts at resolving these problems and much unanswered correspondence between the LRC and welfare authorities, advocate Mark Euijen of the Grahamstown office launched a litigation campaign to address the crisis. Euijen filed 60 applications in the High Court seeking mandatory relief on behalf of welfare applicants against Nomsa Jajula, the Member of the Executive Council (MEC) for Health and Welfare in the Eastern Cape.

In April, 1998, the LRC obtained 43 orders in the High Court (mostly on an unopposed basis) compelling the MEC to either make payment or decide on the applications within 14 days. It was at this point that the Permanent Secretary of Welfare, Professor M. W. Makalima intervened, requesting that the LRC halt its litigation campaign. He promised a co-operative relationship with the aim of improving the system for all applicants and not only for those who sought relief at the High Court. In particular, Prof. Makalima gave an undertaking that his department would comply with the terms set out in the Notices of Motion in all the cases brought against the MEC, without the necessity of obtaining court orders to that effect.

These promises rang hollow, however, when at the end of 1998, the Department of Welfare had complied with only one of the court orders in full. Most of the orders for payment had been complied with, but not completely. Two judgement creditors who were required to be paid their welfare grants with arrears had received no such amounts at all. Of the court orders where decisions were required to be taken by the MEC on the applications for a welfare grant, the majority were rejected without any reason supplied, as required by regulation.

Although the officials named in the contempt application had agreed to rectify all outstanding matters by the end of April, 1999, they nevertheless had not done so completely by that date. This necessitated further action. The LRC then made an interlocutory application for joinder of all those applicants who had orders for payment of their welfare grants which had not been fully complied with by then. Although reasons for the rejection of those applications had still not been supplied by that date, the LRC decided to pursue these matters by way of separate reviews rather than joining them to the contempt cases.

It required a further three postponements of the matter before welfare officials complied with the payment terms of the court orders. In fact, compliance only took place at the end of June, 1999 – a full 14 months after the original court orders were granted. The original court orders stipulated that payment of these pensions had to take place within 14 days.

The litigation campaign came to a temporary end on 12 August 1999, the date on which the matter was postponed for the determination of the additional prayer – namely, that welfare officials be held personally responsible for the Department's wasted costs incurred in defending the contempt of court application. Only at that point did the Department tender to pay in full the applicants' litigation costs and the LRC accepted the offer on behalf of our clients. The threat of holding public officials personally accountable for the costs of litigation – a strategy which the LRC learned via colleagues in the Canadian Bar Association - was sufficient to make the Department settle quickly.

As a result of the litigation campaign, Professor Makalima also made a public apology to all the pensioners who were affected by the failure of the Department to comply with the court orders. The provincial welfare minister, Ms. Jajula, claimed that she did not know about the orders issued against her. Prof. Makalima said that he had given instructions to officials to make arrangements for payment, and he had expected these to be carried out. The person to whom this task was delegated explained that the Finance Department issued the cheques, but as it emerged months later, the cheques had never been signed.

The pensioners accepted the public apology and finally received payments of their grants. But in the process, they learned a valuable lesson – namely, that public officials can be held 'morally and financially' responsible for their inefficiency and maladministration. In the words of advocate Clive Plaskett, who acted as counsel in this matter, 'The victims [of administrative injustice] are helpless people who are unable to support themselves. It would be another thing if [welfare officials] had picked a fight with someone who could fight back. But [in the case of pensions maladministration] they are trampling on the rights of the helpless.'

**Advocate Mark Euijen,
of the LRC Grahamstown office:**

'The 1998 litigation campaign against the Provincial Welfare Department highlighted the virtual seizure of the welfare system in the Eastern Cape. In the first instance, it required orders of the High Court to have welfare applications in 43 cases processed. Thereafter and notwithstanding the court orders, it required a further 14 months of relentless badgering, pleading, and finally threatening on our part to secure compliance with those orders – not to mention launching contempt of court applications against senior officials of the Department, including the Member of the Executive Committee and the Permanent Secretary.

'The most disturbing aspect of this whole experience is that matters have still not improved in the Eastern Cape. There has been no acknowledgement from the Welfare Department, national or provincial, of the extent of the crisis faced in the delivery of welfare to the destitute of this province. Consequently, the administrative will and ability to put matters right does not appear to exist.

'The need for organisations like the LRC to seek judicial redress for this most insidious form of administrative ineptitude and torpor is no less than it was during our undemocratic past.

The right to an environment that is not harmful to health or well-being Cleaning up abandoned mine dumps on the Reef

The landscape of urban Johannesburg is distinctive for the abandoned mine dumps that rise above this otherwise flat city. From the west to the east, artificially-created mountains of mine refuse are the legacy of more than 100 years of gold mining on the Witwatersrand. An estimated 35 mine dumps exist in this city alone - most of which are abandoned, and many of which have never been properly rehabilitated once mining operations ceased.

Mine dumps pose serious environmental hazards to the people of Johannesburg. They reportedly emit high levels of radiation. They pollute the surface and ground water. Erosion of the dump slopes gives rise to sludge slides in the rainy season. And during the heat of summer, dust pollution from the dumps blankets surrounding areas.

Mine dumps might pose less of an environmental hazard if they were located in remote, unpopulated areas or if they were properly cleaned up. But these unrehabilitated dumps are situated in densely-populated Johannesburg, usually adjacent to poor black communities as a result years of bad town planning and racially-discriminatory urban design. The result – unrehabilitated mine dumps located adjacent to densely-populated, poor residential areas – causes complex health, environmental, legal and social problems for their neighbours.

West Rand community struggles against mine dust and pollution

To understand the range of problems that confront communities living adjacent to these mine dumps, consider the case of Kagiso, a township of 100,000 people that has lived downwind from a mine dump for the past 14 years. When the Luipaardsvlei Estates mine closed its doors in 1991, it left behind a slimes dam full of sludge and other waste products that covered 240 hectares of land. Over the years, the slimes dam expanded in size until it reached within 30 metres of the nearest street of houses in Kagiso.

The environmental problems that the Luipaardsvlei mine dump has caused for the people of Kagiso are shocking. The dried-out slimes dam created extremely fine particulate matter that regularly blanketed the community with dust pollution during windy weather. The resultant dust pollution was so bad that many Kagiso residents could not hang their clothes on outdoor washing lines. Others had to seal their windows and doors with tape in order to prevent the dust pollution from blowing into their homes. And in some homes, scientists discovered nearly two kilograms of mine dust per square metre in house ceilings closest to the mine dump. In a few instances, the accumulated dust was so heavy that it forced the ceilings to collapse. Worst of all, a study by the National Centre for Occupational Health discovered that the dust particles in Kagiso contained traces of alpha quartz, which can lead to potentially-deadly lung diseases like silicosis as well as other respiratory ailments. Local Kagiso residents tried in vain for many years to stop the dust pollution emanating from the mine. Their attempts were frustrated for two reasons. Firstly, Kagiso residents did not know who owned Luipaardsvlei and which company should be taking responsibility for cleaning up the unrehabilitated mine dump. Secondly, Kagiso residents petitioned the Department of Mineral and Energy Affairs, for instance, but failed to convince government officials to enforce environmental regulations that would force the owner to rehabilitate the dump. Out of frustration at government intransigence and corporate neglect, and out of fear of continued health hazards, the Kagiso Environmental Awareness Task Forum finally instructed the LRC to take up the matter on behalf of the community.

Gold mine reaches settlement with community after court application

The case was handled by advocate Ellen Nicol of the Pretoria LRC office who was assisted by Matthews Majopela, a candidate attorney. The focus of Ellen's legal practice falls under the rubric of the Environmental Justice Project, which looks at how the legal system can redress the disproportionate costs of environmental degradation borne by poor and vulnerable communities.

Soon after taking on this matter, the LRC discovered that the Luipaardsvlei gold mine was owned by Consolidated African Mines Limited. The LRC then invited the company to a meeting with community members to discuss the nuisance created by this abandoned mine dump, but the mining company ignored requests to resolve this matter. A negotiated settlement between the mine and the community seemed unobtainable without stronger measures.

As a result of the mine's intransigence in cleaning up this environmental hazard, the LRC filed an application with the Pretoria High Court in which the Kagiso community sought a court order compelling the company to take the necessary steps to rehabilitate the mine and to stop the dust pollution emanating from the Kagiso tailings within two months. The LRC also applied for a court order to compel the Department of Minerals and Energy Affairs to monitor enforcement of the rehabilitation process. Only after filing the application did the mine inform the LRC that it was willing to settle the matter out of court according to the terms of the original court order.

Since the settlement, Luipaardsvlei has employed an environmental engineering company to rehabilitate the mine dump in such a way as to minimise dust pollution and redirect the sludge sliding down its slopes into nearby homes. This is what the people of Kagiso had been demanding for nearly 14 years – and it took legal action to curtail the environmental hazards emanating from this unrehabilitated mine. The Kagiso community's problems with the unrehabilitated mine dump illustrate the need for public interest lawyers like Ellen Nicol and Matthews Majopela to pursue environmental justice in South Africa. The plight of this community also demonstrates the difficulties in giving meaning to Section 24 of the Constitution which guarantees everyone's right to 'an environment that is not harmful to their health or well-being.' But Kagiso's plight is by no means unique. In the past two years alone, the LRC has assisted community groups in West Rand townships like Meadowlands and Davidsonville, grappling with the same problem of unrehabilitated mine dumps.

'Our goal is to persuade government and mining companies to accept greater responsibility for the rehabilitation of mine dumps according to the existing legislative framework,' says Ellen Nicol. 'But until there is voluntary compliance with our newly-enacted environmental protection laws, it will continue to be necessary for the LRC to use litigation as a means of compelling polluters to stop environmental degradation that affects the health and well-being of thousands of people living in poor communities.'

**Ellen Nicol,
advocate in the LRC Pretoria office:**

'I had always known that migrant labourers and their families carried a terrible burden as a result of the gold mining industry in South Africa. But until I started working on these cases, I never realised the extent to which poor and vulnerable black communities living adjacent to these mines also paid a very high price for the

extraction of our country's mineral wealth. The innocent neighbours of abandoned gold mines pay a terrible toll because mine companies externalise the costs of their pollution to poor communities on the Reef rather than internalizing and absorbing these costs in the normal course of business. As a result, thousands of people who derive no benefit from gold mining may contract asthma or even silicosis as a result of the mine dust that they breath daily. They cannot hang their washing out to dry because the mine dust muddies it, and they have to seal off the windows and doors of their homes with masking tape to prevent the fine dust from creeping into their lives. These are the people who wage a sisyphian struggle against pollution on a daily basis.

'The LRC represents the interests of large groups of people whose health and well-being are damaged by the fugitive dust from large mine dumps. Our work in this area is relatively new. We shall continue to challenge mining companies who fail to comply with their responsibility in law to rehabilitate these dumps. At the same time, we shall continue to expose the inaction of government departments which fail to uphold their responsibilities to monitor and regulate industrial pollution in terms of the law.'

The right to equal protection under the law Using impact litigation to challenge unfair discrimination against women in Muslim marriages

One of the most effective strategies at the disposal of any public interest law centre is impact litigation. These are the kinds of cases where public interest lawyers seek to obtain court decisions which establish new legal precedents or which impact large numbers of disadvantaged people.

The LRC introduced the concept of impact litigation into its new mission statement last year. The reason the LRC chose to focus on impact rather than routine litigation in the public interest is that the organisation realised that it needed to focus its work and maximise the use of its limited resources. The LRC also recognised that there was great scope to undertake impact litigation in strategic areas that would help shape and define constitutional rights in the first few years of the new Constitution. The LRC chose impact litigation in the belief that the state now has a constitutional duty to provide legal representation to poor and indigent clients in routine matters, but may have less enthusiasm for strategic cases that challenge the abuse of state power.

