

Legal Assistance Centre Annual Report 2000

WHAT IS THE LEGAL ASSISTANCE CENTRE?

The Legal Assistance Centre (LAC) was founded in 1988 by lawyers, church leaders, trade unionists and student leaders who were concerned about the human rights situation in Namibia. The LAC is a public interest law centre and is the only Namibian organisation currently active in this field. Its Board of Trustees, consisting of lawyers and other experts, governs the LAC. The following people currently serve on the Board of the Legal Assistance Trust: Advocate Dave Smuts (Chairperson), Mr Hosea Angula, Ms Gica Nakazibwe-Sekandi, The Honourable Ben Ulenga, The Honourable Wilfried Emvula, The Honourable Hosea Kalyamo, Dr Teopolina Tueumuna, Advocate Bence Gawanas and Dr Sakeus Akweenda.

To achieve the objectives set out in the LAC's Mission Statement, the Centre works in the following three main areas:

- legal advice and litigation
- education and training
- research, advocacy and lobbying

The LAC is a member of the Namibia Non-Governmental Organisations' Forum (NANGOF) and works closely with a number of organisations and institutions to reach the broader community

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The LAC is a member of the Namibia Non-Governmental Organisations' Forum (NANGOF). NANGOF member organisations march down Independence Avenue with their colourful banners during the second celebration of NANGOF Week in October 2000. The theme: 'Towards a Partnership for Social Development and Empowerment' aimed to mark the achievements and contributions of the NGO sector during the ten years of Namibia's independence.

LEGAL ASSISTANCE CENTRE

annual report 2000

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PERSONNEL MATTERS

The revision of the conditions of service is in an advanced stage and will soon be submitted to the Trustees for contributions to the final product. During 2000, 52 staff members were employed. It is envisaged that the staff component at the Centre will not exceed 44 in 2001.

THE LEGAL ASSISTANCE CENTRE



LAC staff members in December 2000

Clement Daniels, Director of the LAC

During 2000, 15 staff members benefited from staff development assistance at a cost of N\$44 507. Staff members also attended various workshops, seminars and meetings relevant to their specific area of responsibility.

New Appointments and promotions:

Clement Daniels (Director)
Norman Tjombe (Coordinator of LEAD)
Tenu Afavia & Gerson Narib (Candidate Legal Practitioners)
Gwen Krotz (Administrative Assistant)
Yvonne Dausab (Legal Practitioner)
Colette Campher & Ilda Lomba (Project Assistants)
Toni Hancox (Legal Practitioner & Coordinator of Huricon)
Monica Nganjone, Alloysius Katzoo, & Ruth Hekandjo (Legal Educators)
Rita Mukwillongo & Annie Rhode (Administrative Assistants)
Ambrosius Mukongwa & Wilma Isaaks (Juvenile Justice Promoters)



Resignations:

Maria Kavanze from Rundu Advice Office
Johann Malan of ALU
Clinton Light of Huricon
Jonah Kamwanyah of the JJP

Retrenchments:

Ono Angula, Tania Petersen, Mina Hangula, Napoleon Uutoni, Ben Ausiku, Matheus Sinonge, Paulina Kalola from the different advice offices

Internships:

Melanie Delmarte & Treena Sikora at the GR&AP

Retirement:

Tusnela Nangola of HRC as of 31 December

OVERVIEW OF THE WORK OF THE LEGAL ASSISTANCE CENTRE DURING 2000

The year was indeed a great challenge for the new management at the Centre. As the opportunity for civil society participation shrinks and political intolerance increases, many people and organisations are looking to the Centre for leadership and guidance.

Despite our efforts to publicise the true nature of our work, the Centre and some of its staff were singled out for public attacks during the course of the year. This is part of an ongoing campaign to silence legitimate resistance by individuals and communities to undemocratic behaviour and the violation of human rights. The Centre has nevertheless made a very important contribution to the development of a human rights culture and tolerance in Namibia.

RESTRUCTURING

One of the key tasks of management was the implementation of a restructuring process. As early as 1998 the Centre decided to phase out its general advice service and focus its attention on human rights and constitutional issues. The restructuring of the Centre was a major challenge, but with the support of dedicated staff this was achieved with great success and minimum disruption to our work. A direct result of this process was the closing of our advice offices in Rundu, Ongwediva, Walvis Bay, Katutura and Keetmanshoop. At a very early stage staff were informed of the restructuring process and the

possible consequences thereof. Before the closing of the advice offices a physical inventory of all equipment and furniture was done. Most files were closed and summaries of all cases were made. Files not closed were transferred to lawyers at the Centre. A positive spin-off of the restructuring has been the implementation of a national community paralegal volunteer training programme.

After consultation with some community leaders and organisations it was decided to train community paralegal volunteers to replace staff at the advice offices.



Graduates of community paralegal training workshops, Walvis Bay (left) and Women's Action for Development (right)



PUBLIC RELATIONS

In our challenging and competitive world there is a need to portray the image of the Centre in a positive manner. Many hours were spent in meetings with local NGOs, government-organised meetings, donor meetings, embassy functions and other activities to market the work of the Centre. The publication of three editions of LAC News has focused greater attention on the work and values of the Centre. This publication will increase to four editions in 2001. The 1999 annual report and numerous new and old educational materials were sent to all Members of Parliament, senior government officials, local NGOs, high schools, businesses and local authorities. These public relations activities will be intensified in 2001.

LAC PROJECTS

During 2000 the Centre managed six major human rights projects:

AIDS LAW PROJECT

the primary aim of which is the protection of the human rights, dignity and legal rights of people living with AIDS and HIV

CONSTITUTIONAL AND HUMAN RIGHTS LITIGATION PROJECT

whose primary aim is to conduct constitutional and test-case litigation on human rights issues. The project is also involved in legal and human rights education and the training of candidate legal practitioners

GENDER RESEARCH AND ADVOCACY PROJECT

the main aim of which is to conduct extensive research on legal issues affecting gender equality in Namibia and to publish research findings and educational materials to speed up the law reform process with regard to gender equality

JUVENILE JUSTICE PROJECT

whose primary aim is the protection of the rights of children in conflict with the law. The project works closely with the Inter-Ministerial Committee on Juvenile Justice

LAND, ENVIRONMENT AND DEVELOPMENT PROJECT

whose main aim is to assist government and communities in the land reform and land redistribution process. The Project deals with land, community and natural resource management disputes and development

LEGAL EDUCATION PROJECT

whose purpose is to create awareness with regard to human rights, legal rights and the Constitution of Namibia

AIDS LAW UNIT (ALU)

Staffing:

Michaela Figueira (Coordinator)
Johann Malan (Project Lawyer, resigned in September)
Yvonne Dausab (Project Lawyer)
Ruusa Shipiki (Candidate Legal Practitioner)
Mona Malherbe (Project Assistant)
Funding for ALU activities for 2000 and 2001 was secured from the Ford Foundation and the American Embassy in Windhoek.

The main activities of the Aids Law Unit included:

- Research in the field of HIV/AIDS
- Policy reform and law reform
- Litigation and legal advice

- Advocacy
- Education and training
- Publications
- Regional networking and some other general activities

The Unit made legal history when it succeeded in an application to the Labour Court to prevent pre-employment HIV/AIDS testing by employers.

The Namibian HIV/AIDS Charter of Rights was published in a pocket-sized booklet and a simplified illustrated version. These publications were launched on 1 December 2000 by the Minister of Health and Social Services.

CONSTITUTIONAL & HUMAN RIGHTS UNIT (HURICON)

Staffing:

Clinton Light (Project Coordinator, resigned in September 2000)

Toni Hancock (Project Coordinator)

Tenu Avafia & Gerson Narib (Candidate Legal Practitioners)

Delme Cupida (Legal Practitioner)

Lynita Conradie (Legal Practitioner and Editor of Namibia Law Reports)

The Unit closed 90 files during 2000 and dealt with a further 230 matters.

Funding:

The European Commission has agreed to fund the Constitutional and Human Rights Unit for a period of three years from 8 March 2000. The funding proposal commits the unit to achieving a number of measurable outputs. Litigation is also restricted to cases that concern a violation of a constitutional right or of a right guaranteed under an international human rights treaty binding on Namibia.

Most of the Unit's work relates to the detention and torture of alleged Caprivi secessionist. The Centre acts for 136 persons who were arrested following the secessionist attacks in the Caprivi region on 2 August 1999. More cases are being identified as time goes by and as the aggrieved parties become aware of their rights. Mainly members of the Namibian Police and in a few cases, members of the Namibian Defence Force, allegedly tortured our clients. The number of clients increased from approximately forty last year to the current number following three visits during May and June 2000 to the Grootfontein Prison where most of the clients are being detained on treason charges.

The Unit represented two people, one of whom a German national, on Citizenship and Immigration. One of the Refugee cases (Osire Stars) taken on earlier in 2000 aroused a great deal of public interest and almost resulted in a Constitutional Crisis. The Unit also acted on behalf of a boy in a Medical Negligence case against the Ministry of Health and Social Services (MOHSS).

The Namibian Police Human Rights Manual was launched and handed over to the Namibian Police at the Israel Patrick Iyambo Police College in Windhoek on 30 March 2000.

The LAC provides Bill summaries to parliament in terms of an agreement with the NDI. We received a number of Bills towards the end of the parliamentary session last year for summary.

Lynita Conradie spent most of last year editing the 1999 Law Reports. These were sent to Jura's at the end of last year. She also compiled the Cumulative Index of the Namibian Law Reports. It is hoped that the index will be published early in 2001.

GENDER RESEARCH AND ADVOCACY PROJECT (GR&AP)

Staffing:

Dianne Hubbard (Coordinator)

Willem Odendaal (Project Researcher)

Collette Campher (Project Assistant)

Melanie Demarte & Treena Sikora (CHLAIR Interns)

The main activities of the GR & AP during 2000 included:

- Namlex 2000 Update
- Advocacy and publicity on the Combating of Rape Act
- Domestic Violence
- Men against Violence against Women
- Violence against women in general
- Vulnerable witnesses
- Divorce and other family law issues
- Maintenance and children's legislation
- Affirmative action
- Land, Farm Workers and Domestic Workers
- Law Reform and Advocacy

Funding:

Funding has been secured from the Austria North South Institute until December 2002.

Publications:

• NAMLEX Update 2000 (the annual supplement to the Index of laws in force in Namibia)

• Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response, published jointly by the Law Reform & Development Commission and the LAC, with joint copyright, completed in 1999 but released to the public after printing was completed in early 2000.

• Proposals for Divorce Law Reform in Namibia, which is a companion to the paper published last year entitled Proposals for Law Reform on the Recognition of Customary Marriages and which also draws on the background paper entitled The Viability of Divorce Mediation in Namibia: An Analysis with Recommendations.

• After The Rape: Preventing HIV, STDs and Pregnancy, published as an independent research paper in English and Afrikaans, as well as being serialised in 5 parts in The Namibian and in Die Republiek.

• Newspaper articles in The Namibian:

Organising Men Against Violence Against Women (January)

Rape Redefined: A Summary of the New Combating of Rape Act (February; reprinted in LAC newsletter)

When Violence Hits Home: Domestic

Violence Cases In Namibia (March; a summary of the report Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response)

Assault And Murder In Our Homes Daily: Violence On Namibian Television (April)

Domestic Violence Courts in Canada: A Special Solution (September)

Why the Law on Sodomy Should be Repealed (November)

Gender Scorecard 2000 (December)

- Gender and Law Reform in Namibia: The First Ten Years, to be published in the proceedings of the UNAM Law Faculty Conference Ten Years of Nationhood.