But impact litigation has its limitations. Winning a key victory may establish an important new legal precedent, but it does not immediately change circumstances for aggrieved people overnight. Often a precedent-setting legal case is only the beginning of a long path towards building a new jurisprudence, changing government behaviour, or shaping societal attitudes.

The paradox of impact litigation is no better illustrated than in the case of *Ryland v. Edros*, a landmark decision in which Muslim marriages gained a modicum of legal recognition for the first time in South African legal history. The case – handled by the LRC Cape Town office in conjunction with the Constitutional Litigation Unit - is now reported as *Ryland v. Edros* (1996) 4 All SA 557 (C). This landmark decision in 1997 is included in this year's annual report because of the relief it brought Muslim women, but also because of the unforeseen consequences that it created for Muslim clients across the country. Before looking at the ramifications, a quick review of the case itself is necessary.

Facts of a precedent-setting case

The two parties in this case – Moegamat Fuad Ryland and Thoerayah Edros – were married according to Muslim personal law in 1976. Fifteen years later, after a turbulent marriage characterised by domestic violence and abuse, Ryland invoked the extra-judicial form of marital dissolution, *talaq*, which is available to Muslim men only. Ryland ordered Edros to vacate their marital home with her five children, two of whom were from her previous marriage.

While Edros accepted the breakdown of her marriage, she felt aggrieved at being unjustifiably repudiated and without access to her contribution to joint marital property. During her marriage, she worked in various jobs to bolster the family's income – buying food and clothing for the household, for instance. While her husband operated a small business, Thoerayah Edros made a significant contribution to the monthly income and performed numerous household duties like cooking and cleaning. But because South African law does not recognise Muslim marriages, Muslim women like Edros are left with no stake in the marital estate despite all their contributions in cash and kind over many years.

Potentially destitute and with no other options available, Edros turned to the LRC Cape Town office for assistance. Initially, LRC attorneys Angela Andrews and Soraya Bosch managed to secure Edros's stay in her marital home while civil claims against

her husband were being pursued. Then the LRC's lawyers sought relief in the Cape Supreme Court, arguing that Muslim marriages should be recognised as enforceable contracts similar to those in Roman-Dutch and common law.

The court agreed that Muslim marriages could be treated as civil contracts which create reciprocal rights and obligations between the parties. Furthermore, Judge Ian Farlam upheld several important obligations arising from the marriage contract – namely, the husband's duty to maintain his wife during marriage, his duty to provide arrear maintenance, and the duty to provide a consolatory gift to his wife for unjustified repudiation. The Court did not accede to Edros' claim to her entitlement of an equitable share of the marital estate.

'A small but important window of opportunity for Muslim women'

The judgement in the Ryland v. Edros case made legal history in South Africa, overturning a previous Appellate Division decision in Ismail v. Ismail. After decades of prejudice against Muslim marriages and repeated refusals to grant legal legitimacy to these unions, a court finally recognised the legitimacy of marriage contracts that were neither Christian nor civil. Prior to this case, the courts held that Muslim marriages were invalid and offensive because they were potentially polygamous unions. In fact, the courts had previously deemed these marriages as *contra bonos mores* – or repugnant to good public values – for this very reason.

The Ryland v. Edros case turned some of this judicial thinking upside down by conferring legal standing to Muslim marriages.

'It created a small but important window of opportunity for Muslim women to seek relief from the courts,' according to Professor Ebrahim Moosa, director of the Centre for Contemporary Islam at the University of Cape Town, writing in *Democracy in Action*. 'Judge Farlam has ensured that the contractual agreement of actual monogamous Muslim marriages at least will be recognised. Disputes over the patrimonial consequences at the dissolution of a marriage may now be enforced with greater equity than before.'

Assessing the impact on different aspects of Muslim personal law

There are many different aspects of personal law which hinge on the basic question of whether a marriage is legally sanctioned or not – questions of status, inheritance, custody, guardianship, and succession. This case brought these issues into sharper focus, opened up new avenues for change, and created opportunities to use the law more creatively to broaden the recognition of various aspects of Muslim personal law. There are now new opportunities to revisit a wide range of legal questions.

In the two years since this decision, more and more cases of Muslim personal law have entered the offices of the LRC nation-wide. In Cape Town, for instance, LRC attorney Chantel Fortuin handled the case of a married Muslim woman threatened with eviction from her home by her husband. Although the client had paid for the bond with her own money, the city council only registered the deed of sale in the name of her husband – who thus held the legal right to evict her from the premises. The LRC challenged the city council's discriminatory housing policy which is inconsistent with the Constitutional right to equality.

In the LRC Johannesburg office, attorney Kameshni Pillay has handled a variety of matters related to Muslim personal law – such as the legitimacy of children, family maintenance claims, unilateral divorces, and housing issues.

'There are a plethora of questions about different aspects of personal law that arise out of the Ryland case,' says LRC attorney Angela Andrews. 'What happens when someone dies in a motor vehicle accident – does a wife have a claim for

dependence? Can a wife inherit from her husband when he dies intestate? Are the children of Muslim marriages legally legitimate? In whose name should property be registered – the husband's or the wife's? Many of these issues have now been raised and resolved through legislation, policy changes, or successful judgements since Ryland.'

'The Ryland case recognised one piece of the jigsaw puzzle – that Muslim marriages are legally-enforceable contracts. It did not recognise all of the other personal law obligations that flow from it,' says Andrews, one of the attorneys who worked on the case. 'In one sense, we got our foot in the door and created legal legitimacy for one aspect of Muslim personal law. We created a shift in the judicial perception of these relationships – not merely as potentially polygamous unions, but as enforceable legal contracts between two individuals. Now it is no longer possible to shut the door in the face of couples married according to Muslim rites.'

The Ryland case certainly set a legal precedent. But as the LRC's experience over the past two years has demonstrated, it is only the opening gambit in a long and arduous struggle for equal protection under the law for women married according to Muslim personal law.

Report on the Land, Housing, and Development Programme

Recognising the importance of land, housing, and development issues to South Africa's people, the LRC established a specialised programme to co-ordinate and support the work of our lawyers in these three key areas. Since its inception four years ago, the Land, Housing, and Development Programme has worked to secure the necessary legal arrangements which will enable communities or groups of poor people to access, secure, and manage resources such as land and housing. To achieve these goals, the LRC uses a variety of legal strategies.

Our principal strategy is litigation or the threat of litigation in defense of principally poor and marginalised people seeking to realise their fundamental rights to land, housing, food, water, and other resources. The LRC currently represents more than 189,000 families or approximately 950,000 people in cases related to land, development or housing. These cases are primarily matters concerning land restitution claims, land redistribution claims, tenure cases, and farm worker evictions. The LRC handles matters related to the provision of municipal services and housing to clients who have accessed or secured land resources. The LRC also provides assistance to communities seeking to find legal solutions to the management of collective resources like land, water, minerals, and other potential sources of development.

In addition to litigation, the LRC contributes towards law reform and government policy-making processes in order to create an enabling environment for land reform and development to take place in South Africa. In years past, the LRC has helped formulate or has made strategic inputs into some of the key pieces of legislation around land reform enacted since 1994 including: the Communal Property Association Act of 1996 (which allows for group ownership of resources); the Protection of Informal Land Rights Act of 1996 (which protects people from dispossession); the Labour Tenants Act (which aims to protect labour tenants); and the Extension of Security of Tenure Act of 1997 (which aims to extend basic legal protections to people such as labour tenants or farm dwellers who are threatened with evictions).

There are currently 14 LRC lawyers working full-time in this programme. The programme helps legal practitioners from different regional offices to work on a collaborative basis – to attend joint strategy meetings, to share their experiences of the land and development law, to build their skills, to better co-ordinate their legal interventions, and to enhance their partnerships with government and other non-governmental organisations on a national basis. Through the Land, Housing, and Development Programme, the LRC has gained a national reputation for excellence in the provision of legal services to the poor on some of the most contentious issues in post-apartheid South Africa.

Litigation and case work

During the past year, the Programme achieved some important successes in landmark cases:

- In the Northern Province, for instance, where rural poverty is most acute, the LRC facilitated a settlement between the Makuleke community and the South African National Parks regarding 20,000 hectares of land in the Kruger National Park. This was a ground-breaking land restitution settlement in which the community was granted commercial rights to state conservation lands. The matter was handled by Moray Hathorn in the LRC Johannesburg office.
- Similarly, in the Northern Cape, the LRC represented the Mier community in negotiations which resulted in the redistribution of four farms, R2 million in

compensation for dispossession, and restoration of more than 27,500 hectares of land inside the Kalahari-Gemsbok Park. Another reason why the Mier case is noteworthy is that it was settled in March, 1999, within three months of application – a record in land restitution in South Africa. The matter was handled by Henk Smith in the LRC Cape Town office.

- In the North West Province – which advertises itself as the ‘Platinum Province’ – the LRC assisted the Barolong community in a restitution claim for land in the Mosita Native Reserve. The community – whose occupation of the land dates back to at least 1869 – was dispossessed in 1968 in terms of the Expropriation Act 55 of 1965. The Mosita case is noteworthy because the LRC helped negotiate a settlement which fully restored 3,000 hectares of land to this community of 202 families, enabled them to retain their compensatory land, and most significantly, obtained rights to minerals beneath the surface of their land. This was the first time that mineral rights were awarded as part of a restitution settlement. The case was handled by Louise du Plessis of the LRC Pretoria office

- In the town of Belfast in Mpumalanga Province, the LRC represented a 78-year old labour tenant who resided on Draaikraal farm with his daughter and grandchildren. The man was threatened with eviction by the owner of the farm after having resided there for more than seven decades. The LRC referred the case – one of the first in the country in terms of the new Labour Tenants Act – to the Department of Land Affairs for settlement. The case is now pending before the courts, and has highlighted some key shortcomings of the new Labour Tenants Act. These cases – some of which are explained more fully in the accompanying extracts from our case reports - represent achievements of the Land, Housing, and Development Programme over the past year. They indicate months or even years of painstaking, laborious legal work on complex issues. But more importantly, they represent a unique commitment to public interest law in pursuit of poverty alleviation. Indeed, this is one of the central themes which characterises the LRC’s work: using law in pursuit of the transformation of socio-economic conditions for the poorest of the poor, particularly in rural areas.

Key contributions to law reform

Enacting meaningful change on a national scale, however, often involves intervention in shaping and crafting the legislative environment. During the past year, the LRC’s Land, Housing and Development Programme has participated in several key attempts to create the legislative framework that enables land reform and development to take place. Our submissions to law reform processes are intended ultimately to shape new legislation which will enhance our clients’ access to the natural and financial resources which they require for development. Some substantial contributions towards this goal can be reported.

During the past year, for instance, the LRC made various submissions to the Parliamentary Portfolio Committee on Housing and the Western Cape Legislature’s Select Committee on Land and Housing with respect to the Unlawful Occupation of Land Bill. This bill was later enacted as the Prevention of Illegal Evictions and Unlawful Occupation of Land Act No. 91 of 1997, which provides procedural protection to people threatened with arbitrary or unfair evictions. The Act also puts pressure on various levels of government to take positive steps to implement policy and programmes that further people’s access to housing. Subsequent to the enactment of this new piece of legislation, the LRC provided advice to partner NGO’s and client communities on the scope and applicability of the Act.

The LRC monitored the White Paper on Mineral Policy prepared by the Department of Mineral and Energy Affairs. Our concern was that the White Paper would protect the status quo in guaranteeing mineral rights for the large, multi-national corporations involved in mining South Africa’s natural resources at the expense of the

communities which might potentially lay claim to the mineral rights beneath their land. The White Paper does nothing to challenge the inequitable allocation of mineral rights – or conversely, to bring about equitable access to mineral resources as envisaged in Section 25 (4) of the Constitution.