- Towards the Development of Protocols for the Combating of Rape Act, a background document for police, social workers, prosecutors, magistrates and other professionals dealing with the act.

- A Guide to the Combating of Rape Act, plus a shorter version of this document for the general public.

- A Guide to the Married Persons Equality Act, plus a shorter version of this document for the general public.

JUVENILE JUSTICE PROJECT (JJP)

Staffing:

Jonah Kamwanyah (Coordinator)

Senorita Gases (Diversion Options and Crime Prevention)

Ricardo Mukonda (Research, Statistics and Monitoring)

Celeste Zaahl (Assessment and After Care)

Sophie Van Wyk (Project Assistant)

Lovisa Kandenge (Social Work Intern)

Funding:

Secured funding from Austria North South Institute until June 2001, whereafter a two-year agreement will be entered into.

The Juvenile Justice Project renders direct services in the Khomas region. The project is also responsible for the expansion and coordination of the juvenile justice programme in the whole country.

The Project was actively involved in the following activities:

- Practical diversion of juvenile offenders
- Crime prevention

- Monitoring and research
- Training of government officials
- Networking with local and regional institutions

The project has compiled good statistics that will be vital for future development and crime prevention options. The project has moved into a final transitional phase and government is expected to take over the project activities in 2003.

LAND, ENVIRONMENT & DEVELOPMENT PROJECT (LEAD)

Staffing:

Norman Tjombe (Coordinator)

Elly Shipiki and Andrew Corbett (Consultants)

Collette Campher (Project Assistant)

Funding:

During 2000 HIVOS and EZE funded the project. A new three-year (2001–2003) funding proposal was forward to EZE, HIVOS, IIZ and the Ford Foundation and the prospects for acquiring this funding look good.

External evaluation of the LEAD Project has been completed. This evaluation was done on the request of LAC and HIVOS. In the final outcome of the evaluation it was noted that: 'Respondents argued that the LAC was still the best institution in which to base the services. It has demonstrated its financial propriety and has impressive track record in serving the needs of its intended beneficiaries. Staffed by highly skilled professionals, it can be referred to as a "blue chip" NGO. Relations with donors are good and the organisation has an "institutional memory" which ameliorates the possibility of skills being to closely associated with a person or persons, a real risk in a context of a death of skills.'

Some major shortcomings have been identified in the report. These are being addressed in the new proposal and activity plans. Better cooperation was established with stakeholders and client organisations.

The Project was involved in the following activities:

- Research on land and environment issues
- Litigation and legal advice
- Education and training
- Local and regional networking

LEGAL EDUCATION PROJECT (LEP)

Staffing:

Milly Jaffa (Coordinator)

Monica Nganjone (Legal Educator)

Collette Campher (Project Assistant)

Funding:

The project secured funding from Austria North South Institute until December 2002.

For the first six months the LEP focused mainly on consultative meetings with men countrywide and the planning of the National Conference on Men against Violence against Women, which took place in February 2000. Thereafter it facilitated follow-up meetings to assist with the establishment of regional chapters of Namibian Men for Change.

As part of the phasing out process, the Project was also involved in arranging community meetings and identifying community members to be trained as Community Paralegal Volunteers in the second half of the year.

LEP staff also co-facilitated the Community Paralegal Volunteer Training with lawyers from the Centre. As three of the current advice offices, Walvis Bay, Katutura and Rundu, were closed at the end of December 2000, LEP staff finalised, referred and/or closed their cases as future provision of general legal advice will be discontinued.

LEP was actively involved in supporting and planning the following activities at each advice office:

- Men against violence against Women National Conference
- Community Paralegal Volunteer Training
- The project participated in the observance of International Human rights Day in Keetmanshoop, Windhoek, Rundu and Ongwediva/Oshakati
- The LAC publish a number of booklets relating to the Namibian Constitution and the UN Declaration of Human Rights
- Essay competition for Grade 12 boys
- Discussions on date rape at tertiary institutions



Essay Competition for Grade 12 boys on 'Men's Views on Ending Violence Against Women' Prizegiving
From left to right standing: Representative from the Continental Hotel, Norman Tjombe (Chairman), First Prize winners Gerrit Esterhuys, Lloyd Lonat and Ngariye Kandukira, Finalists Kwasi O Yeboah and Danie Narib

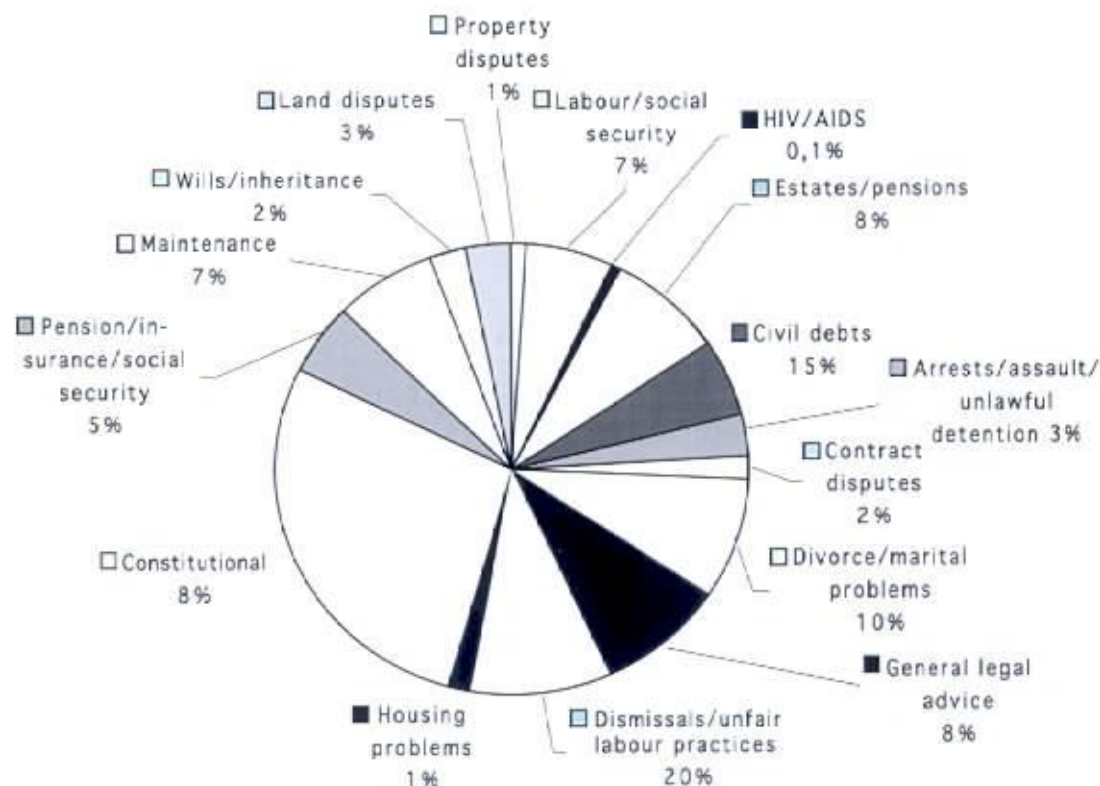
Seated: Milly Jaffa (Organiser), Dr Louis Burger (Under Secretary, Ministry of Basic Education and Culture), Gillian Belben (Director, British Council), Clement Daniels (Director, LAC)

ADVICE OFFICES

During 2000 the Centre managed six advice offices, which were situated in Keetmanshoop, Mariental, Katutura, Walvis Bay, Ongwediva and Rundu. Below is a brief summary of the activities of these offices. As mentioned previously the Centre unfortunately had to close these offices in December 2000.

The LAC and the advice offices dealt with a total of 1288 cases during 2000.

Cases dealt with by the LAC in 2000



- | | |
|-------------------------------------|--------------------------------------|
| □ Property disputes | □ Labour/social security |
| ■ HIV/AIDS | □ Estates/pensions |
| ■ Civil debts | ■ Arrests/assault/unlawful detention |
| □ Contract disputes | □ Divorce/marital problems |
| ■ General legal advice | □ Dismissals/unfair labour practices |
| ■ Housing problems | □ Constitutional |
| ■ Pension/insurance/social security | □ Maintenance |
| □ Wills/inheritance | □ Land disputes |

Cases 2000

Human Rights Centre	178
Mariental	157
Keetmanshoop	197
Rundu	289
Walvis Bay	40
Katutura	107
LAC	420
Total	1288

MARITAL ADVISE OFFICE

Staffing:

Trudy Bock (Coordinator) after Alec Boois resigned in May 1999

Funding:

The office will not be affected by the phasing-out project as the donor (IIZ) extended their contract with the Bridge until December 2001.

Cases:

The number of labour cases decreased. Maintenance remains the biggest problem in the surrounding areas. Pension/Insurance Policies and Social Security cases were also reported to the office.

Other Activities of the Office during 2000:

- Legal Education throughout the Hardap region
- Organising Men Against Violence Against Women and participating in the different programmes regarding violence against women and children
- Juvenile Justice and visits to the Hardap Prison

HUMAN RIGHTS CENTRE, ONGWEDIVA

Staffing:

Ben Ausiko (Paralegal)

Napoleon Uutonl (Coordinator)

Rita Mukwillongo (Receptionist)

Ruth Hekandjo (Paralegal)

Tusnelda Nangolo (Cleaner)

The office was actively involved in the following activities:

- Land, Environment and Development Project (LEAD), representing clients in a number of land disputes and assisting Norman Tjombe with cases
- Juvenile Justice Project (JJP), visits to police cells
- Legal Education Programme (LEP), Men against Violence Against Women, School Competition, Community Paralegal Volunteers, Workshops on Domestic Violence and other activities
- HIV/AIDS, raised awareness on HIV/AIDS and human rights



Graduates and trainers of a community paralegal training course conducted at the Human Rights Centre at Ongwediva

KATUTURA ADVICE OFFICE

Staffing

Yvonne Dausab (Coordinator until she joined the ALU in August 2000)

Monica Nganjone (was a Paralegal/Gender Officer, until she joined LEP in May 2000 as a Legal Educator)

Ono Angula (Paralegal)

Julia Shuuya (Receptionist/Administrator, joined the office in August 2000 as a temporary employee until December 2000)

The office served the communities of Katutura and Khomasdal, which eventually expanded to greater Windhoek due to the focus and the workload at head office. Provision of a general legal advice service, particularly in the past twelve months, also extended to the surrounding areas. Legal advice was sought by men and women in almost equal numbers, while vulnerable women continued to dominate maintenance advice statistics. Despite the fact that the decision to phase out the general legal advice service has been made known to the community since February 2000, labour issues continued to form the bulk of the work taken on by the office, followed by issues involving maintenance, housing, pensions, HIV/AIDS, assault and general advice.

Workshops and Other Activities

After Monica Nganjone, the focus person for the LEP Programme, left in May 2000, not much was done in terms of other activities involving legal education training. Yvonne Dausab devoted almost 70 percent of her time during the year to activities relating to the phasing out of the office. Training of community paralegals between July and October 2000 comprised a large part of this activity. The first half of the year was devoted to other activities of the project such as consultations with communities, other service institutions and staff, and the development of a curriculum for the training of community paralegals. Ono Angula remained the only paralegal until the office was finally closed in December 2000.