The LRC worked with another NGO, the Surplus People's Project, in researching and preparing a report on the lack of a legal remedy to deal with the Northern Cape provincial government's control of state land. The absence of a suitable legal instrument has been an obstacle to speedy land reform in the Northern Cape in particular. As a result, the LRC drafted the Land Administration Bill which will provide the provincial government with the necessary powers to dispose of state land in the Northern Cape, while guaranteeing accountability and transparency in the process of disposing of state assets.

The LRC provided legal assistance to the Northern Cape provincial government as it attempted to repeal the Coloured Rural Areas Act 9 of 1987, which determined the basis on which the majority of our clients in Namaqualand reside on 1.2 million hectares of land. The LRC played a key role in the conceptualisation and formulation of new land ownership options for the people of Namaqualand. Keeping in mind the need to create options for communal land ownership in communities where livestock provide the chief source of income, the LRC worked to ensure that the legislation which replaces Act 9 will be consistent with new municipal demarcation and restructuring processes that are happening concurrently. In this regard, the LRC joined the Surplus People's Project in proposing specific amendments to the Municipal Structures Bill of 1999.

The sustainable use of natural resources is a major concern of the Land, Housing, and Development Programme. The programme submitted comments on the National Environmental Management White Paper, while other lawyers in the organisation contributed to the formulation of the subsequent National Environmental Management Bill of 1998.

The LRC's developmental approach towards land reform means that the organisation is not merely concerned with facilitating access to natural resources for our client communities; we are also interested in obtaining natural and state resources to ensure that proper development takes place. We believe that sustainable livelihoods in rural areas cannot be built on land alone; there is a need to obtain water, sewerage, housing, and other infrastructure to make a success of land reform in the long-term. Two examples of our legal advocacy demonstrate this point with regard to the provision of housing to the poor.

LRC lawyers prepared comments on the Notarial Deeds of Servitude Bill, drafted by the Department of Land Affairs, with the intention of ensuring that the proposed legislation creates a range of secure tenure options for a variety of client circumstances. Farm dwellers requiring housing on land owned by others present a case in point: to enable farm dwellers to qualify for the R15,000 government housing subsidy there is a need for a stronger tenure option than the occupiers' rights currently available under the Extension of Security of Tenure Act.

The second example of legal advocacy with regard to the housing issue came in the form of our comments on the Housing Rental Bill. We believe that the Bill does not seem to be in line with a wide range of legislation that seeks to give content to Section 26 of the Constitution which states that 'everyone has the right to have access to adequate housing' and that 'the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.' The LRC is working towards developing a broader equity jurisdiction in the courts with regard to housing rental practices, too.

Through legal advocacy on specific legislative items – such as the ones described above - the LRC hopes to advance the interests of our clients in achieving their social

and economic rights in terms of the Constitution. The difference is one of scale: legal advocacy by civil society organisations like the LRC has the potential to create a greater impact for larger numbers of people on a national basis.

Education and training

The Land, Housing, and Development Programme hosted a series of innovative workshops designed to enhance the skills of our lawyers, paralegals, and candidate attorneys in the practice of public interest law. During the course of the year, the programme organised five internal workshops for our staff:

- Legislation drafting workshop (22-23 May 1998) – The LRC invited Professor Anne Seidman and her husband Bob from Boston University in the United States to facilitate a workshop to enhance the skills of attorneys and candidate attorneys in legislative drafting in order to bring about socio-economic transformation. The crux of the workshop was that the law can be used as an instrument of change – not just in state institutions, but also in the ways in which those institutions redistribute, manage, and allocate resources. The facilitators highlighted the divergence in South Africa between the Constitution on the one hand, and the behaviour of state officials and institutions on the other. There is a discernible gap between a rights-based approach to legislative change (which focuses on the behaviour of the legislature and keeps rights abstract) and a problem-solving approach to legislative change (which is democratic, participatory, transparent, and inclusive of public participation.)
- Workshop on natural resource management (7 October 1998) – The workshop focussed on the relationship between natural resource management and legal mechanisms to manage those resources – such as communal property associations, environmental entitlements, and co-operation agreements. The LRC recognises that natural resources are critical to poverty alleviation, but all too often the poor and vulnerable – particularly women – are denied access to or control over these resources. The workshop dealt with a variety of issues related to natural resource management, including the conflict between customary practices and new legal arrangements, the economic viability of communal property associations, conflict management within community structures, and the role that gender plays in preventing women from participating in community decision-making about natural resources. The workshop also examined natural resource management in terms of water and forestry resources.
- Workshop for candidate attorneys (14-16 October 1998) – The LRC organised a national workshop for all candidate attorneys in the organisation on issues related to land, housing and development. The purpose was to provide training on key pieces of legislation related to socio-economic rights. The methodology of this training course was experiential rather than didactic: each candidate attorney had to prepare a presentation on a new law and its relationship to the Constitution. Candidate attorneys researched legal issues related to matters handled in their offices, consulted with their supervising attorneys, and prepared a short presentation for their fellow candidates. The workshop presentations are being compiled into a booklet entitled, 'Know you land, housing, and development rights' which will be published by the LRC.
- Training course on land and community mediation (12-16 December 1998) – The Independent Mediation Service of South Africa (IMSSA) facilitated a workshop on conflict management for lawyers working in community development. The aim was to assist our staff in better understanding the nature of conflict, how to manage conflict, and to acquire new skills in mediation, problem-solving, and facilitation. These are the kinds of skills that our legal team requested in order to enhance their ability to provide effective assistance to poor communities who face complex and

potentially divisive issues like resource management and allocation. The workshop considered various trajectories of conflict, focussed on the role of the mediator as 'process facilitator' and 'manager', and presented alternative methods of conflict resolution.

- Workshop on the privatisation of state-owned land (30 March 1999) – Because the national government has embarked upon a programme of privatising state land which often impacts upon our client communities, particularly in restitution cases, the LRC convened a training workshop to address issues arising out of privatisation. One of the key issues in the privatisation process is access to information, as the case studies of Alexkor (state-owned diamond mine) and Aventura (state-owned recreational resorts) amply demonstrate. The workshop considered the government's uneven approach to privatising state assets, and highlighted the need for the LRC to be increasingly vigilant in these kinds of cases to ensure that our client communities gain equity in privatisation schemes.

The Land, Housing, and Development Programme will continue to run training workshops and seminars for members of the LRC in order to share skills and experiences across our five offices, to strengthen our expertise in the changing legal environment, and to develop our core competencies in this specialised area of public interest law.

Projects

The work of the programme is divided into several thematic areas, or projects: Land Restitution; Land Redistribution; Security of Tenure; Farm Dweller Evictions; Housing; Services; and Development and Management. LRC lawyers allocate time to these projects on an hourly basis in each of our regional offices. The following reports highlight some of the work done in the programme during the past 12 months.

Anthea Billy and Henk Smith,
National Co-ordinators, Land, Housing and Development Programme

The right to restitution of land Makuleke settlement sets precedent for land claims against state parks

The Makuleke Song
Tiko Ra ka Makuleke
I tiko lerinkulu
I tiko ro sasekela
Ku sukela Pafuri ku fika Limpompo
A hi nkheseni Xikwembu
Xi nga endla misava
Xi hi nyika na kihosi

The Makuleke land is very big
It is very beautiful
From Pafuri up to Limpompo
We thank God for having given us that land
And again we thank God for giving us our chiefs

In the northern-most corner of the country, where Zimbabwe and Mozambique intersect with South Africa, the LRC assisted the Makuleke community in lodging a claim for approximately 20,000 hectares of land taken away from them by the apartheid government in 1969.

On the face of it, there was nothing extraordinary about this claim for restitution of land – except that the piece of real estate in question consisted of a huge chunk in the upper part of South Africa's most famous wildlife reserve, the Kruger National Park. The ancestral home of the Makuleke people had been incorporated into the national parks system after expropriation 30 years ago – and now the Makuleke wanted it back in terms of the government's land reform programme.

At the onset of this case, conservationists expressed fears that numerous land claims like this one would be the beginning of the end for the world-renowned Kruger Park and others like it across the country. Over a period of 100 years, South Africa had built an extensive system of national parks – home to protected wildlife, rare plant life, and unique ecosystems – which had been carved out of land seized or expropriated from indigenous people. Now, with an opportunity for dispossessed people to reclaim these lands through the government's restitution programme, there were fears that the Kruger Park and other state conservation areas would be returned to the original inhabitants.

The Makuleke case typifies the delicate balancing act between competing national priorities that characterises complex land restitution claims. Three government departments had vested interests in the outcome of this restitution case, but for very different reasons. The Department of Environmental Affairs and Tourism had an interest in preserving the Kruger Park and avoiding a precedent that would unbundle the rest of the national parks in the country to the detriment of the growing tourism industry. Likewise, the South African National Defense Force also had an interest in securing the country's borders with Mozambique and Zimbabwe, protecting a local air force landing strip, and preventing the influx of illegal migrants across the borders. And the Department of Land Affairs had an interest in satisfying the Makuleke claim and fulfilling the promise of land restitution contained within Section 25 (7) of the Constitution.

When the Makuleke first approached the Department of Land Affairs about making a restitution claim in 1994, government officials referred the matter to the LRC office in Johannesburg to handle. Moray Hathorn, an attorney specialising in land matters, started representing the Makuleke community in December, 1994 – a working

relationship that would last for the next five years. Although he was based in Johannesburg, Hathorn would drive between Gauteng and the Northern Province in order to consult with his clients on a regular basis, often over weekends. At the end of five years, however, his efforts paid off and Hathorn helped broker an agreement that satisfied not only his clients, but the various government departments involved in negotiations over this prized tract of land. The Land Claims Court formalised the agreement in late 1998 and the deal was approved by a vote of Parliament in 1999.

Winners on all sides

The final settlement of this precedent-setting restitution case was a win-win situation for all parties.

For the Makuleke community, the settlement finally restored rights which had been taken away from them in dispossession 30 years ago. The leadership of the Makuleke persuaded community members not to seek the return of their land, but instead to seek a deal that would preserve the parklands as well as generate revenue for development. What they got in the end was a settlement in which the Makuleke obtained commercial rights and joint management of the Pafuri section of the Kruger Park. In terms of the settlement, the Makuleke can enter into business partnerships with private investors on projects that are compatible with eco-tourism and wildlife protection. The community is currently exploring options to sell various concessions in the park, to grant exclusive rights to build game lodges, to establish a cultural history museum, and to create opportunities for local youths to gain training in parks management, hospitality, and game rangership. Within a few years, the 2,500 families of the Makuleke community will begin to reap the economic benefits of this landmark settlement package.

This case has also been a victory for the South African National Parks. Through the successful resolution of this claim, the state managed to increase the size of the Kruger National Park by an additional 5,000 hectares donated by the Makuleke people. The state also managed to reaffirm its commitment to eco-tourism partnerships with local communities living adjacent to conservation areas, while at the same time, extending its protection of endangered wildlife in the Kruger Park. Former Minister of Land Affairs Derek Hanekom hailed the Makuleke settlement as a model that government can replicate in other national parks where local people are seeking restitution of their rights to land.

For the LRC, this case was an important example of how skilful negotiation can help facilitate land restitution in South Africa to the satisfaction of the state, the claimants, and conservationists alike. Much more than just the resolution of a complex case, the Makuleke settlement agreement illustrates how a public interest law centre can use its legal skills to help untangle some of the thorniest legal quagmires which the apartheid era bequeathed to democratic South Africa. Over the past five years, the LRC may have helped the Makuleke in some small way in their fight for the restoration of their rights to land. But the legacy of our intervention in this instance may be more long-lasting than a paper restitution agreement. The LRC created a legal mechanism called a communal property association – a legal tool that will assist the Makuleke in managing their new land rights and access to resources to the benefit of the entire community. The newly-formed communal property association – which blends democratic civic structures with traditional chiefly authority – will be able to manage the post-restitution development process for years to come. This, too, is a victory of another sort: an opportunity for our clients to take control of their own development processes without having to rely upon lawyers or other forms of external assistance to improve their socio-economic circumstances.

**Attorney Moray Hathorn
of the LRC Johannesburg office:**

'During the years after receiving the initial instructions in the Makuleke matter late in 1994 to the date of the signature of the settlement of the case in June 1998, and the ensuing period to the end of 1999, during which the conditions pre-cedent for the commencement of the agreement – notably the requirements for an appropriate order of restitution by the Land Claims Court, the registration of the Makuleke Communal Property Association, the excision of the Makuleke land from the Kruger National Park by Parliamentary resolution and finally the issuing and registration of Deed of Grant of the land to the communal property association – I came to know the road to Malamulele where the Makuleke people now reside very well.

I also came to know the road to South African National Parks headquarters at Muckleneuk in Pretoria very well. I also became a little better acquainted with the environs of Parliament (and for the first time with the inside of that building) in Cape Town in the course of at least three trips to address the parliamentary sub-committee which dealt with excision of the land from the Kruger National Park.

'Travel certainly plays a central part in the life of a 'land lawyer'!

'The wisdom of the Makuleke community in dealing with this complicated claim has been extraordinary. No lawyer could have asked for a better or wiser client. It has been quite wonderful to see the growing confidence and even mastery evinced by this historically most oppressed and disadvantaged community in dealing with the wide outside world, including the international stage of environmental politics.

'Tribute is due to the Regional Land Claims Commission and our negotiating partners in achieving this settlement, not to mention the facilitators of the negotiation process from IMSSA. Initially the claim was met with hostility by SA National Parks. Five years later, after much intensive and careful discussion with all role players, the agreement of settlement of the claim was concluded in an atmosphere of genuine partnership and commitment to its successful implementation.

The right to restitution

Mier land restitution claim settled in record time of three months

The government's land restitution programme has not proceeded as swiftly as many land claimants across the country had hoped. To date, fewer than 1% of the 63,455 land claims lodged in the past four years have been settled, raising serious questions about the complexity, cost, and time required to process each restitution claim.

The reasons for the slowness of the land restitution programme are multiple. By law, each claim for restitution requires careful investigation and verification processes to determine the rights lost in dispossession, the extent of the land in question, the number of people affected, the present value of compensation paid, if any, and the form of racial discrimination that led to dispossession. These tricky questions need to be answered before a decision can be reached about a claim's validity. Once the claim is approved, the claimants and the Restitution Commission enter into negotiations over an appropriate settlement of either land or equitable redress. According to some observers, at the current rate of processing of these claims it may take the government at least 30 years to complete the restitution component of the national land reform process.

Against this backdrop of delay and disappointment over the slow pace of land restitution in South Africa, there is good reason to celebrate when a community claim to restitution in a complex matter is settled within a mere three months. The case of the Mier community in the Northern Cape Province – filed by the LRC in December, 1998 before the close of restitution claims and settled by March, 1999 – probably holds the current record for the fastest settlement yet negotiated between a group of land claimants and the Restitution Commission.

The LRC is justifiably proud, therefore, of its contribution to the settlement of the Mier claim. The case is one of the highlights of our work of the past 12 months and merits special reporting in this annual review as a model of speedy restitution and good lawyering.

Land of national and international significance

The land belonging to the Mier community is situated in the Kalahari Desert between Botswana to the east, Namibia to the west, and the Kalahari Gemsbok National Park to the north. It falls within a summer rainfall region and is home to approximately 5,000 residents in an area of 400,000 hectares. The name of this region, 'Mierland' or 'lake country', is derived from the prevalence of pans and depressions found in the region. The Mier area includes small towns such as Rietfontein, Loubos, Klein Mier, Groot Mier, and Welkom. The people who live in this area refer to themselves as Bastards, Coloureds, and San.

Because of its proximity to the Kalahari Gemsbok National Park – which is a potential world heritage site and a transfrontier park between South Africa and Botswana – this finger-like stretch of land bears both national and international significance.

According to historical accounts, this piece of land north of the Orange River was occupied by various hunter-gatherer groups who lived in the Kalahari region in pre-colonial times. Around 1865, however, members of the 'bastervolk' under Dirk Vilander's leadership settled in the Mier area and declared the Philander Republic with its own legal and land tenure systems. Gradually, over the next 70 years, the Philander people lost their rights to this land as a result of colonial annexation and incorporation into British Bechuanaland and encroachment by white farmers. Their access to land and farming activities were severely circumscribed by a series of administrative and legal measures.

In 1930, the government declared Mierland a 'coloured settlement area', converting 25 farms adjacent to the Kalahari Gemsbok National Park into a reserve. Thereafter, the communal land systems adopted by indigenous people living there were whittled

away: during the 1950's for instance, occupation rights to land were granted to individual farmers; during the 1960's grazing strips were allocated; during the 1970's fences were erected to demarcate land plots; and during the 1980's new legislation was adopted which parceled out the land into 125 different plots leased to farmers, dispossessing the majority of residents there. By 1986, most of these land leases were renewed and some were even sold to private individuals – the first time communal property had been sold to individuals in any of the nine Coloured Rural Reserves of the Northern Cape, areas where land is held in trust by the state. The net effect was that the majority of people living in Mierland were reduced to less than 10% of the land. By the 1990's, therefore, the land tenure system in Mier was unique among reserves in South Africa because it contained land held in a mixed bag of communal tenure, private ownership, and lease agreements.

Complex and competing claims

When the opportunity arose in terms of the Land Restitution Act of 1994, the Mier community filed a claim for the restitution of land that had been excised from the reserve in the creation of the Kalahari Gemsbok National Park. The Mier also claimed compensatory land located outside of the rural reserve. The land claimed outside of the reserve was in respect of the land plots previously leased or sold inside the reserve in terms of the Coloured Rural Areas (House of Representatives) Act 9 of 1987.

One of the striking features about the Mier claim is that it involved all three elements of the government's land reform programme: restitution (for lands taken away to create the national park); redistribution (of land as compensation for lands excised from the reserves); and tenure reform (to address the insecurity of land tenure that resulted from the application of a flawed, permit-based land lease system). This claim attempted to increase the land base of the inhabitants of Mier and to effect a more equitable access to natural resources in the area.

What complicated this restitution claim even further was that the Southern Kalahari San or Khomani people instituted a similar claim in 1997 to 400,000 hectares of land in the Mier Reserve and in the national park. This meant that the government had to contend with two competing claims for land restitution simultaneously.

Speedy settlement of claims

On 11 February, 1999, all parties involved in these claims agreed to a process whereby both the Mier and the San claims would be accommodated. The then-Minister of Land Affairs, Derek Hanekom, committed the government to signing a comprehensive, full, and final settlement agreement on 21 March, 1999 – celebrated as Human Rights Day in South Africa – which added further pressure for a speedy resolution of the claims.

A new agreement was forged on 13 March, 1999, in which the Mier community gained the following: four farms outside of the reserve and the Kalahari Gemsbok National Park; commercial access to 27,500 hectares within the national park; and compensation of R2 million for dispossession. The settlement was completed in terms of Section 42D of the amended Restitution Act which allows the government to settle claims without resorting to court. A similar deal was reached with the Khomani San.

From December, 1998, when the claim was first filed to March, 1999, when the deal was signed, the process took an amazingly swift three months to complete. The Mier claim was shepherded through the labyrinthine restitution system by attorney Henk Smith of the LRC Cape Town office.

'This land claim is about the rebirth of a people'

An official handing-over ceremony, which was attended by Minister Hanekom and Deputy President Thabo Mbeki, took place on 21 March 1999 at the Molopo Lodge, south of the national park.

'This land claim, I am sure, will stand out among all land claims,' Mbeki told a crowd of 2,000 who gathered in the sweltering heat on that day. 'It stands out because this land claim is about the rebirth of a people. When we say, 'Here is your land, have it', we say too that you must reclaim a proud history and rebuild a rich culture. This land is a space to rebuild a community. That which we are doing here in the Northern Cape is an example to many other people around the world.'

'It must be one of the great prizes of our freedom that the Khoi and the San, who became the first victims of colonialism, above all should emerge as the greatest beneficiaries of our liberation in 1994.'

**Attorney Henk Smith
of the LRC Cape Town office:**

'The LRC prioritises restitution cases that are the most complex – in other words, claims in rural areas (instead of urban areas), claims on behalf of groups or communities (instead of individuals), and claims where legal precedents can be established which will facilitate land restitution for thousands of other beneficiaries.'

'By focussing on cases from rural areas, by working on communal restitution claims, and by grasping the legal challenges of complex cases like Mier, we hope to facilitate developmental solutions that will bring about meaningful change in the lives of the poorest of the poor.'

'The government's three-pronged land reform programme – restitution, redistribution, and tenure reform – is not an end in itself. Rather, the land reform programme creates the basis to achieve sustainable economic development and poverty alleviation.'

The right to protection from arbitrary evictions A routine Eastern Cape evictions case makes national headlines

Every year, more than a hundred newspaper articles are written about cases that the LRC litigates in the highest courts of the land – test cases in the Constitutional Court, appeals to the Supreme Court of Appeal, or a variety of urgent matters brought to the various High Courts around the country. These are the cases which grab the headlines of our nation's newspapers.

Few of the cases reported in the media carry the name of the LRC. Even fewer report on routine legal matters that never reach the courts and ironically, constitute the bulk of the LRC's caseload each year.

One journalist, Carmel Rickard, who is the Legal Editor of the Sunday Times, consistently finds important stories in the legal matters that never make headlines - reporting on the cases that don't make the law reports, uncovering matters that affect the poor and vulnerable most critically, and informing the public about their constitutional rights.

Rickard wrote an article that appeared on the opinion page of the Sunday Times on 1 August 1999, about an obscure evictions case undertaken by staff of the LRC Grahamstown office – advocates Johan Roos and Mark Euijen, who were assisted by attorney Pushpa Naidu and paralegal Rufus Poswa.

The story revolves around an Eastern Cape farm worker evicted at the beginning of 1999 in contravention of the Extension of Security of Tenure Act of 1997. These kinds of cases are somewhat routine for the LRC, which handled more than 150 such matters in 1998 and 1999. But Rickard found inspiration in the LRC's deft lawyering and in the responsiveness of the Land Claims Court to the plight of the poor and defenseless.

The headline of the article read: 'By preventing the misuse of power against the 'small man', the legal system redeems itself.' The story is reprinted in this year's annual report – not only as an example of the countless cases of evictions that the LRC handles every year, but to illustrate how skillful lawyering and sensitive journalism can collaborate in the public interest:

Now and again, justice clears its name

Just occasionally, like a freak planetary alignment, the law works as it should. Trayeshile Ketschese's story of how the law came to his rescue at the last minute to prevent a miscarriage of justice is a shining example.

Ketschese was dismissed after working for many years on the Happy Rest Farm near East London. The owners decided to sell and wanted to evict him and his fellow occupants from their shacks to leave the land 'empty' of labourers and thus fetch a better price.

The owners asked the East London magistrate's court for an urgent interim eviction order under the 1997 Extension of Security of Tenure Act. This order is intended to provide for a period of notice to people such as Ketschese, who are living on a farm, at the end of which time everyone is supposed to go back to court for a final decision on whether the eviction will be authorised.

But things went badly wrong for Ketschese. The magistrate misunderstood or misapplied the law – he gave an order for both sides to come to court six days later for a final decision, but at the same time issued an order granting the owners immediate rights to evict Ketschese and his fellows.

Some of their homes were demolished right away, even before the return date on which the legal and factual issues were due to be fully canvassed.

When the return date, March 18, came around, Ketschese had his first bit of luck – he was represented in court by lawyers from the Grahamstown Legal Resources Centre. During the hearing, they pointed out all the irregularities of the case, and there were plenty of them.

The papers on which the case was based contained hearsay evidence only. And Section 15 of the Act under which the application was brought lays down certain requirements which have to be met before an eviction order can be granted, but none were satisfied.