KEETMANSHOOP ADVICE OFFICE

Staffing

Alloysius Katzao (Coordinator)

Wilma Isaaks (Paralegal)

Theodora Isaacs (Receptionist)

The office was very busy and dealt with a total of 197 new cases.

Twenty-two Community Paralegal Volunteers successfully completed the two-week training course in Keetmanshoop. They will continue to render legal advice to the community in the south of Namibia.

The Office was involved in the following activities during the year:

- Gender Research, assisting with the employment survey on HIV/AIDS policies and Men Against Violence Against Women
- Juvenile Justice Project, visiting cells and attending meetings of the Juvenile Justice Forum
- Land, Environment and Development Project
- Legal Education Project

The office strove to complete all cases, but unfortunately a few cases remain pending and need to be finalised.

RUNDU ADVICE OFFICE

Staffing:

Ambrosius Makongwa (Office Coordinator)

Paulina Kalolo (Secretary/Receptionist)

Sinonge Matheus (Office Assistance/Cleaner)

The office served the Kavango and Caprivi regions. For reasons of security, the Caprivi region was omitted from office activities during 1999. The office officially closed down on 31 December 2000. A closing-down function attended by business partners and some clients was held in December 2000. Sixteen Paralegals from Rundu and surrounding areas were trained as paralegal volunteers

The office was further involved in planned activities of the following projects:

- LEP activities
- Community Paralegal Volunteer Training
- Assisting lawyers and journalists in the investigation of human rights violations in the regions
- Men Against Violence Against Women

WALVIS BAY ADVICE OFFICE

Staffing:

Tania Pietersen (Coordinator)

Mina Hangua (Paralegal)

Annie Rhode (Secretary)

The operations of the office finally came to an end with the closing of the office on 31 December 2000. The closing-down function was held in December 2000 and business partners and other clients attended.

The office was involved in the following planned activities:

- Legal Education Programme
- Research and HIV/AIDS
- Juvenile Justice Project
- Workshops and other general related activities



A group of paralegals and trainers from the Khomas region

VIOLENCE AGAINST WOMEN AND CHILDREN

There were two major national developments for women in the year 2000. The first was the passage of a new law on rape, which was long lobbied for by a range of women's groups and NGOs. The lobbying finally began to bear fruit in 1999, but it was necessary for the NGO community to remain active and vigilant to ensure that the bill continued to move forward, and to ensure that the provisions of the bill were responsive to NGO concerns about rape and rape survivors. The lobbying process was marked by a greater openness on the part of government to NGO input than on previous women's issues, and by better strategising on input from the NGO community.

The LAC played an important role in mobilising this input by making clear information about the bill available very quickly after its release, and by convening a forum for discussion and summarising NGO input in an appropriate form for presentation to government. This lobbying strategy could serve as a future model.

The second major national development was the introduction of new gender structures. The former Department Of Women Affairs became a new Ministry of Women Affairs and Child Welfare, and the National Assembly transformed its Standing Committee on Human Resources into a Standing Committee on Human Resources, Equality and Gender Development. Both of these steps signal a government commitment to women's issues. It is too soon to assess the impact of these new structures, but the Gender Research & Advocacy Programme (GR&AP) has held familiarisation meetings with both of them to discuss potential areas of future cooperation.

It must be noted that the scourge of violence against women in Namibia continues unabated, with repeated news reports of grisly murders of women by ex-boyfriends including some murder-suicides. This problem surely continues to rank as one of the nation's foremost human rights violations. It is also noteworthy that the government has increased the number of Woman and Child Protection Units (specialised police response units aimed primarily at sexual assault and child abuse cases) to seven.

The LAC participated in an international study of laws on marital rape conducted by the UK-based group CHANGE. We provided Namibian materials and information and will receive the overall study in due course.

RAPE

The Combating of Rape Bill became law in February 2000, along with amendments to the Combating of Immoral Practices Act, after a final flurry of lobbying activities aimed at fine-tuning the bill. Almost all of the amendments proposed by LAC and the NGOs who worked on this bill were incorporated into the final act, which should be considered a tremendous indicator of success. A newspaper article on the key changes made by the new law was published.

The LAC published a short information paper on medical issues for rape survivors. The paper covered HIV prevention (known as PEP), STD prevention and pregnancy prevention in the wake of a rape. It was serialised in *The Namibian* in June. The article was published in *Afrikaans* in *Die Republiek* in November, with the inclusion of new information pertaining to recent successful trials of PEP.

With funding from the US Embassy, the LAC co-hosted two one-week workshops planned by the Office of the Prosecutor General to train police, social workers, prosecutors and magistrates on child witnesses. This part of the workshop was facilitated by two South African experts and authors of the recent book, 'Introducing the Child Witness.' The LAC presented training on the new rape law and took the opportunity to promote formal guidelines for each of the four professions. Senior officials from each of the four professions were consulted about the project in advance of the workshop and gave their support. Workshop participants were invited to prepare a draft protocol which will be taken forward for further consultations and eventual finalisation. In conjunction with the AIDS Law Unit, a similar process will be used to introduce protocols for medical professionals dealing with rape survivors in 2001.

Two educational booklets on the new rape law were produced: a detailed Guide to the Combating of Rape Act and a shorter booklet aimed at the general public. Both are illustrated publications written in simple English which will be translated into Afrikaans in 2001.

PARLIAMENT PASSES RAPE BILL

Both houses of parliament passed the Combating of Rape Act in March and it came into force in June 2000. Many women members of parliament were very vocal to ensure that there were no further delays in this piece of legislation which is extremely important in the combating of violence against women. But what is the Bill all about and what can ordinary women and men expect from it?

The Combating of Rape Act completely redefines rape. What was formerly 'unlawful sexual intercourse with a woman without her consent' is now a 'sexual act' committed under 'coercive circumstances'.

There are several advantages to this new definition. Firstly, it is gender-neutral, recognising the reality that men and boys can be raped. Secondly, it covers a range of intimate sexual acts, instead of being confined to sexual intercourse alone. Thirdly, it moves the legal emphasis away from absence of consent by the complainant, to focus on the use of force or intimidation by the perpetrator. Fourthly, the definition no longer excludes rape within marriage.

Marital rape acknowledged

Some men have found this removal of the 'marital rape exemption' to be controversial, fearing a rash of charges by wives against their husbands. But the experience of other countries indicates that charges of rape within marriage are rare. Namibian studies show that rapes within marriage can be extremely brutal. For example, one woman told researchers how her husband tried to rape her with a broomstick after hitting her repeatedly. Another woman who was brutally beaten by her husband described how he raped her in front of her children, in a pool of her own blood. Who would seriously argue that wives in situations such as these should not be able to lay a charge of rape?

'Coercive circumstances' in the new act include the use of force or threats of force. They also include situations where the complainant has been unlawfully detained, or is unable to make a decision or communicate unwillingness because of being disabled, drunk, drugged or asleep. A recent addition to the list of 'coercive circumstances' is where the presence of more than one person is used to intimidate the complainant, to give full coverage to all forms of gang rape.

As a result of the new emphasis on the actions of the accused, rape complainants should no longer feel that they are the ones who are being put on trial.

Greater protection to children

The new law also gives greater protection against the sexual abuse of children. Under the previous law, the age at which children were considered capable of giving meaningful consent to sexual intercourse was 12 for girls, and 7 for boys. Under the new law, rape occurs whenever a sexual act is committed with a boy or a girl under the age of 14, by someone who is more than three years older. The age of 14 is a logical choice, as this is the age at which children are presumed to understand the difference between right and wrong if they are charged with committing a crime. A companion piece of legislation amended the Combating of Immoral Practices Act to give additional protection to boys and girls under the age of 16, where there is sexual contact with someone more than three years older.

Stiffer sentences, stiffer bail conditions

Another significant aspect of the new law is that it provides stiff minimum sentences for rapists. Depending on the circumstances of the rape, the minimum sentence for a first offence is five, ten or fifteen years. A second offence is punishable by a minimum sentence of 10, 20 or 45 years. The highest sentences apply to gang rapes, rapes of young children or elderly persons, and rapes where a weapon is used or where the complainant suffers particularly serious harm.

Rapists who know that they are infected with a serious sexually-transmitted disease such as HIV will also receive the heaviest sentences, along with rapists who take advantage of a position of trust or authority (such as rapes involving family members, or teachers and their students). The court has the power to depart from the minimum sentences only where there are 'substantial and compelling circumstances' which would justify more lenient treatment. The minimum sentences do not apply to young offenders under the age of 18.

The new law also provides stiffer bail conditions. It ensures that the victim has an opportunity to inform the court of any threats from the accused before bail is considered. Rape

This is a law that will make Namibia a proud partner in modern-day global terms.

Prosecutor General, Hans Heyman, in consultation with Mr Brian Donaldson, British High Commissioner, at the opening of a week-long training session on the new Combating of Rape Act and child witnesses, for police, social workers, magistrates and prosecutors, organised by the LAC and the Office of the Prosecutor General



complainants must be notified if the accused rapist is released on bail, and no accused rapist out on bail is allowed to have any contact with the complainant.

Women's groups proposed that the possession of firearms or other dangerous weapons while on bail should be automatically forbidden, but this proposal was not incorporated into the final bill, leaving decisions on firearms to the discretion of the presiding officer.

Clear duties for police and prosecutors

In addition to the provisions on bail, the new law sets forth clear duties for police and prosecutors. These duties help to ensure that all information relevant to a bail application is placed before the court. They are also designed to make the trial process less traumatic for the complainant, by making sure that the prosecutor informs the complainant what to expect in court.

The new law protects rape victims from irrelevant questions about their sexual history. Evidence about the complainant's sexual reputation is not admissible under any circumstances. Evidence about the complainant's previous sexual conduct or experience with the accused or with any other person is admissible only on certain limited grounds. For example, the accused is allowed to lead evidence that pregnancy, semen, disease or injury which is being attributed to the alleged rape actually had its source in another sexual encounter. The accused is allowed to lead evidence of sexual history in any case where failure to do so would hamper the accused's defence so fundamentally as to amount to a violation of constitutional rights.

A new provision adds corresponding rules about previous sexual offences by the accused. Evidence of such previous offences was not admissible at all under previous law, but is now admissible in future whenever its relevance is stronger than its potential for unfair prejudice to the accused.

All trials in camera

Another welcome aspect of the new bill is the protection it gives to the privacy of the rape complainant.

Courts are automatically closed to the public during rape trials, and there are stiff penalties for revealing the identity of rape complainants in the press from the time the offence is committed.

The original bill contained several provisions aimed at reducing the trauma of court testimony for child witnesses. These have now been moved to a separate piece of legislation, which is expected to come before Parliament hot on the heels of the rape bill. The move is appropriate because the proposed techniques – such as the use of screens and closed circuit televisions to prevent the witness from having to look directly at the accused – will apply in all criminal cases and not just to rapes.

Concerned groups such as the Multimedia Campaign on Violence Against Women and Children have greeted the new law with praise. The final bill was amended substantially to take into account concerns put forward by interested parties to the Parliamentary Committee on Human Resources. This committee has been applauded for its sensitivity to NGO input and its ability to achieve workable compromises on contentious points.

DOMESTIC VIOLENCE

Domestic violence remains one of the most serious violations of human rights in Namibia. With over 2000 cases reported, crimes of domestic violence comprise more than one-fifth of all violent crimes committed in the country. Despite these alarming statistics, domestic violence is still viewed by some as a private issue that should remain behind closed doors. Those who are not affected by it choose to ignore it. Police often do not want to get involved in something that they consider a domestic dispute.

The Law Reform & Development Commission (LRDC) has recognised an urgent need for law reform on domestic violence and the process is underway in Namibia. To assist this, four women experts who have been involved in monitoring South Africa's new domestic violence legislation visited Namibia in September and shared their knowledge at a workshop organised by the LAC.

In 1998, at the request of the LRDC, the LAC looked at domestic violence legislation in many different countries. Recommendations for law reform were made in a draft proposal and a subcommittee of the LRDC reviewed these suggestions and forwarded a draft bill to the full Commission for its consideration. The draft bill approved by the LRDC should be published in the near future, and will hopefully be passed by Parliament next year. In the light of these developments it was timely to consider the South African experience. In order to gain insights for fine-tuning Namibia's proposed reforms.

The workshop entitled 'Law Reform on Domestic Violence: Lessons from South Africa' was attended by people from various sectors involved with domestic violence, including police, social workers, counsellors, academics and men and women from community-based groups. Members of parliament, magistrates, senior government officials and several members of the LRDC also attended.

The motivation behind the workshop was to learn from the experiences of South Africa and to underline the need for legislation pertaining specifically to domestic violence.

Four special guest speakers from South Africa were invited. All four women have been involved in monitoring South Africa's new domestic violence legislation, which was implemented in December of 1999.

Namibians are already taking initiatives to combat the problem of domestic violence

which has become a more prominent issue in recent years because of media attention given to some of the more horrendous cases. There is a significant amount of academic work on domestic violence, although many facets of the issue remain unexamined.

Increased public awareness and concern has resulted in the formation of community organisations to tackle the problem, along with related issues such as alcohol abuse, and men are also beginning to get more involved.

The definition of domestic violence in the South African Domestic Violence Act is an all-encompassing one that covers all sorts of harmful and threatening behaviour – physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, and other forms of controlling or abusive behaviour. This law opted to rely on existing criminal offences such as assault, rape and malicious damage to property, rather than creating a new criminal offence of 'domestic violence'.

Regarding the implementation of the above law it was found that police commitment is lacking, especially in rural areas. For example, interviews with complainants in rural areas found that 34% were told to 'stop wasting police time' and 26% were accused of somehow provoking the violence. In 74% of the cases police would not take statements in the complainant's home language and 20% of the complainants were discouraged from taking further action.

The position in urban areas was not much better, with complainants being satisfied with the help they received from the police in less than half of the cases studied.

It was suggested that Namibians take the following observations into account when finalising our own legislation to ensure that we avoid the same mistakes:

- There is a need to have a clear definition of 'domestic violence' as a criminal offence.
- The police should not grant bail in domestic violence cases, but a competent court should consider a bail application. In such applications the court should seriously consider the potential danger to the complainant and look at possible ways in which she can safeguard herself.
- The South African legislation creates a procedure for a civil protection order. A complainant can make an application to a magistrate's court for a protection order, which can be granted on a temporary basis even in the absence of the complainant, if the court is satisfied that the complainant may otherwise face undue hardship. Contravening a protection order is a criminal offence.
- The possible use of diversion programmes for first-time offenders in cases where there is no serious injury should be developed. There is, however, a need to treat diversion with caution in the domestic violence context, perhaps limiting it to cases where both parties are certain that they want to continue the relationship.
- There is a need to legislate positive duties for police to ensure that the legislation is implemented effectively throughout the country. Although police cite lack of resources as a problem, those who are committed to the issue have proven able to come up with creative solutions to overcome lack of transport or other such limitations.
- There is a need for proper training of the police and magistrates before the act comes into force to ensure that there are no misconceptions about the nature and purpose of the law.
- Another practical problem to be addressed is how to apply for an order which will force the perpetrator to leave the common household when the couple reside in accommodation which is dependent on the perpetrator's position.
- There are a number of cases in which women have killed their partners because of consistent abuse. Many of these cases are clear instances of self-defence. It was recommended that the court allow expert testimony on the psychological effects of abuse in that particular relationship, to expand concepts of self-defence in a manner which is appropriate to battered women.

The presentations inspired a lively discussion from the group attending the workshop. Informal feedback from the participants indicated that the inputs were extremely informative and should certainly make it possible to help Namibia benefit from South Africa's experience.

Seated left to right are Lulama Nongogo and Deborah Quenet from the Women's Legal Centre in Cape Town, Dianne Hubbard, Coordinator of the Gender Research & Advocacy Project at the LAC, Lillian Artz of the Institute of Criminology of the University of Cape Town. Seated in front is Helen Combrink of the Community Law Centre at the University of the Western Cape.



A paper based on a questionnaire about domestic violence sent to the police by the LRDC was published jointly by the LRDC and the LAC in an unprecedented manifestation of cooperative effort. This paper is entitled 'Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response.' It was completed in 1999 and released to the public in early 2000.

Preparatory work is underway for a domestic violence advocacy campaign which will feature radio serials and video productions in indigenous languages aimed at rural audiences. The British Government has provided almost 100 000 British Pounds for the project. The company Quiet Storm has been engaged to produce the media material under the supervision of LAC. Consultation began in September with a workshop in Windhoek attended by representatives from the government, NGOs and community-based groups. This was followed during October-December with focus discussions and personal interviews in Oshakati, Rehoboth, Keetmanshoop, Okakarara, Khorixas, Otjimbingwe, Walvis Bay and Rundu. The local workshops have been video-taped and can be drawn on for a variety of purposes, as they provide a gauge of attitudes and understanding about domestic violence in different communities.

Research on television violence on NBC and its possible impact on children in particular was completed and published in the form of a newspaper article in The Namibian in early 2000. This article appears to have stimulated expressions of concern about violence on television from high-ranking government officials.



GR&AP staff have given legal advice on domestic violence to several clients. One woman who was in a potentially life-threatening situation was accompanied to the police station after she encountered resistance on the part of the police to taking a statement in Afrikaans, which is the only language she speaks. It should be noted that in South Africa, police refusal to take statements in the complainant's home language has been a major obstacle to the effective implementation of domestic violence legislation. This problem may need to be raised in Namibia in conjunction with forthcoming domestic violence legislation. (This issue is part of the draft protocol for police on rape which is under discussion.)

VULNERABLE WITNESSES

Provisions concerning vulnerable witnesses originally included in the rape bill have been moved to a separate and more extensive Vulnerable Witnesses Bill which will apply in all contexts. The GR&AP continued to make input into this bill throughout 2000, in the form of internal meetings with various Government representations. On issues where government officials were in disagreement, GR&AP has conducted additional research and attempted to draw up alternative proposals to facilitate internal discussions. The invitation to play this role is a mark of confidence in the input of the GR&AP, which has respected government confidentiality regarding such internal discussions. The draft bill is not yet publicly available, but is in its final stages.

VIOLENCE AGAINST WOMEN IN GENERAL

A section on law reform on rape and domestic violence was prepared for the 2000 UNDP Human Development Report, which is about violence against women in Namibia. Detailed feedback was given to the UNDP on successive draft outlines for this report. The publication was delayed by the UNDP and may appear only in 2001.

Negotiations are underway with Mandy Bonisteel of George Brown University in Canada to visit Namibia in July 2001 to organise advanced training in the counseling of persons who have experienced rape and domestic violence, as part of the UNAM curriculum for nurses and social workers, and in other forums for grassroots women. Mandy has already successfully transferred components of the Canadian course she teaches to Sarajevo.

MEN AGAINST VIOLENCE AGAINST WOMEN

GR&AP worked together with the Legal Education Programme (LEP) to host a national conference on this topic in February. This workshop was attended by 250 men from virtually all parts of Namibia, as well as by guest speakers from Zimbabwe, South Africa and Canada. The conference was successful in inspiring men in the various regions to begin work around the issue of violence against women, and it has also led to the formation of a national men's organisation – Namibian Men for Change (NAMEC). The event received excellent media coverage, including coverage of Namibia's 'real men' demonstrating (and ululating!) against violence against women outside the High Court building.



Conference participants from all regions of Namibia pictured during the afternoon public meeting in front of the High Court in Windhoek

A Human Rights Violation!

Violence against women is a human rights violation and thus a public matter, with resultant obligations on the state. Realising that violence against women is a human rights violation means that, in addition to other means of addressing instances of violence, the government is obliged to recognise that women are entitled to be protected from violence, and that this is a human right which the government should guarantee and protect. It should also provide remedies when this right is violated, regardless of who perpetrates the violation.

Under CEDAW (the United Nations Committee on the Elimination of All Forms of Discrimination Against Women), which Namibia has ratified and which is therefore binding on Namibia, to eliminate violence against women, states are required to modify social and cultural patterns of conduct of men and women, and to eliminate all practices that are based on the notion of inferiority or superiority and on stereotyped roles for men and women.

Stereotyping – of both males and females – is a societal problem, which instils certain gender

roles for both genders. Women are stereotyped as submissive, dependent and in the kitchen, while men are required to be macho, sexually active and philandering. The position of children in the family is also affected by this problem.

Stereotyping is a major factor in the life of traditional women that denies many women any form of social mobility.

Article 5 of CEDAW calls for the enactment of appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, and customary and all other practices which are based on the idea of the inferiority or superiority of either sex or on stereotyped roles for men and women.

Article 10 imposes an obligation on Namibia to eliminate any stereotyped concept of the roles of men and women at all levels and in all forms of education, by encouraging co-education as well as other types of education which will help to achieve this aim, and in particular by the revision of textbooks and school programmes and the adaptation of teaching methods.

MEN AGAINST VIOLENCE AGAINST WOMEN

Since the conference, the GR&AP has assisted LEP with some follow-up activities pertaining to the establishment of the national men's organisation, such as advising on the constitution of the new group, facilitating links with other men's groups and with funders, and the like.

In November, GR&AP staff attended a conference in Switzerland hosted by the World Council of Churches and the YMCA. The aim of the conference was to create a 'Global Network of Men in Solidarity with Women'. The outcome of the conference was very positive in the sense that closer ties were created with men's groups from all over the world. Organisations in Zambia and Zimbabwe indicated that they would like to create a closer regional link with NAMEC.

Michael Kaufmann, member of the international White Ribbon Campaign, acted as facilitator at the historic Namibian Conference on Men Against Violence Against Women



ART THERAPY WORKSHOP



Participants in an Art Therapy Workshop held in December

Namibian artist Nicky Marais has been engaged as a consultant to arrange art therapy workshops for community-based paralegals, to equip them with techniques for dealing with the emotional aspects of violence which are inevitably intertwined with the legal issues brought to them by their clients. This technique has proved to be very successful in South Africa, particularly for women who may have trouble discussing such matters because



Some of the artwork produced during the workshop

of their cultural background or lack of education. The GR&AP has already hosted two free workshops for training of grassroots level trainers, and one fee-paying workshop for local artists, psychologists, etc. The idea behind this initiative is to ensure that appropriate support services are in place to deal with the increased disclosure of violence expected in light of the new law on rape and the forthcoming law on domestic violence.