The law also requires that there must be an investigation into whether there is suitable alternative accommodation, and this, too, had not been done. Apart from Ketschese, none of the other people whose homes were demolished were so much as named in the application.

Judgement was postponed twice, and shortly before it was delivered on March 31, the magistrate allowed the farm owners to hand in extra papers in an attempt to patch up the legal mess of their original application. This was done without notice to Ketschese and didn't give his lawyers a chance to argue that it was highly irregular. The next day, April 1, just before the Easter long weekend, the Legal Resources Centre wrote an urgent letter to the Land Claims Court asking for the proceedings and judgement of the magistrate's court to be reviewed immediately, pointing out that the eviction and demolition would take place, by force if necessary, on the morning of April 6.

The matter looked quite desperate for Ketschese. With Friday and Monday being Easter public holidays, there seemed no doubt that, come Tuesday, he and his fellow occupants would be thrown off the farm and their homes demolished. This was despite the fact that the legal process authorizing the evictions was riddled with irregularities.

But justice was on Ketschese's side in more than one sense and the equivalent of a legal miracle was about to happen.

The Land Claims Court received the last-ditch letter and all the documents from the magistrate's court hearing just before everyone went home on Thursday. Over the long weekend, Judge Justice Moloto considered all the papers. On Tuesday morning he immediately issued his decision: the whole of the magistrate's order was set aside; the sheriff was instructed to reinstate anyone he had already ejected and re-erect any building already demolished – and the costs were to be carried by the farm owners.

Judge Moloto said the irregularities of the Magistrate's Court proceedings had been 'too many to go into' in his judgement, given the urgency of the intended evictions that morning. He said the whole matter should be reheard.

Ketschese's case will probably never make any law report or record book, but it should. For when the law comes to the rescue of 'little people' – those helpless in the face of power irregularly wielded – it marks a milestone on the road to the kind of society dreamed of by our Constitution.

Despite the often desperate shortages of staff, funds, and resources in the legal system, Ketschese experienced the law as a powerful angel, swift to avenge the injustice done to him. That experience will do more to enhance the credibility of the legal system among his community than any fancy schemes dreamed up in the offices of bureaucrats.

The Legal Resources Centre's unorthodox action in asking for an urgent review by means of a letter reflects the centre's well-known commitment and tenacity on behalf of 'underdog' clients.

This, and Judge Moloto's prompt and sympathetic intervention, intolerant of the miscarriage of justice about to be perpetrated, are models of what is needed if the name of justice is to be cleared in South Africa.

**Advocate Johan Roos
of the LRC Grahamstown office:**

'We had three wonderful experiences out of the Ketschese case. Firstly, we obtained real justice: the Court had the power to do something that we brought to its attention by letter, and it did not shrink from exercising it.

'Secondly, the occasion was marked by that rare satisfaction that comes from a really good legal tactic turning out to have been spot-on target.

'Thirdly, we won and we did so for genuinely deserving clients who would otherwise have been the hapless victims of a sale of land which made their continued residence an inconvenience to the contracting parties.

'That case – and the way our regional director, Mark Euijen, managed the pursuit of the restoration of Ketschese's accommodation – did wonders for the morale of our office.'

The right to have access to adequate housing

A rights-based approach to addressing the problem of homelessness

Housing remains a critical issue of poverty alleviation in South Africa. The government's White Paper on Housing, published in 1994, estimates that there is a backlog of approximately 1.5 million units of housing, increasing at a rate of at least 178,000 per annum. The effects of this housing crisis can be seen all across the country: continued land invasions in urban areas, burgeoning informal settlements, poor infrastructure of services, and vastly overcrowded communities of poor people living in both rural and urban settings. The shortage of adequate housing in South Africa is nothing short of a national crisis.

The LRC has assisted numerous clients over the past year with legal advice and services concerning their rights to adequate housing and secure tenure. Taking its cue from Section 26 of the Constitution, the LRC seeks to give content to these specific rights - namely, that everyone has the right to have access to adequate housing; that the state has an obligation to realise this right within its available resources; that no one may be evicted from their home without a court order; and that no one's home may be destroyed without a court order. These are potentially far-reaching fundamental rights - but rights which remain largely out of reach for the majority of poor South Africans without some form of legal assistance.

Using a rights-based approach to addressing the problem of homelessness, the LRC's interventions in the housing arena have revolved around four kinds of cases. Firstly, the LRC defends residents of informal or squatter settlements against evictions by local municipalities or land-owners. Secondly, the LRC defends unlawful occupiers in formal housing from eviction in cases where eviction would be inequitable. Thirdly, the LRC helps secure adequate permanent housing for homeless people, taking up matters which relate to housing lists, government housing subsidies, and other policies affecting the distribution of houses. And finally, the LRC works with new home-owners in bringing actions against building contractors to rectify shoddy workmanship and government authorities to stop bad town planning. This part of the annual report looks at the diversity of cases in which the LRC represented clients in some of these housing matters.

Rebuilding homes destroyed illegally in Gauteng

In Johannesburg, attorney Moray Hathorn acted on behalf nearly 200 people living in an informal settlement consisting of 39 shacks on privately-owned land near Lanseria. In 1995, the owner demolished these shacks without a court order, rendering the entire community homeless.

After taking instructions from the former residents, the LRC applied to the Supreme Court for an order directing the owner to restore the dwellings to the state they were in prior to demolition. In court, there was a technical dispute over whether the land occupiers had erected their dwellings with or without the consent of the owner. In November, 1995, the court decided that the onus of responsibility rested with the owner in terms of Section 3B of the Prevention of Illegal Squatting Act, and the judge granted an order for the restoration of all 39 dwellings that were destroyed. The land owners appealed the decision to the Appellate Division, but later abandoned their appeal.

For the past three years, the LRC has continued representing these clients by monitoring the implementation of the court order. Moray Hathorn has facilitated discussions between the residents, the land owners, the Gauteng Department of Housing, and the Randburg Town Council to reach an appropriate resolution of this matter. The LRC persuaded the local municipality and provincial authorities to find an

alternative site for housing the community, while it convinced the land owner to permit the people to remain on his property until an alternative could be identified for development.

Finding alternatives for land invaders on the Cape Flats

The LRC Cape Town office acted to prevent the Cape Town City Council from demolishing the dwellings of approximately 3,000 people who spontaneously occupied land in Tafelsig, Mitchell's Plain in May, 1998. The City Council had applied for an urgent court interdict in order to remove the estimated 500 to 600 shacks that were erected without municipal permission.

The so-called 'land invaders' were homeless people from Mitchell's Plain, who were desperate to find decent accommodation. Many of them claimed to have been waiting on the City Council's housing list for more than 10 years, and had decided to seize the unoccupied land and construct their own homes of wood, cardboard, and corrugated iron.

'Every time we go to the council offices to ask where we are now on the waiting lists and when are we going to get houses, we are told there is no land available. Or they would tell you to hang on,' David Roux told The Cape Times in explaining his reasons for moving into Tafelsig. 'But look, here is an open space of land and we have cleared it and built shacks.'

Acting on behalf of several hundred families who occupied the land, attorney Vincent Saldanha of the LRC Cape Town office sought to have the interim court order which had been obtained by the City Council reviewed by another court, and challenged the order on a number of procedural grounds. Eventually, the parties settled the High Court application on the basis of the City Council withdrawing its application and tendering the LRC's costs. The matter was referred subsequently for mediation in terms of the Prevention of Illegal Eviction Act.

Negotiations between the residents and the City Council started in November, 1998 and have continued since that time without a settlement being reached. Vincent Saldanha continues to represent the people who occupied Tafelsig in their quest for land, housing and basic services.

Seeking developmental solutions to the housing crisis in KwaZulu-Natal

Political violence in the early 1990's left thousands of people homeless in KwaZulu-Natal Province, resulting in a desperate shortage of alternative housing. As a result, the LRC office in Durban has undertaken a number of cases involving development projects and access to housing.

In one matter, the LRC represented a group of Inanda residents who had been promised houses 12 years ago as a result of their voluntary relocation from land to make way for the construction of a dam that would service metropolitan Durban. Originally, the Inanda residents were given a choice between two relocation options: subsistence farmers with livestock would be resettled in a rural community; the rest would have houses built for them in a nearby township. The LRC's clients in this matter were part of the group who were offered houses in the township – but after 12 years, still did not have a roof over their heads.

The Department of Development Aid did indeed construct houses as promised. But instead of the houses being allocated to our clients as agreed, it is alleged that certain corrupt officials had accepted bribes and had allocated houses to other groups of people who were not part of the relocation settlement. For more than 12 years, our clients have been waiting for their houses to be built.

Attorney Mzomdala Mdhladhla of the LRC Durban office entered into negotiations with the Provincial Department of Local Government and Housing to ensure that our clients benefit from the housing development project and that their names are included on the list for preferential occupation. At present, the residents are living on temporary sites in the Durban area until the development project commences. In another case, the LRC defended the tenure rights of 450 families threatened with eviction by the municipality at Etafuleni, outside of Durban. The LRC opposed the matter and prevented the eviction from taking place. Subsequently, attorney Mzo Mdhladhla represented these clients in negotiations with the provincial Department of Local Government and Housing and the North Central structure of the Durban Metropolitan Council to develop the area for residential settlement. In addition to houses and secure land tenure, provision has been made for tarred roads, tap water, water borne sewerage systems, and other public amenities. Our clients agreed not to build shacks or other structures on the site in order to avoid interfering with the development process.

Once threatened with eviction, the community of Etafuleni – which has now grown to more than 1,000 families – today benefits from the construction of new homes. The LRC is also negotiating with landowners who own farms in the nearby Ngoqokazi area to sell their properties either to the Durban Metropolitan Council or to the provincial government to make additional land available for more homeless people.

In the Eastern Cape, 400 new and 175 upgraded homes

For the past eight years, the LRC has worked with the Mfengu community in the Eastern Cape in developing a series of legal agreements that would eventually establish a 500-site residential community at the Clarkson Moravian mission village. The mission station, which was founded in 1839, is located in the Tsitsikamma in the southeastern Cape on 2,337 hectares of land holding approximately 175 households. The LRC assisted the Mfengu in returning to Clarkson in April, 1994, following Supreme Court litigation in 1992. Originally, 5,000 members of the Mfengu community were dispossessed of their land in 1977 without any compensation and then were resettled in the former Ciskei homeland. As a result of litigation by the LRC, the government purchased 6,000 hectares of arable dairy farming land worth R38 million from 19 white farmers in order to resettle the community. This was the first case in South Africa where white-owned land was returned to the original black inhabitants, and a precursor of the new government's land restitution programme. But returning 5,000 people to prime agricultural land would have been insufficient to meet the development needs of the returning Mfengu. So the LRC took a number of steps to ensure that development followed the restoration of their land. This included negotiating and establishing the Clarkson Communal Property Trust. Once the community had a legal framework in which to negotiate and hold resources from the state, the Trust then applied for subsidies from the government in order to build 400 houses for the returning Mfengu families. The development process was completed in 1998, when, in addition to the new homes for returning Mfengu families, the government also upgraded and serviced 175 existing homes occupied by inhabitants of the Clarkson Mission Station. Clarkson has now become the main residential settlement for both returnees and mission station inhabitants with a school and other facilities under construction.

The work at Clarkson has contributed to the democratisation of decision-making and the strengthening of land tenure on the mission station. This settlement provides a useful test case on how land reform and development at mission stations can be tackled jointly with residents, the church, and local government. Subsequent to the Clarkson case, the LRC has continued to work with the Department of Land Affairs

and the Moravian Church to bring about land reform and the transformation of local authority at six other missions stations in the Cape.

**Mzo Mdhladhla,
attorney in the LRC Durban office**

'There is a huge gap between the housing rights contained in the Constitution and the housing situation in South Africa today. To narrow that gap, the LRC has attempted to use law to leverage the state to provide housing resources at scale, and in the process we have achieved some noteworthy successes.