MAINTENANCE AND CHILDREN'S LEGISLATION

The stalled Maintenance Act suddenly and unexpectedly began to move again in November. GR&AP staff are assisting the Ministry of Justice with fine-tuning the section of the act rejected by Cabinet more than a year ago, so that this bill can return to Cabinet and get back on track. The involvement of the GR&AP at this level is a sign of the government's confidence in our ability to make an important contribution.

Lobbying on the long-delayed Maintenance Act and children's legislation continues, although other organisations are being encouraged to take a lead here. Sister Namibia spearheaded a march and petition to the President highlighting these issues on International Women's Day in March, and GR&AP helped to draft the petition on these points. The Multi-Media Campaign on Violence against Women and Children has been given a written list of suggested lobbying activities which other groups might consider.

The GR&AP continues to respond to many queries for information on these bills, and to give media interviews on them as requested, while encouraging such interviews to be shifted to other groups where possible. Prudence Negumbo has been engaged as a consultant to prepare a report on maintenance guidelines for Namibia, as a means to raising the level of maintenance awards which currently appear to bear little relation to the actual cost of living.

The influence of our research and lobbying is evident in the Combating of Rape Act, which includes almost all of the changes proposed by LAC and the NGO coalition which submitted joint proposals to Parliament. Similarly, the current draft Domestic Violence Bill and the draft Vulnerable Witnesses Bill both draw heavily on LAC proposals.

News coverage of the work of the GR&AP is good, particularly on radio and in the print media, meaning that our research results are widely disseminated.

LAW REFORM AND ADVOCACY

Dianne Hubbard of GR&AP presented a summary of an academic paper at the Law Faculty Conference: Ten Years of Nationhood, held in September. The paper, which proved to be somewhat controversial, was entitled 'Gender and Law Reform in Namibia: The First Ten Years.' It will be published in a book of the conference proceedings. This paper was also the basis for a presentation at an NGO conference organised by Sister Namibia and the Women's Manifesto Group in September, and a presentation at a NANGOF Forum on Participatory Development in November.

GENDER RESEARCH & ADVOCACY PROJECT - A SUCCESS STORY

Workshops have been attended by a wide cross-section of participants, and have attracted prominent government policy-makers (such as Ministers, Deputy Ministers and the Ombudswoman).

We have been included in a number of internal government forums, in the role of technical adviser on draft gender legislation. This is a strong mark of confidence in the value of the LAC's contribution. Our efforts to form stronger links with the Ministry of Women Affairs and the Parliamentary Committee on Gender have been well received.

The work of the GR&AP has been favourably acknowledged both locally and internationally, as the information and quotes below illustrate:

From the 'Namibia National Progress Report on the Implementation of the Beijing Platform for Action', by the Department of Women Affairs (July 1999), page 47: 'Another Organ that has been in the front line with gender- and law-related research is the Gender Research Project of the Legal Assistance Centre. The GRP has continued to plan work together with the Multi-Media Campaign on Violence Against Women and Children, organising specific awareness and advocacy campaigns on domestic violence. These campaigns have been, so far, the most effective means of disseminating information to combat violence against women and children. In addition through the GRP it has been possible to advocate for the Combating of Rape Bill and the Domestic Violence Bill, which are two of the most important Bills to combat violence against women and children.'

'I think you are doing the most marvelous work' 'On behalf of this rape survivor and all of us here who have been through some form of sexual violence - thank you for your commitment.'

(Charlene Smith, well-known South African journalist, rape survivor and rape activist, e-mail on 23 December 1999).

The local office of the British Council sent the Domestic Violence and Sexual Abuse Service Directory to Gender Officer Andrea Murray at the head office of the British Council, to be used as a model for other countries. Ms Murray agreed that 'it will be a good model and we will use it'. (9 December 1999, information from Gillian Belben)

The GR&AP published a report on a survey of television violence and its effects on viewers in The Namibian in March 2000. In June, President Nujoma suggested that NBC television should stop showing violent films, saying that they damage the minds of the nation's children. Although the LAC study was not mentioned, clearly it may have been influential. In a similar view, Deputy Minister of Prisons Jeremia Nambinga stated, 'It is a correct international perception that movies that depict crime and violence have a direct influence on the behaviour of young people [...] and some adults. There would thus be a connection between public exposure to programmes depicting antisocial behaviour on our screens and the crime rate.' Unfortunately, these comments have arisen in a context where government appears to be seeking greater political control over NBC and so have not had as positive an effect as they might have had. (The Namibian 7 July 2000, 'And Another Thing') Deputy Minister Of Justice Kowane stated in June that proposed legislation to do away with discrimination against children born outside of marriage should go to Parliament by the end of the year or early next year. The statement appears to refer to the Children's Status Act which the GR&AP drafted in 1994. (See The Namibian 12 June 2000)

A complaint by LAC and sister NGOs about inattention to violence against women in a 1999 UNDP Human Development Report (via the Multi-Media Campaign) led to a decision that the 2000 UNDP Report would concentrate solely on this topic. The complaint was cited by UNDP as being the catalyst for the decision in a July 2000 meeting.

AIDS AND THE LAW

HIV/AIDS has become one of Namibia's most pressing social and economic problems over the last decade. Together with Botswana, Zimbabwe and Swaziland, Namibia now ranks among the countries most affected by HIV in the world, with an overall prevalence of at least 20% among sexually active adults (UNAIDS/WHO 1998). This, according to the UNDP Namibian Human Development Report of 1999, means that at least one in five Namibians aged 15-49 is infected with HIV and is likely to die within the next seven years. By far the majority of Namibia's workforce find themselves in this age category.

AIDS has already caused life expectancy to fall from 58.8 years in 1995 to 55.8 in 1998. To date, the majority of work done by NGOs and government in the field of HIV/AIDS has been in the areas of education on prevention and the training of counsellors. Little has been done to address the issue of discrimination and other rights issues that arise in the context of HIV/AIDS.

Despite the alarming incidence of infection and a disturbingly high level of discrimination experienced by people with HIV or AIDS in Namibia, AIDS has not effectively been placed on the national agenda as a human rights issue.

It has long been recognised elsewhere that the dignity of persons with HIV or AIDS is an essential condition for effective intervention. Where there is prejudice or blame, people do not come forward for information, counselling or treatment. Given the particular nature of the epidemic, fear and a misguided sense of justification give rise to serious rights infringements. As the epidemic progresses, questions of social and economic rights in the form of access to resources become increasingly important. There is accordingly a pressing need to address issues of discrimination on the basis of HIV status and to provide an avenue for remedies for people with HIV or AIDS who have been discriminated against.

It is with this in mind that the Legal Assistance Centre established an AIDS Law Unit to be run as a project of the centre. The project commenced its activities in August 1999 last year and formally set up office at the LAC in September.

Objectives

The primary objective of the project is to facilitate the establishment of a legal and social environment that encourages openness about HIV infection. The aim is that people with HIV/AIDS will benefit from openness by receiving fair and equitable treatment from society. The

project addresses issues on a number of levels including litigation, research, policy formulation, education and advocacy, with a view to placing HIV/AIDS on the agenda as a human rights issue.

Research, policy formulation and law reform

A research project has been started aimed at gathering data on existing attitudes of employers in public and private sectors with regard to HIV/AIDS in the workplace, and their knowledge of the Guidelines on HIV/AIDS and Employment promulgated in the Labour Act. This was done to assess to what extent the National Code has been successful in achieving a culture of nondiscrimination in the workplace. The results of the survey were published in the *Growth* magazine in October 2000, and the data will be used to compile a baseline review of existing policies on HIV/AIDS in Namibia, with a further component to gauge public opinion on HIV/AIDS in the workplace.

Research on discrimination on the basis of HIV status in access to insurance is underway. The results of this research will assist in deciding whether to launch a test case challenging the constitutionality of discrimination.

The unit has finalised a policy on HIV/AIDS notification, reporting and confidentiality. The policy has been approved by the Minister of Health and Social Services and will be presented by the Minister to Cabinet shortly to be gazetted and adopted. This policy is significant in that it recognises the relationship between human rights and an effective public health intervention in the HIV/AIDS epidemic and promotes a rights-based approach to HIV/AIDS.

The project also provides assistance to employers and trade unions in developing appropriate HIV/AIDS policies in the workplace.

HIV/AIDS CHARTER OF RIGHTS

The fruits of what took just over a year to develop, with as many stakeholders as possible, were harvested on December 1 when the Minister of Health and Social Services, Dr Libertine Amathila launched the Namibian HIV/AIDS Charter of Rights.

The project was spearheaded by the LAC's AIDS Law Unit and was the result of a number of workshops and drafts circulated for approval by public and private institutions.

A pocket-sized booklet on the Charter and an illustrated, simplified version of it were also launched on the occasion.

As a result of prejudice, stigmatisation and discrimination towards people living with HIV/AIDS, people are reluctant to know their HIV status, thus undermining public health measures to prevent the spread of HIV/AIDS.

Prevention efforts will not succeed as long as people do not know their HIV status, do not have adequate information about the disease and how it is transmitted, and do not take responsibility for protecting themselves and others against HIV infection. Therefore the participation of people living with HIV/AIDS is crucial in effective prevention efforts.

The promotion and protection of human rights is an essential component in preventing its transmission and reducing the impact of the pandemic.

An HIV/AIDS Charter of Rights is necessary to protect the inherent dignity of persons affected by HIV/AIDS and can help achieve public health goals such as reducing vulnerability to HIV infection, lessening the adverse impact of HIV/AIDS on those affected and empowering individuals and communities to respond to HIV/AIDS.

It is anticipated that this charter will serve as an indispensable tool in education on HIV/AIDS and human rights and in promoting a human rights based approach to HIV/AIDS in the country.



The Minister of Health and Social Services, Dr Libertine Amathila and Michaela Figueira of the ALU at the launch of the Namibian HIV/AIDS Charter of Rights



As anticipated at the outset of this project, the initial caseload in terms of litigation and advice has been fairly low. This can largely be attributed to the fact that due to the discrimination and stigma currently attached to HIV/AIDS, people living with HIV/AIDS are reluctant to seek advice and litigate as this

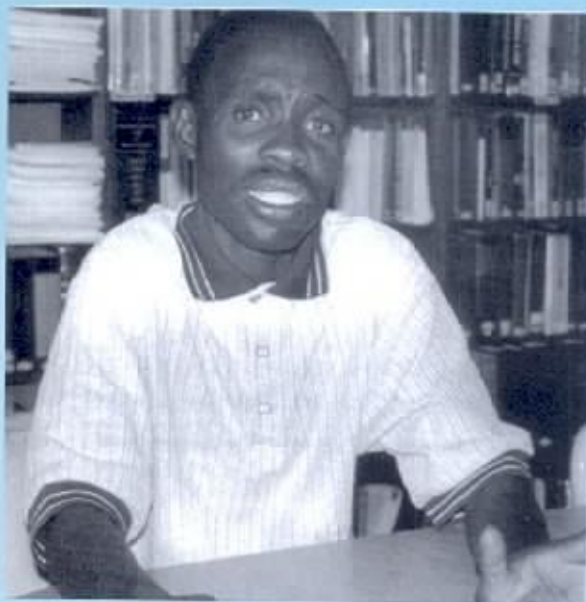
inevitably involves a disclosure of their HIV status. We anticipate that as our work on advocacy, education and training and on the promotion of a nondiscriminatory approach to HIV/AIDS progresses, the demand for this type of assistance will increase.