'But in order to really make the right to housing real for millions of homeless people in this country, the LRC will need to press the courts to interpret what the Constitution means in Section 26 (2), which says that 'the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.'

'Perhaps this is the key clause in the Constitution that will not only open up vast state resources for housing, but will also help public interest lawyers understand the state's responsibility towards the provision of other socio-economic rights.

**The right to secure tenure:
Developing new methods of allocating and
regulating communal lands in Namaqualand**

For generations, the indigenous people of Namaqualand have relied upon dry land plots located on communal lands in order to sustain low-intensity agricultural production in their semi-arid part of the Northern Cape Province.

A dry land plot – known as saailand in Afrikaans or literally ‘sowing field’ – is nothing more than a piece of land, usually four to eight hectares in extent. During growing season, this piece of land is pegged out for private usage in wheat farming, and is used by the same families year after year. Outside of the growing season, the plot of land reverts back to communal property used for sheep and goat grazing. There are more than 1,500 of these dry land plots in Namaqualand which play an important role in producing a wheat harvest for livestock in one season, and grazing lands for farm animals in another.

Typically, families do not have access to more than one or two of these plots. But in recent years, as a result of poor administration and uncertainty over land tenure rights, some families have acquired four or more plots – stripping some Namaqualand residents of their rights to land plots which have been worked by their families for many years. The result: uncertainty over land administration has created further impoverishment in the economically-depressed Northern Cape.

A case from Leliefontein

The story of Timotheus Wildschut, an LRC client from Leliefontein, illustrates how the unregulated land tenure system in the Northern Cape directly affects the livelihoods of several thousand pastoralists in the region. His story demonstrates how the LRC can use its legal skills not only to rectify individual wrongs in the courts, but also in broader law reform initiatives aimed at lending greater legal certainty to indigenous land management systems.

The saga began in June, 1998, when Timotheus Wildschut, a pastoralist and saailand farmer, was evicted from a plot of land which his family had used and lived upon for at least three generations. The story goes that his father had given the land to an aunt and uncle to be held in trust on behalf of Wildschut. This arrangement was not recorded in the local municipal government, but had stood for many years. Things changed, however, as soon as Wildschut's aunt died and her husband decided to reallocate this piece of land given to him in trust in favour of another relative named Horniman.

Horniman, a man of means, promptly obtained a court injunction to stop Wildschut from working the land. Wildschut hired a Cape Town lawyer to defend his interests, but the case was so weak that he ended up losing his right to use the land as well as the tractor and trailer used to plough the fields. These two farm vehicles were attached by the court in lieu of the alleged damages which Horniman allegedly suffered. Horniman sought damages from Wildschut on the basis of loss of income as a result of being unable to reap any crops from the land during that season. In fact, nobody in Leliefontein reaped any crops that season due to severe drought – not even Timotheus Wildschut.

The inability to regulate and record the allocation of saailande in Namaqualand contributed to the dispossession of Wildschut from his land, home, and farming vehicles. Had there been a uniform set of regulations governing grazing and reaping in the area, had there been more direct involvement by the local municipality in administering saailande, and had there been greater involvement of local people in

administering the system, the tragic consequences that befell this pastoralist farmer in the Northern Cape might have been averted at an earlier stage.

Legal relief

Having lost the case and, more importantly, the property on which his entire livelihood was derived, Wildschut then approached the LRC in Cape Town for help. Kobus Pienaar, an LRC attorney specialising in land and development matters, managed to secure a stay in the sale in execution of the tractor and the trailer. He then threatened to appeal the case to the High Court in Cape Town. The threat of litigation seemed to work in restoring the seized assets: within a short period of time, by March, 1999, the tractor and trailer were returned to their rightful owners. The land question was a different matter. Kobus and an advocate decided that Wildschut's eviction fell squarely within the parameters of the Extension of Security of Tenure Act, which provides for a speedy review of any magistrate's court decision to evict an occupant if the procedures and principles of ESTA were not taken into account. Again, the threat of automatic review to the Land Claims Court resulted in the opponent's legal case collapsing. Horniman's lawyer abandoned judgement granted in favour of his client, and agreed to an interim arrangement to allow Wildschut to live and work on the saailand pending the final determination of land rights in terms of the repeal of old legislation and the adoption of the Transformation of Certain Rural Areas Act 94 of 1998.

Wildschut's case is but one example of the legal problems that threaten the livelihood of pastoralists all across the Northern Cape. In fact, the whole system of managing and administering 1.4 million hectares of communal property in Namaqualand – including the regulation of grazing rights and the allocation of saailande – has collapsed due to state neglect.

To begin tackling some of these problems, the LRC constituted a working group with the Surplus People's Project and the Department of Land Affairs to oversee the implementation of new legislation that will allow local people to decide on the appropriate mechanisms to hold and manage these communal lands. The LRC's role in this process is to advise pastoralists on appropriate institutional choices, to train government officials in the new law, and to draft improved land-holding management agreements for community groups.

Kobus Pienaar:

'We provide legal assistance to black pastoralists living in arid parts of the country whose subsistence is dependent upon a mix of domestic livestock and agricultural activities. Their livelihoods are under threat as a result of the inability of the state to regulate or lend legal status to indigenous land management systems.

'Our aim is to support these communities as they try to gain secure access to communal and natural resources. By developing appropriate institutional arrangements and legal entities suitable to their unique circumstances, we can assist these pastoralist communities to hold and manage land and other natural resources in a sustainable way.

'In this way, the LRC can contribute towards efforts to improve the socio-economic circumstances of hundreds of pastoralists living in the Northern Cape.

Report on the Candidate Attorneys Programme Training a new generation of public interest lawyers

Since 1980 the LRC has created opportunities for young law graduates to gain experience with our lawyers in the practice of public interest law for periods of one or two years. The principal aim of the programme is to enable law graduates from previously disadvantaged backgrounds to gain access to the legal profession by serving their mandatory period of articulated clerkship at the LRC.

During the apartheid era, for instance, it was very difficult for black South Africans to be accepted for clerkship at many of the leading, white-dominated law firms in the country. The legacy of apartheid in the law profession remains to this day: blacks and women remain grossly under-represented in the profession.

The aim of the LRC's post-graduate training programme, therefore, is to open the doors of the legal profession to blacks and women. At the same time, we hope to create a new generation of lawyers trained in constitutional and human rights law. Just as public interest lawyers played an important role in the past to dismantle elements of apartheid laws and regulations, so, too, there is critical need for a new generation of lawyers to continue the struggle to realise the full range of rights contained within the Constitution.

There is also a very practical element to the Candidate Attorneys Programme in terms of the organisation's daily practice: it boosts the staff complement of the LRC each year by 16 to 20 paraprofessionals. This enables the LRC to extend its free legal services to more poor and vulnerable in a more cost-effective manner.

Over the past two decades, the LRC has demonstrated remarkable success in the Candidate Attorneys Programme, judging from the career path of its graduates. Approximately 45% of the programme's graduates over the past 19 years have pursued careers in the public interest in either state or non-governmental organisations. Four of the graduates are judges on the High Court or Labour Court. One is the Chief Land Claims Commissioner. One is the Secretary of the Ministry of Safety and Security. Twenty-four of them are currently practising public interest law. The quality of these candidate attorneys and fellows has been impressive.

Today, the Candidate Attorneys Programme attracts between 15 and 20 law graduates who work for one or two years under the supervision of experienced lawyers in the LRC's five regional offices. Their practical training consists of the typical things lawyers learn after they leave law school - working with clients, opening a case file, researching precedents, drafting correspondence, negotiating contracts and settlements, appearing in court, and preparing for trial. Their work is supervised on a one-to-one basis by experts in the field of human rights. Their practical training is supplemented by attendance at in-house seminars, litigation discussions, and external course work.

Distinguishing features

There are three distinctive features of the LRC's Candidate Attorneys Programme which differentiate it from other courses.

Firstly, candidate attorneys at the LRC are exposed to the rich diversity of constitutional issues at the forefront of legal practice in South Africa today – thus gaining valuable experience in matters related to women's rights, children's rights, environmental rights, land rights, and health rights, to name but a few of the topics covered during the two-year clerkship. This exposure to human rights law with some of the country's top practitioners is unique in the country. Articled clerkship at the LRC stands in stark contrast to similar programmes at commercial law firms where law graduates are schooled in ordinary legal matters like drafting wills, motor vehicle

accident claims, and divorce matters. The LRC's training programme is qualitatively different.

Secondly, candidate attorneys at the LRC benefit from the organisation's position as a national public interest law centre with offices in five major cities across the country. The LRC affords candidate attorneys opportunities to gain experience in a variety of settings – in rural and urban areas, in informal and formal communities – in a way that few regional law firms can offer. The LRC's training programme is genuinely South African in its breadth and depth, and not merely confined to one city or province in the country. It is a national programme.

The third major difference between candidate attorney programmes offered by the LRC and by commercial law firms is in the selection of the candidates. The LRC has an aggressive affirmative action policy for blacks and women which ensures that our candidate attorneys represent the demographics of South Africa at large. In 1998 and 1999, for instance, the LRC nationally selected a total of 19 candidate attorneys – 16 of whom were black and 3 of whom were white. Of the 19, approximately half were women. There are very few firms of attorneys of comparable size in South Africa which can compete with the LRC's recruitment of both black and women candidate attorneys on a national basis.

The LRC's robust affirmative action policy is borne out by a recent study by the Law, Race, and Gender Unit of the University of Cape Town which supports our view that women and blacks remain under-represented in the legal profession. The study painted a rather bleak picture of demographic representativity in the legal profession: by mid-1998, 68% of the practising attorneys in South Africa were white men; 13% were black men; 15% were white women; and a meagre 4% were black women. The study conclusively demonstrated that the legal profession in South Africa is still dominated by white male lawyers.

By carefully selecting and training a group of black and women candidate attorneys, the LRC believes it can make a significant contribution to the transformation of the legal profession in this country.

Programme evaluation

To continue this tradition of excellence in training black and women lawyers, the LRC commissioned a study to evaluate the Candidate Attorneys Programme during 1998 and 1999. The purpose of the study was three-fold: to advise on the adequacy of the training programme; to determine whether the objectives of the programme are being met; and to look at the impact of the programme over the period of its existence. The LRC commissioned Nic Swart, director of the Practical Legal Training School in Pretoria, to undertake this evaluation.

The evaluation report praised the LRC's Candidate Attorneys Programme. 'The LRC is serious about the training of its candidate attorneys,' the Swart report noted. 'This is evident from the role that the principals are playing, the documentation designed for the training programme, and the exposure of candidates to a variety of public interest matters.'

The report recommended that the LRC consider a national system of co-ordinating candidate attorneys' training in order to ensure that uniform standards of training are implemented in each office. It also recommended that the LRC adopt performance appraisal systems, more rotation of candidate attorneys within and between offices, greater exposure to court, and possibly seconding candidate attorneys to public defender programmes or private law firms to round out their experience.

'I have been extremely impressed throughout the entire exercise with the high calibre of the persons I have spoken to,' the evaluator concluded. 'They are all

confident and have a clear understanding with regard to what the practice of law requires. I have no doubt that the LRC has over the years produced a well-equipped body of young lawyers, irrespective of the field that they are working or practicing in at present.'

Comments from former candidate attorneys

Swart's praise for the programme were confirmed in questionnaires circulated to 20 different graduates of the LRC's Candidate Attorneys Programme. In their written statements, graduates praised the LRC for the insights which they gained into public interest law: Here are a few extracts from the comments of former graduates who participated in the evaluation:

'I saw the law as a weapon against apartheid. [After my time at the LRC] I now see law as a protector of the weak.'

'[At the LRC] I realised that a lot of people do not have access to justice. Now I am committed to serve them.'

'[Before joining the LRC] I was sceptical about the law in operation. I then witnessed the role of lawyers in bringing about transformation.'

'I was sceptical, but realise that the law is the only instrument for changing society through lobbying, policy-making, and litigation.'

'I now realise that the Constitution provides the tools for addressing injustice.'

'I realised that a lot was still to be done to unravel apartheid laws.'

Judging from the feedback generated by graduates of this programme, it seems clear that a sizable sample of those who completed their training at the LRC gained important insights into the practice of law in post-apartheid South Africa - insights which have lasted and guided them throughout their careers as lawyers.

Kameshni Pillay, former candidate attorney, who now works as an attorney in the Johannesburg LRC office:

'Some candidate attorneys only develop a love of public interest work after they have served two years of their articulated clerkship at the LRC. With me, I had the dedication to undertake public interest work from the outset, but needed to learn the legal skills necessary to qualify as an attorney.

'I wanted to become what Wim Trengrove calls a 'legal technician' so that I could be of real assistance to poor people.

'During my articles, I was given lots of responsibility and plenty of opportunities to prove myself. It was an excellent learning environment for me.

Bongiwe Hadebe, candidate attorney in the LRC Durban office:

'When I complete my articles, I would like to become a land attorney. There are so many people in our country who have been robbed of their land or evicted from their homes. These are serious issues to be tackled, issues that affect the lives of the poor. If I can go outside and handle these kinds of cases, then I think I can make a difference.'

**Human Resources Profile
as at 31 March 1999**

Sustaining the work of the LRC Report on fundraising

The Legal Resources Centre continued to enjoy broad support from donors locally and internationally during the 1998-1999 financial year.

During the period from 1 April 1998 to 31 March 1999, the Legal Resources Trust raised R15,286,193 in grants and donations for the Legal Resources Centre from a diverse range of philanthropic foundations, development agencies, charities, human rights groups, corporations, law firms, and individuals.

'We are grateful to all of our benefactors for the tremendous support which they continue to show for the LRC,' says Thomas Winslow, who joined the LRC in February, 1999, as the new Assistant Director for Fundraising. 'Their donations are critical to ensuring that the LRC remains South Africa's leading independent, non-profit public interest law centre.'

Foreign funding

In terms of foreign revenues, more than R13.2 million or 87% of the LRC's donations income came from 21 international donors. The top five donations to the LRC came from the following agencies:

- The Canadian International Development Agency and the Canadian Bar Association contributed R3,800,883 for the Constitutional Litigation Unit as part of a four-year funding agreement;
- The Evangelische Zentralstelle für Entwicklungshilfe e.V. (EZE), the German Protestant Association for Co-operation in Development, contributed R1,933,221 to the overhead costs of the Cape Town office as part of a multi-year funding commitment.
- The Belgian Administration for Development Co-operation (BADC) provided R1,322,557 for a variety of purposes including the Candidate Attorneys Programme, gender cases, and land reform work.
- The Swiss Development Corporation provided R1,100,000 in core funding to cover the LRC's overhead costs.
- The Swedish Section of the International Commission of Jurists (ICJ) – in partnership with the Swedish International Agency for Development (SIDA) – gave the LRC a grant of R752,377 towards the Access to Justice Project.

The LRC is grateful to these and other foreign donors who continue to realise the importance of supporting the practice of public interest law in South Africa – not only in terms of the development of constitutional democracy in this country, but also in terms of entrenching the rule of law in Southern Africa as well.

The following chart illustrates from where the LRC's donations income is derived:

RANK	COUNTRY	AMOUNT	%
1	Canada	3,800,822	25
2	South Africa	2,049,978	13
3	Germany	1,933,221	13
4	United Kingdom	1,850,377	12
5	Belgium	1,322,567	9
6	Switzerland	1,100,000	7
7	Sweden	902,376	6
8	Netherlands	750,358	5
9	United States of America	714,100	5
10	Luxembourg	608,000	4
11	Greece	114,600	1
12	European Union	71,6370	
13	Norway	58,4310	

The LRC is strengthened in its fundraising efforts abroad through the assistance of two independent non-profit organisations in the United Kingdom and the United States – the Legal Assistance Trust (LAT) and the Southern African Legal Services and Legal Education Project, Inc. (SALSLEP) respectively. The LAT contributed R1,461,173 to the Legal Resources Trust or approximately 11% of our international income through donations from Comic Relief, the Gatsby Charitable Foundation, and a private donor. SALSLEP raised R351,600 from the Scherman Foundation and its own sources, which represented approximately 2.6% of our international income. We are indebted to the work of Jill Williamson of LAT and Camille Holmes of SALSLEP for their efforts to raise money from British and American donors for the LRC.

Domestic funding

In terms of local fundraising efforts, South Africans contributed R2,049,978 to the Legal Resources Trust during the 1998-1999 financial year, representing 13% of our total donations income. This means that South Africa provided the second-largest source of income to the Trust during the past year; the only people who gave more to the Trust than South Africans themselves were the Canadians. Our future goal is to increase our local fundraising efforts in order to ensure that South Africans are the largest contributors to the LRC each year, and thus, gradually reduce our dependence upon foreign funding.

Within South Africa, the LRC was fortunate to receive grants from the Attorneys Fidelity Fund (R200,000 in support of the Candidate Attorneys Programme), the Open Society Foundation (R375,000 for the Land, Housing, and Development Programme), and the South African Legal Defence Fund (SALDEF) in unrestricted funding (R571,300). These three benefactors provided approximately half of our local income from grants and donations. The balance was provided by a committed group of judges, lawyers, law firms, professional societies, corporations, and friends of the LRC.

A complete list of grants and donations received by the Legal Resources Trust and then transferred to the Legal Resources Centre is contained in the abridged audited financial statements contained at the end of this report. (A complete version of the audited financial statements for 1998–1999 is available upon request from the LRC National Office.)

Fundraising team

The LRC is indebted to a small number of people who worked over the past year to raise funds to sustain the work of the organisation. Christina Landsberg, the Funding and Publications Manager, left the LRC in July, 1998, after 12 years of service. Rev. Frank Makoro, the Fundraising Officer, arrived in September, 1998, but departed in February, 1999 in order to further his studies. Derric Reid, our executive trustee, and Melville Pels, stalwart volunteer, were responsible for much of our local fundraising initiatives. Bongani Majola, the National Director, Odette Geldenhuys, the then-Deputy National Director, and Tilly Meyer, Financial Manager, played an indispensable role in maintaining the consistency of our fundraising efforts in a year of staff changes. The LRC also relied upon the assistance provided by trustees, regional directors, and staff lawyers in all of the offices who spent a great deal of their time writing reports and meeting with donors. We are grateful to all these people for their contributions towards sustaining the work of the LRC in 1998–1999.

**Abridged Financial Statements
For the year ended 31 March 1999**

LEGAL RESOURCES TRUST

Fund Raising Act Ref No. 01 100024 000 0

Report of the independent auditors to the trustees of the Legal Resources Trust

We have audited the annual financial statements set out on pages 3 to 20 for the year ended 31 March 1999. These financial statements are the responsibility of the trustees. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope

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

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

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

Qualification

In common with similar organisations, it is not feasible for the trust to institute accounting controls over collections from donations prior to initial entry of the collections in the accounting records. Accordingly, it was impractical for us to extend our examination beyond the receipts actually recorded.

The allocation of expenditure against restricted trust funds, as detailed in note 3, is determined in accordance with the methods stated in note 3(I). That method utilises a summary of time allocated by the professional staff to the various projects of the trust as the basis by which expenditure is allocated. The summary of time spent is prepared from time sheets submitted by professional staff. Those time sheets have not been retained by the trust. Accordingly, it was not possible for us to verify the summary of time spent, and therefore the allocation of expenditure to the various projects of the trust.

Audit opinion

In our opinion, except for the effect on the financial statements of the matters referred to in the preceding two paragraphs, the financial statements fairly present, in all material respects, the financial position of the trust at 31 March 1999 and the results of its operations and cash flows for the year then ended in conformity with generally accepted accounting practice and in the manner required by the Fund Raising Act.

JOHANNESBURG
30 August 1999

PRICEWATERHOUSECOOPERS INCORPORATED
Chartered Accountants (SA)
Registered Accountants and Auditors

LEGAL RESOURCES TRUST
DEVOLUTION NOTES
for the year ended 31 March 1999

1. The Legal Resources Trust was created by a deed of trust dated 22 November 1978 which was amended by a notarial deed of variation of trust dated 3 June 1990.
2. The purpose of the trust is to:
 - (a) establish and support a Legal Resources Centre at or by which legal assistance will be given in the public interest and without charge to persons requiring such assistance and at or by which legal research and legal education may also be undertaken;
 - (b) generally to support, in addition to the Legal Resource Centre, any other similar undertaking and to engage in any other related activities which in the opinion of the trustees are likely to further the interest of law and justice.
3. The trust shall have perpetual existence, but may be dissolved on a resolution supported by 75% of the trustees. In the event of the trust being dissolved, the surplus assets of the trust shall be distributed to institutions of an ecclesiastical, charitable or educational nature.

LEGAL RESOURCES TRUST
 INCOME STATEMENT
 for the year ended 31 March 1999

	1999 R	1998 R
Income		
Gross current collections		
Overseas donors	13,246,211	16,365,799
Local donors	2,049,028	2,383,529
Dividends received	151,790	174,918
Interest received	2,432,612	1,686,341
Profit on disposal of investments	326,547	430,644
Total income	18,206,188	21,041,231
Expenditure		
Auditors' remuneration	181,595	34,540
Accounting fees	80,5200	Audit fees
- current year	80,220	34,540 - underprovision in
previous year	20,8550	
Bank charges	1,358	1,416
Consultancy fee	3,990	5,130
Investment management fee	176,555	42,330
Travelling expenses	2,315	0
Total expenditure	365,813	83,416
Surplus for the year before transfer to Legal Resources Centre	17,840,375	20,957,815
Transfer to the Legal Resources Centre	(17,335,727)	(16,997,723)
Surplus for the year	504,648	3,960,092
Unexpended funds at beginning of the year	671,416	1,067,732
Net movement on restricted funds		
Net surplus/ (excess expenditure) for the year	330,125	(1,130,680)
Transfer (to)/from reserves	(240,103)	(3,225,728)
Endowment reserve - interest received	(944,671)	(795,084)
Endowment reserve -		

management fees	31,1150	
Capital reserve - profit on realisation of equity investments	(326,547)	(430,644)
Capital reserve - general reserve	1,000,000	-2,000,000
Unexpended funds at end of year	1,266,086	671,416

LEGAL RESOURCES TRUST
BALANCE SHEET
at 31 March 1999

	1999 R	1998 R
Employment of capital	434,815	434,815
Investments	16,512,885	10,891,813
Land and buildings at valuation	37,533	37,533
Managed portfolio	2,067,727	5,444,578
Listed shares	19,052,960	16,808,739
Cash on call	0	5,700
Current assets	3,306,397	4,858,680
Accounts receivable	3,306,397	4,864,380
Bank balance	1,216,600	1,035,010
Less:		
Current Liabilities	2,089,797	3,829,370
Accounts payable	21,142,757	20,638,109
Net current assets		
Trust capital	307,186	42,641
Contingency reserve	3,522,011	4,025,156
Endowment reserve	17,313,560	16,570,312
Capital reserve	21,142,757	20,638,109

LEGAL RESOURCES TRUST
NOTES TO THE FINANCIAL STATEMENTS
for the year ended 31 March 1999

	1999 R
2. Gross current collections and income	
(a) Overseas - organisations	
Belgian Administration for Development Co-operation (BADC)	1,322,557
Catholic Fund for Overseas Development (CAFOD)	96,600
Carnegie Corporation	9,949
Christian Aid	292,602
Church of Sweden Mission	150,000
Canadian International Development Agency (CIDA) and the Canadian Bar Association (CBA)	3,800,883
European Union Foundation for Human Rights in South Africa	71,637
Evangelische Zentralstelle für Entwicklungshilfe E.V. (EZE)	1,933,221
Embassy of Greece	114,600