INFORMATION UNIT

- Walvis Bay Municipality – an HIV/AIDS policy for the municipality
- IRDNC requested assistance in developing an appropriate HIV/AIDS policy, not only for their own workplace but also in respect of their interactions with the communities they serve
- Namwater – an HIV/AIDS policy for the workplace
- In the process of assisting the Namibian Transport and Allied Workers Union with the formulation of an HIV/AIDS policy for the union
- Namibian Police – to develop a policy on HIV/AIDS and Awaiting Trial Prisoners. Discussion paper drafted for circulation to stakeholders highlighting the issues to be considered for inclusion in such a policy formed the basis of discussion at a workshop organised by Nampol and facilitated by the project on 19 June 2000. The project was mandated by Nampol to develop a first draft of the policy, which was circulated to stakeholders and finalised at a further workshop held in August 2000

The project is currently dealing with several cases relating to discrimination on the basis of HIV/AIDS in respect of access to employment and to insurance. The most significant of these is a matter in which the applicant challenged the NDF's policy of pre-employment testing and of excluding people with HIV from employment in the NDF in the Labour Court. This case was brought by the AIDS Law Unit on behalf of Haindongo Nanditume, an ex-PLAN combatant who was refused entry into the Namibian Defence Force solely on the basis of his HIV status. This matter was set down for hearing in the Labour Court in February 2000 but was postponed at the instance of the Government Attorney to April 2000. The matter was heard by the Labour Court

and the applicant was represented at the hearing by Advocate David Smuts, assisted by the project coordinator and instructed by the project lawyer. It was argued before the Labour Court that in excluding Mr Nanditume from the NDF solely because he is HIV positive, the NDF was acting contrary to the provisions of the Labour Act by discriminating against Mr Nanditume in an unfair manner. In its judgment the court found that an employer such as the NDF is not permitted to exclude people from employment on the basis of their HIV status, as being HIV positive does not necessarily mean that one is not fit for employment. This judgment is an important step forward in the fight against discrimination on the basis of HIV/AIDS. The NDF



Haindongo Nanditume, an ex-PLAN combatant who was refused entry into the Namibian Defence Force solely on the basis of his HIV status

originally applied for leave to appeal a judgment but has subsequently withdrawn this application and has stated that they will abide by the decision of the Labour Court. Notwithstanding this judgment, a further case of a client not being recruited into the NDF after testing HIV positive has been reported to the project. In correspondence with the NDF, they have alleged that the client was not recruited as a result of the fact that the NDF could not accommodate all of the applicants for their last intake. They have however, to date, failed to provide us with criteria they employed in their decision not to recruit the client in question, despite having been put on terms to do so. Accordingly the project is in the process of preparing an application to the Labour Court on the basis of unfair discrimination in access to employment. (Meetings between project staff and staff from the AIDS Law Project in Johannesburg to discuss ongoing collaboration took place during the NDF trial as both projects were engaged in litigation on HIV and the military at the time.)

In addition, the project runs a legal advice clinic for people living with and affected by HIV/AIDS at the offices of Catholic AIDS Action in Katutura every Thursday from 10h00 to 11h30. Attendance at the clinic held at Catholic AIDS Action is fairly consistent and the main issues dealt with include the drafting of wills, maintenance and social security claims, insurance, unprofessional conduct on the part of medical practitioners including breaches of confidentiality and adoption. The clinic also serves as an important referral agency in respect of problems that are not of a legal nature.

The project is currently negotiating with NUNW for the establishment of a similar clinic at the NUNW.

ADVOCACY

The project coordinated an extensive consultation process on the issue of HIV/AIDS notification and reporting during 1999. As a result, the project was requested by the Minister of Health and Social Services to develop a draft policy on confidentiality, reporting and notification for Namibia. This policy was completed in February 2000 and circulated to stakeholders prior to a workshop on 27 March to finalise the policy. This workshop was well attended by stakeholders from government and NGOs as well as by the Minister of Health and Social Services with active participation in discussions on the draft policy. The draft policy was finalised and approved by the Minister and was presented by the Minister to Cabinet for adoption.

Following this announcement, Positive Nation, a self-help group of people living with HIV/AIDS, requested the assistance of the LAC in facilitating a meeting between the Minister and the group to afford their members an opportunity to voice their concerns about the negative impacts notification would have. Discussions were held between the Minister and Positive Nation and it was agreed that the self-help group would develop guidelines on notification, reporting and confidentiality.

The unit assisted by co-hosting, with Positive Nation, a workshop on HIV/AIDS reporting, notification and confidentiality late last year to provide stakeholders an opportunity to discuss this issue and to provide input on the guidelines compiled by Positive Nation.

A Treatment Access Forum has been initiated by the project to address the issue of access to treatment for HIV/AIDS in Namibia. AIU staff member Michaela Figueira served as a member of the technical advisory committee established by the Permanent Secretary of the Ministry of Health and Social Services to advise the Minister of Health and Social Services on access to treatment for HIV/AIDS in Namibia. The first meeting of this forum was held at the project's office on 31 May 2000 at which there was extremely useful discussion amongst doctors, members of the pharmaceutical sector, the National AIDS Coordination Programme and AIDS service organisations. This meeting was followed up with further discussion meetings and the output from this forum has been fed into the technical advisory committee established by the Ministry of Health and Social Services to examine the issue of access to treatment in Namibia.

EDUCATION AND TRAINING

The project is collaborating with the AIDS Care Trust of Namibia to provide training on the legal and rights aspects of HIV/AIDS in the workplace to management. Training was given on this topic to top and middle management at Nampower, Namwater, the Roads Authority and Walvis Bay Municipality. AIU staff assisted the British Military Assistance Team based in Harare as well as British Military training personnel based in England with the training of SADC troops on HIV/AIDS and the Military. This training forms part of the broader training of SADC by the British on military and peacekeeping operations. Training was given in Walvis Bay, Tanzania, Botswana, Mozambique, Kenya and Malawi. The British government covers all costs of this training and a donation of 100 British Pounds is made to the project for each training course presented.

HUMAN RIGHTS PROTECTION

The year 2000 was an extremely volatile one regarding the human rights situation in Namibia. When put to the test, the government, in particular the Ministry of Home Affairs and the Ministry of Defence, has sadly fallen far short of the ideals set out in our Constitution. The secessionist attacks in the Caprivi region on 2 August 1999, the continued violence in the northeast of Namibia and the question of the rights of refugees have given rise to numerous human rights offences. When the courts were approached in an attempt to protect the rights of persons accused of high treason, the Minister of Home Affairs reacted with extreme vehemence and intolerance. Verbal attacks were made against human rights organisations and defenders and also against the media.

By far the bulk of the Constitutional and Human Rights Unit's work during the year has been related to the detention and torture of alleged Caprivi secessionists. The LAC is acting for 136 persons who were arrested following the secessionist attacks in the Caprivi region on 2 August 1999. More cases are being identified with time as the aggrieved parties become aware of their rights and how the LAC can assist them. Mainly members of the Namibian Police and, in a few cases, members of the Namibian Defence Force, allegedly tortured more than 100 of our clients.

Our client number increased from approximately forty last year to the present number, following three visits during May and June by members of the unit to Grootfontein Prison. Most of our clients are being detained on treason charges and have been refused bail.

The most common method of torture is the sjambokking of prisoners. Sensory deprivation techniques have also frequently been used, including blindfolding prisoners, in some cases for days or weeks, and requiring prisoners to stand or sit with their hands above their heads against a wall for long periods of time.

During August 1999 the Minister of Defence, Erkki Ngnimtima, visited the area. He admitted that the security forces had committed abuses and promised that this practice would be halted. The abuses, however, continued with the apparent use of more sophisticated methods which did not leave obvious marks. Batons rather than sjamboks were more commonly used later in August and in the following months. Batons do not leave such visible marks as those made by a sjambok. In almost all cases, prisoners did not receive medical treatment until they had been moved from the Katima Mulilo police station, often only two to three weeks later. Photographs taken a few weeks after the tortures document the genuineness of many of these cases. In most cases, scars caused by a sjambok are still visible today.

On 20 August 1999 and in writing, the Centre requested the Inspector General of the Namibian

Police to investigate the assault of the Caprivi emergency detainees and further requested that criminal charges be laid and thoroughly investigated against those implicated. As a result, Deputy Commissioner Visser of the Namibian Police was appointed to investigate criminal offences against members of the Namibian Police implicated in the assault of our clients.

We understand that the Namibian Police completed the investigation in March 2000. The normal procedure is that the criminal investigation docket is then submitted to the Prosecutor General for a decision on criminal prosecution. This did not happen in this case. It was reported in *The Namibian* on 29 March 2000 that the dockets had instead been handed to the Namibian Defence Force. According to the report, Colonel Kavungo, a Namibian Defence Force legal advisor, is quoted as saying that: '[The Namibian Defence Force] would handle the Caprivi torture cases using its internal disciplinary mechanisms because at the time of the alleged torture there was a state of emergency administered by the army,' and further: 'Defence has its own jurisdiction, its own type of courts and its own way of handling disciplinary matters. We don't need to send our cases to the Prosecutor General.' The Centre thereafter assisted Geoffrey Mwillima, who was also savagely tortured in August 1999, to bring a High Court application ordering that the dockets be handed over to the Prosecutor General.

The government first opposed the application but later conceded that the dockets should be delivered to the Prosecutor General, albeit contending that the Namibian Police should be given more time to investigate the charges. We were informed during July that the dockets had eventually been handed over to the Deputy Prosecutor General in Rundu. A list of the complainants was expected from the Prosecutor General in order to ensure that all our clients who wish to lay charges have in fact done so.

Free at last!

A former prisoner who was kept in custody last year for almost three weeks after his prison term had run out scored a second court victory within a week in October when his prolonged detention was declared unconstitutional and invalid.

Titus Amakali's week of court victories started on 20 October when LAC legal practitioner, Norman Tjombe, brought a claim for damages against the Minister of Prisons and Correctional Services. Civil Magistrate Schickerling of the Windhoek Magistrate's Court ordered the Minister to pay Amakali N\$25 000 in damages. Titus's five-year jail term for two housebreaking convictions was supposed to end on March 8 last year, but he was kept in prison for an extra 18 days, until March 26 last year.

A week later, on 27 October, Amakali scored a second point against the Minister of Prisons and Correctional Services when acting Judge

John Manyarara ruled in the High Court in Windhoek that Amakali's continued detention after the end of his prison term was invalid and unconstitutional. LAC legal practitioner, Lynita Conradie, argued on Amakali's behalf that his detention after March 8 last year had to be declared unlawful, because the Constitution prohibits the deprivation of personal liberty except where there are procedures established by law.

Acting Judge Manyarara's ruling confirmed the interim court order for Amakali's release made on March 26 last year. The onus to prove that Amakali's arrest and detention was lawful was on the Minister, Acting Judge Manyarara said. Since the unlawfulness of the detention had gone unchallenged, he found the court's interim order of March 26 last year, which had declared his continued detention unconstitutional and invalid, had to be confirmed.

The Minister was ordered to pay Amakali's legal costs.

BREAKING THE CHAINS

Inmate wins claim

"Whatever the circumstances, the practice to use chains and leg-irons on human beings is a humiliating experience which reduces the person placed in irons to the level of a hobbled animal whose mobility is limited so that it cannot stray. It is furthermore still a strong reminder of days gone by when people of this continent were carted away in bondage to be sold like chattels." (Quoted from the Supreme Court judgement of *Thomas Namunjepe and Others v The Commanding Officer, Windhoek Prison and Another*.)

In this case, brought by LAC legal practitioner Clinton Light in 1998, the court made it clear that the practice of placing prisoners in leg-irons or chains is a violation of Article 8 (Respect for Human Dignity) of the Namibian Constitution. One would have thought this issue was finally settled, but it arose once again in a claim for compensation by Norman Engelbrecht for his being placed in leg-irons or chains whilst in prison. Engelbrecht had endured pain and sustained abrasions as a result of the irons knocking against his ankles, experienced discomfort, was unable to move or walk easily and could not clothe and wash himself regularly.

This infringement on the rights of Engelbrecht had occurred for an uninterrupted period of 17 days some 18 months before the decision in the *Namunjepe* case. The legal question therefore arose whether the Minister of Prisons and Correctional Services could be held liable for a practice which was, at the time it was effected, done in accordance with the Prisons Act (Act No.

8 of 1959) and before such practice had been declared unconstitutional by the Supreme Court. The Minister argued that he could not be held liable since this would have placed him in the untenable position of either having to adhere to the provisions of the Prisons Act, alternatively to follow the tenets of the Constitution. Council, instructed by LAC legal practitioner, Toni Hancox, argued on behalf of



Matti Asino, Government Attorney's Office, Advocate Coetzee and Clinton Light pictured at the Supreme Court of Namibia during litigation brought by the LAC

Engelbrecht that the Constitution is the supreme law of Namibia and has occupied this position since 1990. Thus, a practice that was declared unconstitutional in 1999 is therefore deemed to have been so since 1990 and cannot be saved by any legislation purporting to condone such practice. The court decided that the prison authorities had violated the rights of Engelbrecht and awarded N\$15 000 and costs. The decision has been appealed.

On a positive note, it appears that prisoners are no longer placed in leg-irons or chains since the Supreme Court ruling in 1998. Although an appeal has been noted, the important issue that arose from the Engelbrecht case is that institutions should examine their practices against the spirit and values of the Constitution and make concerted efforts to change such practices should they be found lacking. They should not plead ignorance, and sit back and wait upon the courts to make these decisions for them.

COURT REJECTS GOVERNMENT'S VIEW OF THE STATE OF EMERGENCY IN CAPRIVI

During the crackdown after the separatist attacks at Katima Mulilo in August last year, two teachers, Albert Sibeya and Martin Mutumba, were arrested at Ongwediva on August 7 last year. They were kept in detention without appearing in court until August 16.

In another incident a Grootfontein policeman, Chrispin Mazila, was also detained outside Caprivi, apparently for joking about the violence at Katima Mulilo. He was also only released on 16 August last year.

Each of the three is now suing the Minister of Home Affairs for N\$170 000 for alleged unlawful detention and for not having appeared in court within 48 hours as required by the Constitution and the Criminal Procedures Act. The three were freed as the LAC's lawyers were on the brink of approaching the High Court with an urgent application to ask for their release.

The State of Emergency was proclaimed in the Caprivi on 2 August last year. This was followed by the proclamation of Emergency Regulations which were stated to 'be applicable in, and with respect to, the Caprivi Region.'

Norman Tjombe of the LAC, who represented Sibeya, Mutumba and Mazila, argued that these regulations could not have applied outside Caprivi. Home Affairs Minister Jerry Ekanjo's lawyer, Ruben Philander, argued that it was intended that the regulations could also be used outside the Caprivi against actions that gave rise to the public emergency in the Caprivi region. Philander also conceded, though, that would have meant that a de facto state of emergency existed in all of Namibia, without it having been declared.

However, Acting Judge Shivute stated in his judgement in November this year, that because the Emergency Regulations limited some of the rights and freedoms guaranteed in the Constitution, the declaration of the State of Emergency and the regulations that were made had to be interpreted strictly within the context of the Constitution. To interpret the regulations' phrase 'and with respect to' as meaning that the emergency regulations also applied outside Caprivi, would in his opinion amount to an impermissible extension of the State of Emergency. Acting Judge Shivute stated, 'If it was the lawmakers' intention to have the regulations applicable to outside the declared area, there can be no real doubt that the President would have declared a state of emergency in the entire country, for he is legally empowered to do so,' he ruled, before adding: 'A de facto state of emergency is not permitted.'

As a result of the ruling, the plea of the Home Affairs Minister in defence against the civil suit by Sibeya, Mutumba and Mazila was dismissed. Having been dealt a first blow in the three cases, the Minister will now be given another opportunity to file a plea.

(This article first appeared in The Namibian, 8 November 2000, and is reproduced here with The Namibian's permission. It was written by Werner Menges.)

Article 8 of the Namibian Constitution

Respect for Human Dignity

1. The dignity of all persons shall be inviolable.

2. (a) In any judicial proceedings or in other proceedings before any organ of the state, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

FIRST LOCAL OBSERVANCE OF UN'S INTERNATIONAL DAY AGAINST TORTURE A HUGE SUCCESS

Three years ago the United Nations declared 26 June as the International Day in Support of Victims of Torture in recognition of the need:

- to break the silence surrounding torture
- to strengthen support for torture victims, and to eradicate torture internationally

In his message on this day Minister of Foreign Affairs and President of the UN General Assembly, Theo-Ben Gurirab, said that impunity of torturers, regardless of their status cannot be tolerated. He further stated that: "Torture is defined as a breach of a non-derogable human right, which cannot be justified under any circumstances. Its systematic and widespread practice is characterised as a crime against humanity under international law."

"Let this day be a reminder to us all that we owe it to the victims of cruel, inhuman and degrading treatment and punishment to redouble our efforts to eradicate torture."

"We must do whatever we can to help victims of torture to participate fully again in society. As President of the United Nations General Assembly, I pledge to do my part by raising awareness and mobilising action in this regard."

On 26 June 2000 the LAC, the United Nations Information Centre (UNIC) in Windhoek, the Council of Churches in Namibia (CCN), the People's Education Assistance and Counselling for Empowerment Centre (PEACE), Breaking the Wall of Silence Movement (BWS), the National Society for Human Rights (NSHR), the Red Cross in Namibia, the Namibia Non-Governmental Organisations Forum (NANGOF), the Southern African Human Rights Non-Government Organisation Network (SAHRINGON) and others organised an event to observe this day in Namibia. The event took place at the Warehouse Theatre in Windhoek and was attended by approximately 350 Namibians from all walks of life, including children and Members of Parliament.

The day was commemorated with statements by torture survivors Reinhardt Gertze, a former SWAPO detainee who spent six years in the dungeons of Lubango and Paul Ipumbu, a

former Cassinga survivor who was severely tortured and detained by the South Africa racist regime at Mariental for six years. Other speakers included Clement Daniels from the LAC, Mr Clement Jackson, a representative of the UN in Namibia and the Reverend Nangula Kathindi of the CCN. The overriding message was that torture is the most serious violation of human rights, that torture should not be tolerated in Namibia, that torturers should be severely punished and that victims of torture should receive proper compensation.

Highlights were music performances by torture survivors from the bands Minus 4 and Survival. Poets against War, Violence and Nuclear Weapon (PAWN) read poems in support of victims of torture. The Osire Stars, a band of refugee musicians was scheduled to perform at the event, but was refused permission to leave the Osire Refugee Camp, since their status in Namibia was under review.

The only disappointing aspect of this highly successful event was the absence of a speaker from the Government of Namibia. The Minister of Justice was invited to speak, but indicated that he could not attend due to other engagements. No one else from this Ministry was nominated. Although Namibia is a signatory to the Convention against Torture and a member of the UN, no Ministers attended the event, despite being invited. Members of the Diplomatic Missions in Namibia were also absent, with only the British High Commissioner, Mr Donaldson in attendance. The Namibia Broadcasting Corporation (NBC) apparently regarded the event as not newsworthy since they did not cover the event despite being invited in writing and reminded twice.

The day was also marked by people in 70 other countries around the world. Currently, 119 UN member states have ratified the Convention against Torture, while 70 member states have not ratified it. Angola, Botswana, Lesotho, Swaziland, Tanzania and Zimbabwe are among the SADC countries who have not yet done so.

OBSERVANCE OF THE UN'S INTERNATIONAL DAY AGAINST TORTURE



It was indeed a historic event in Namibia since it was the first time that:

- This important day on the UN human rights calendar was observed in Namibia
- Torture survivors of both the South African apartheid regime and SWAPO shared a public platform
- The churches in Namibia came out in full support of all victims of torture and human rights abuses for the first time since independence
- Civil society organisations collaborated to make this observation a success

MORE LITIGATION

The LAC recently launched an urgent application on behalf of Raphael Sikunda and four others, which relates to a list issued by the Minister of Home Affairs purporting to declare certain foreign nationals as *persona non grata* and requesting the UNHCR to relocate these persons to other countries. Mr Sikunda's father is also on this list and although we are not acting on his behalf, it was his arbitrary arrest and continued detention despite a court order ordering his release, that prompted the LAC to act on behalf of his son and four others. The applicants fear that pursuant to their appearance on this Home Affairs list, they too will be detained and deported. Two of the applicants are Namibian citizens and have lived in Namibia for over 40 years. Mr Sikunda (Jnr) has permanent residence and the other two applicants have been afforded refugee status in Namibia. The government indicated that they wished to settle this application on the basis of giving an undertaking that clients will not be arrested, detained or deported until the matter is finalised. This settlement materialised and the urgent application did not proceed.

Furthermore, an application to review the decisions of both the Minister of Home Affairs and the Security Commission to place applicants on the list of foreign nationals declared *persona non grata* was also brought. This application has been opposed.

A very lengthy battle for the LAC ended rather unsatisfactorily recently. In a matter originally dealt with by Johann Malan, Mr JJ van Ellinckhuijzen claimed access to his minor child borne out of wedlock. The court held that a child psychologist's report be compiled to ascertain whether such access was in the best interests of the child. The psychologist found that access would be beneficial and the parties met to arrange access and lay down other ground rules. It was decided that access would be initialised with the assistance of a play therapist. The client then decided to discontinue with his claim, against all advice, as he felt that the nature of the relationship between the child's mother and himself, which was very antagonistic to say the least, would not be conducive to the emotional wellbeing of the child.

In a related matter, however, we are dealing with an application on behalf of the father of an illegitimate child in an attempt to change the common law position which denies them the right to access. This is deemed to be in conflict with Article 10 of the Constitution. This matter will probably be heard next year.

In a matter relating to access to justice and the financial implications thereof, the Centre is acting on behalf of Ms Ellen Louw who was effectively barred from proceeding with an appeal in the High Court as she was unable to furnish security for the costs of such appeal. It was contended on behalf of the applicant that Rule 49(13) of the Rules of the High Court, which directs that security for costs of appeal shall be furnished, is unconstitutional in that it affords the Registrar of the High Court the discretion to determine what amount shall be payable and, furthermore, states that the Registrar's decision shall be final.