	Ford Foundation	362,500
	Grand Duchy of Luxembourg, Ministry of Foreign Affairs	608,000
	International Human Rights Internship Program	3,061
	International Commission of Jurists (Swedish Section)	752,377
	Legal Assistance Trust (Anonymous)	740,198
	Legal Assistance Trust (Comic Relief)	505,566
	Legal Assistance Trust (Gatsby Charitable Foundation)	215,396
	Royal Netherlands Embassy	750,358
	Norwegian Church Aid	58,431
	Southern African Legal Services and Legal Education Project, Inc. (SALSLEP)	351,600
	Swiss Agency for Development and Cooperation (SDC)	1,100,000
		13,239,536
(b)	Overseas - individuals	
	George F. Laurence, QC	2,499
	Susan Liang	4,176
		6,675
		13,246,211
(c)	Local - organisations	
	3M South Africa (Pty) Ltd	15,000
	African Oxygen Ltd.	1,000
	Anglo American and De Beers Chairman's Fund	150,000
	Arnold and Yvonne Galombik Charitable Trust	3,000
	Attorneys Fidelity Fund	200,000
	Basil and Cynthia Wunsh Charitable Trust	1,000
	BP Southern Africa	40,000
	Cape Bar Council	3,750
	Cliffe Dekker & Todd	2,500
	Donald Gordon Foundation	25,000
	E G Woods Will Trust	4,600
	Eric Samson Foundation	1,000
	Felix Schneier Foundation	7,000
	First National Bank Ltd.	55,000
	The Foschini Group	3,500
	General Council of the Bar	5,000
	Hofmeyer Herbstein Gihwala Cluver & Walker Inc.	12,000
	Illovo Sugar Ltd.	1,200
	India Ocean Export Company (Pty) Ltd.	1,000
	Industrial Development Corporation of South Africa	1,000
	Israel South African Foundation	1,000
	Johnnic Industrial Corporation Ltd.	15,000
	Johnson and Johnson Professional Products (Pty) Ltd	10,000
	Mones Michaels Trust	10,000
	Murray and Roberts HO Services	50,000
	NBS Boland Bank Ltd.	10,000
	Open Society Foundation of South Africa	375,000
	P G Foundation	1,000
	Ray Hulett Will Trust	5,000
	Rembrandt Group Ltd.	10,000
	Safmarine	10,000

	Sage Foundation	3,000
	South African Legal Defence Fund (SALDEF)	571,300
	SAPPI Ltd.	5,000
	Shell South Africa (Pty) Ltd.	20,000
	Sonnenberg Hoffmann & Galombik	2,500
	South African Breweries Ltd.	75,000
	Southern Exposure CC.	1,750
	Spoor & Fisher	3,000
	Standard Bank Foundation	60,000
	Strauss, Kurt & Joey Foundation	24,000
	Trencor	10,000
	United International Pictures	2,000
		1,807,100
(d)	Local - individuals	
	Anonymous	1,000
	Adv. Schalk F. Burger, SC	2,000
	In memory of Basil Corder	1,000
	Hon Mr Justice A Chaskalson	2,000
	Hon Mr Justice Johan Froneman	1,000
	Hon Mr Justice Richard J Goldstone	1,000
	Dr Nthato H Motlana	3,000
	Adv AJ Nelson	1,200
	HF Oppenheimer	200,000
	Dr Anton E Rupert	10,000
	Adv M Seligson, SC	1,000
	Hon Mr Justice JJ Trengrove	2,500
	Adv JA van der Westhuizen	1,000
	Hon Mr Justice HJO van Heerden	1,200
	Sundry donations less than R1 000	14,028
		241,928
		2,049,028

2. Gross current collections and income - continued
Sundry donations of less than R1 000 were received from:

Aaron Beare Foundation; HJ Barker; Adv E Bertelsman; Adv A Breitenbach; GM Budlender; Charl Cilliers; Cobra Watertech; Adv NJ Coetzee; Hon Mr Justice CF Eloff; Hon Mr Justice JJ Fagan; PT French; Hon Mr Justice Antonie Gildenhuys; Glenrand MIB; MR Goldblatt; Zilla Graff; GF Griffin; Hon Mr Justice JJF Hefer; DB Johnson; Adv Colin Kahanovitz; Hon Mr Justice Edward King; Hon Mr Justice Johann Kriegler; Moss-Morris Inc; Myro Charitable Trust; Nathan Bearman Foundation; Nettletons; PI Paulou; P Pauw; Hon Mr Justice HJ Preiss; B Rabinowitz; Rynheath Trust; Shoprite Checkers; MT Sithole; Hon Mr Justice BR Southwood; Hon Mr Justice MS Stegmann; Hon Mr Justice PE Streicher; AJ Swersky; Adv DA Uys; Adv JL van der Merwe; Hon Mr Justice DH van Zyl; Adv L Weinkove SC.

LEGAL RESOURCES CENTRE

Report of the independent auditors to the trustees of the Legal Resources Centre
We have audited the annual financial statements set out on pages 2 to 7 for the year ended 31 March 1999. These financial statements are the responsibility of the trustees. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope

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

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

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

Audit opinion

In our opinion, the financial statements fairly present, in all material respects, the financial position of the centre at 31 March 1999 and the results of its operations and cash flows for the year then ended in conformity with generally accepted accounting practice.

JOHANNESBURG
30 August 1999

PRICEWATERHOUSECOOPERS INCORPORATED
Chartered Accountants (SA)
Registered Accountants and Auditors

LEGAL RESOURCES CENTRE INCOME STATEMENT for the year ended 31 March 1999

	1999 R	1998 R
Income		
Funds provided by the Legal Resource Trust	17,335,727	16,997,723
Interest received	20,738	20,856
Profit on sale of fixed assets	2,819	48,275
Publication income 111	17,359,395	17,066,854
Expenditure		
Staff costs		
Salaries and wages		
Professional staff	5,880,813	5,692,927
Other staff	4,513,754	4,121,832
Contributions	1,763,342	1,608,727
Transport and office expenditure		
Subsistence and travel	754,591	747,934
Telephone and postage	525,135	444,903
Printing and stationery	233,184	214,924
Books and periodicals	383,941	251,611
Insurance	171,827	169,783
Maintenance of equipment	136,468	104,341
Publications	310,339	120,741
Fund raising	25,877	16,178
Motor vehicle expenses	66,758	46,085
Land and buildings		
Rent, lights, water, rates and taxes	814,450	757,085
Domestic expenditure		
Food and cleaning	87,656	65,701

Professional and special services		
Auditors' remuneration		
Audit fees	148,200	68,124
- current year	49,780	68,124
- under provision prior year	26,600	
Accounting fees	31,920	
Consulting fees	39,900	
Bank charges	7,338	12,915
Other professional services	1,362,699	1,440,909
Sundries		
Depreciation	462,369	430,956
Book value of library written down	157,049	
Operating lease charges for office equipment	38,976	44,769
General expenses	22,450	12,280
Recovery of costs	-293,147	
Total expenditure	17,710,167	16,236,627
(Deficit) / surplus for the year	-350,772	830,227
Transfer to asset replacement reserve	-1,000,000	
Accumulated funds at beginning of year	1,159,964	1,329,737
Accumulated funds at end of year	809,192	1,159,964
LEGAL RESOURCES CENTRE		
BALANCE SHEET		
at 31 March 1999		

	1999	1998
	R	R
Employment of funds		
Fixed assets	1,687,977	1,669,352
Current assets		
Accounts receivable	1,232,884	1,151,523
Bank and cash balances	61,679	488,489
	1,294,563	1,640,012
Less:		
Current Liabilities		
Accounts payable	669,596	612,239
Bank overdraft	3,752	37,161
	673,348	649,400
Net current assets	621,215	990,612
	2,309,192	2,659,964
Funds employed		
Accumulated funds	809,192	1,159,964
Asset replacement reserve	1,500,000	1,500,000
	2,309,192	2,659,964

Staff,
Trustees and Patrons

STAFF

NATIONAL OFFICE

Diane Andipatin *
Nazli Bhamjee
Martha Bopape
Odette Geldenhuys *
Mpumi Khanyeza+
Moffat Khumalo
Christina Landsberg *
Phindile Langa +
Frank Makoro *
Susan Mazabane +
Bongani Majola
Tilly Meyer
Trudy Naicker +
Melville Pels •
Derric Reid
Irene Sigwili
Esme Wardle
Thomas Winslow +

CONSTITUTIONAL LITIGATION UNIT

George Bizos SC
Cyrenne Christodoulou
Garth Hulley +
Julie Khamissa
Wim Trengrove SC
Catrin Verloren Van Themat
Miriam Wheeldon

PRETORIA OFFICE

Nick De Villiers
Louise du Plessis
Esther Khoza
Oupa Maake
Vusi Malebane
Bethuel Mtshali +
Ellen Nicol
Poppy Ntshabele
Charles Pillai +
Judge Henry Preiss • +
Bella Rangata
Beulah Rollnick
Japther Semanya
Julia Serumula
Mandla Skhosana
Ingrid Wlotzka
Sarah Zimbaye

CAPE TOWN OFFICE

Pam Allen
Angela Andrews
Anthea Billy
Maggie Carrollisen
Naomi Davis
Smanga Dlwathi +
Lionel Egypt *
Fatima Essop *
Chantal Fortuin
Ncunyiswa Hans
Mary Honey
Farouz Ismail
Steve Kahanovitz
Daksha Kassan *
William Kerfoot
Thembile Maneli *
Ashraf Mahomed
Florence Masembate
Nikhisa Matshaya
Nolitha Mazwayi
Zakele Mdanda +
Sibongile Ndashe +
Kobus Pienaar
Vincent Saldanha
Mabel Sajini
Seeham Samaai+
Pamela Silolo
Henk Smith
Achmat Toefy

DURBAN OFFICE

Mahendra Chetty
Sue Clarke
Bongiwe Hadebe
Saloshni Isaac
Mzomdala Mdhladhla
Nompumelelo Mkhize
Gugu Mncwabe
Asha Moodley
Catherine Mote
Thulani Nkosi *
Margaret Ntuli
Beverley Pillay *
Ranjit Purshotam
Sharita Samuel

GRAHAMSTOWN OFFICE

Mark Euijen
Cathy Fulhart +
Joan Hack
Pushpa Naidu
Rufus Poswa
Tabitha Qangule

Johan Roos +
Nomfundo Somandi
Ethel Swartz

JOHANNESBURG OFFICE

Trevor Bailey *
Lynette Bios+
Solomon Bokapa *
Ellem Francis
Moray Hathorn
Lalashé Lundall+
Topsy Mackensie
Pinky Madlala
Ajay Makka
Martha Mahlope
Didi Maimane
Ntini Mashego
Nkele Mashiloane
Happy Masondo *
Achmed Mayet
Mandla Mkhathshwa
Josephine Mokwebo
Connie Mogorosi
Richard Mojapelo
John Mulaudzi *
Nosipho Nkomo
Themba Nyembe +
Kameshni Pillay +
Patrick Pringle +
Sophie Tladi
Mohale Tsotetsi *

+ Joined the LRC during the _____ year

* _____ Left the LRC during the year

• Volunteers

TRUSTEES

Ismail Ayob *
Lee Bozalek
Judge Yusuf Ebrahim
Judge Johan Froneman
Gadija Kahn
Felicia Kentridge
Norman Moabi
Dolly Mokgatle
Tiego Moseneke *
Judge Mahomed Navsa
Judge Chris Nicholson
Judge Jeremy Pickering *
Judge Navi Pillay *
Derric Reid
Richard Rosenthal
Judge Basil Wunsh

* Term of office expired in
April, 1998

PATRONS

Charl Cilliers

Sydney Kentridge, QC

Judge Gie Kotze, QC

David Sampson

Judge John Trengrove

Most Rev. Desmond M. Tutu