Ellen Louw

This rule discriminates against persons on the grounds of their economic status and also denies them access to justice. This is not allowed in terms of the Namibian Constitution. The court was also requested to waive security for costs of appeal in the case of the applicant as a deserving litigant. Two of the respondents, namely the Chairperson of the District Labour Court and the Registrar of the High Court, admitted and conceded that this rule is discriminatory and should be amended, but denied that security for costs should be waived in this instance. The third respondent who is the applicant's previous employer, opposed the application in its entirety.

During the argument of this matter, agreement was reached between the parties and the Court referred rule 49(13) to the Judge President. The Judge President is tasked to bring this rule within the ambit of the Constitution.

CITIZENSHIP AND IMMIGRATION

During February 2000, the test case brought on behalf of Elizabeth Tihoro was argued. The matter concerned the question of whether a person who wants to become a naturalised Namibian need renounce her or his existing citizenship before becoming a Namibian citizen. Clinton Light argued that the Constitution regulates the position and that the provisions of the Citizenship Act that purport to introduce a requirement that an applicant must first renounce his or her existing citizenship are not authorised by the Constitution. The government opposed the application and the court subsequently dismissed the application. However, in argument, counsel for the government conceded that the applicant was entitled to a Certificate of Identity which would regulate her status in Namibia. The reasons for judgment have not yet been furnished and a decision as to whether or not the client should appeal will be made once such reasons are to hand.

Liz Frank, who is a German national, has lived and worked in Namibia for nine years. She took her case to court after two applications for permanent residence had been rejected without reasons. Ms Frank's original application was based on her professional qualifications, but also her long-standing lesbian relationship with her Namibian partner. In her affidavit, Ms Frank pointed out that if she was involved in a heterosexual relationship with a Namibian citizen she would have been able to marry and thereby gain the constitutional right to reside in Namibia. Because of her sexual orientation this was not possible. The court held that the Immigration Selection Board should issue a permanent residence permit to Ms Frank. Not surprisingly, the government then appealed against the ruling. The appeal matter was argued by Lynita Conradie in the Supreme Court in October 2000. During argument, Counsel for the government conceded that the Immigration Selection Board (ISB) should have furnished Ms Frank with their reasons for rejecting her applications for permanent residence. The Court subsequently referred the application back to the ISB for review, with specific emphasis on Ms Frank's professional qualifications and experience and whether she would be depriving Namibian citizens of employment.

One of the cases taken on by the unit earlier this year aroused a great deal of public interest, and almost resulted in a Constitutional crisis.

In June 2000 at Gobabis a musical group, the Osire Stars, consisting of Angolan and Rwandese refugees, was preparing to perform at a social event sponsored by an opposition political party, the Congress of Democrats (CoD).

Before they could take to the stage several members of the Namibian Police arrested the band members and detained them at the Gobabis Police Station. They were subsequently returned to the Osire refugee camp notwithstanding the fact that they had been granted permission by the Ministry of Home Affairs to reside in Windhoek.

Some members of the group subsequently 'escaped' from Osire and instructed the Centre to institute action on their behalf. The unit brought an urgent application on Notice of Motion in the High Court seeking an order, firstly, interdicting the Minister of Home Affairs from detaining and/or deporting our clients, and, secondly, from removing them from any place in Namibia to the Osire refugee camp. An interim order was obtained in respect of the first part of the relief, whilst a rule nisi was issued in respect of the second part of the order.

As these events unfolded, the unit met with church leaders and other NGOs in an effort to safeguard the interest of our clients, as well as to attempt to work out a long term solution to their plight. Following a tense few weeks an agreement was reached in terms of which our clients would apply for work permits whilst returning to Osire voluntarily, and the rule was allowed to lapse.

When the court made an order in the Osire Stars matter, which was not to the liking of the Minister of Home Affairs, this Minister launched an attack against the presiding judicial officer and on so-called 'foreign judges' in particular **and stated that he would, despite the order, seek to arrest our clients.** Although the issue was ostensibly resolved with apologies apparently being made, it could be said that this is the beginning of an underlying apparent disregard for the independence of the judiciary. This can be further evidenced by this Ministry's refusal to release Mr J Sikunda despite an order from the court stating that he must be released.

In the present circumstances, it is more important than ever that the LAC should be steadfast in its commitment to ensure and enforce by litigation or otherwise, the constitutional rights of all persons in Namibia.

Would it be a political act for a refugee to wear a T-shirt depicting the colours and emblem of a Namibian political party, or, for that matter, of a political party from her or his home country? Would a refugee not participate in 'politics' if he or she complains about the living conditions in the Osire Refugee Camp; or about the treatment that they receive from law enforcement agencies?

It is certainly a political act for a refugee to mobilise voters for and on behalf of a Namibian political party. But it would be a long shot to say that political debate by refugees threatens the good relations of our government with other OAU member countries.

Any country's compliance with international refugee law is a social and humanitarian act, and should not be seen by other countries as a cause of tension or an act of aggression.

It is, however, clear from Article 17 of the Namibian Constitution that only Namibian

citizens who have reached the age of 18 years can vote in elections, and who have reached the age of 21 years can run for election to public office. It is clear and logical why these rights are confined to Namibian citizens. However, it is a golden principle of constitutional interpretation that one cannot read one right to diminish another. In other words, there is no hierarchy among the rights and freedoms in the Bill of Rights.

Parliament has passed the Namibian Refugee (Recognition and Control) Act, Act 2 of 1999, although it is not yet in force. This Act neither restricts nor prohibits political activities of refugees. However, it specifically makes the UN's Protocol and the OAU's Convention part of Namibian domestic law. This should bring Namibia's handling of refugees in line with international standards.

(This article was written by Norman Tjombe for the LAC Newsletter, Issue 2, August 2000).

As from the 8th of March 2000 the Constitutional and Human Rights Unit is formally funded by the European Commission for a period of three years. The funding proposal commits the unit to achieving a number of measurable outputs. Litigation will also be restricted to cases that concern a violation of a constitutional right or of a right guaranteed under an international human rights treaty binding on Namibia.

Most other cases, such as labour or matrimonial, have already been phased out or are in the process of being finalised.

HUMAN RIGHTS DAY



Celebrating Human Rights Day on 10 December with the LAC in Keetmanshoop

The LAC spearheaded the celebration of Human Rights Day on December 10, in collaboration with representatives from various NGOs, including NID, PEACE, CCN, NRCS, UNIC, NNSHR and NANGOF. The Human Rights of People in Conflict Situations - a Case Study of Northeast Namibia, was chosen as the theme and focus for the day.



HUMAN RIGHTS EDUCATION AND AWARENESS

POLICE MANUAL ON HUMAN RIGHTS WELCOMED

The Namibian Police Human Rights Manual was launched and handed over to the Namibian Police at the Israel Patrick Iyambo Police College in Windhoek on 30 March 2000. The manual aims to be a self-study and reference book for police officers. It is suitable for use in training because it is directed at Namibian police officers, discussing the specific laws applicable to policing in Namibia, according to the author Clinton Light.

The manual covers key areas such as: ethical standards in policing; nondiscrimination and policing; criminal investigations; arrest; detention; entry, search and seizure; use of force and firearms; the protection of juveniles; policing and the rights of women; and protection of victims of crime.

Speaking at the launch, Police Commissioner Ndeitunga said the police's management cadre remained committed to rooting out mistreatment of arrested suspects and referred to the Inspector General's recent order that outlawed the use of sjamboks by police officers. 'It is equally important that this manual serves a broader purpose of not only enlightening members on human rights, but also reflects on how these rights and responsibilities affect

policing. It should not be seen as giving the upper hand to criminals, but rather as a framework to solidify modern policing.'

The manual contains a valuable appendix, in which a number of key human rights standards are reproduced.

These include the fundamental rights and freedoms in the Namibian Constitution as well as international standards that are relevant to policing, such as the Code of Conduct for Law Enforcement Officials.

Each chapter starts with objectives and essential principles applicable to the topic. This is followed by a practical presentation of these standards, as applied to actual police work. For example, human rights standards applicable to the prohibition of torture are discussed in the context of the treatment of detainees. Practical advice and measures to prevent torture or ill-treatment in police detention are also suggested. Each chapter concludes with a number of exercises and topics for discussion that can be used for training purposes.

The nearly 300-page publication was funded by the Commission of the European Communities.



The Namibian Police Human Rights Manual was launched on 30 March 2000. From left is Clinton Light, author of the manual, Police Commissioner Ndeitunga, Clement Daniels, Mr Piron of the Delegation of the European Union and Deputy Commissioner Hofni Hamufungu

NAMIBIAN POLICE HUMAN RIGHTS MANUAL

At the launching of the Police Human Rights Manual, head of the Namibian Police's Complaints and Discipline Unit, Commissioner Ndeltunga, announced that the use of sjamboks by the Namibian Police had been banned. Unfortunately, this is unlikely to reduce torture because, as described in the section on human rights protection, some members of the Namibian Police continue to use other torture methods that leave less visible marks. There has, however, been very positive reaction to the manual from members of the Namibian Police and it is hoped that they will make good use of them.

The Chief Police Advisor to the United Nations in Sierra Leone has also requested permission to use the manual for the training of civilian police in Sierra Leone, and the Chief Justice of Liberia, Justice Gloria Scott, has taken a few copies of the manual, and indicated that she would like to see the use of a similar manual in her country.

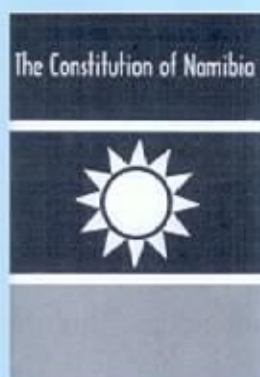
The Chief Police Advisor to the UN in Sierra Leone said that due to the high number of human rights violations in Liberia, his staff was in need of such a manual to assist the government in the training and restructuring of its police force. Clement Daniels, Director of the LAC, said his organisation has granted permission to the UN for the use and reproduction of the manual in Sierra Leone. He was delighted that the LAC could make a contribution to the protection and observance of human rights in other African countries.

Of the 1000 copies printed, most were donated to the Namibian Police. The Inspector General of the Namibian Police, Lieutenant General Hangula said it will be used to promote human rights awareness within the police force and to avoid human rights infringements during operations.

Interested members of the public, law students, human rights activists, journalists and prisoners have also obtained copies of the manual. Due to local demand the LAC is considering a reprint.

EDUCATION TOWARDS A RIGHTS CULTURE

The LAC reprinted 20 000 copies of the Constitution of the Republic of Namibia in a pocket-size booklet. The LAC also produced 80000 copies of a summary of selected human rights cases, from independence in 1990 until 2000. These booklets were widely distributed throughout the country.



CITIZENSHIP IS A HUMAN RIGHT

Can a Namibian be deprived of his/her citizenship when he/she is also a citizen of another country?

Citizenship is not an immediately obvious human rights issue for many of us. Yet, in a sense, it is the primary human right because it provides the legal basis for many of the freedoms we enjoy, as well as entitling us to the protection of the state both at home and abroad. In most countries it is citizenship which allows people to participate in political and social processes, to find employment, and to have access to the judicial system.

The right of all persons to have citizenship has been enshrined in the Universal Declaration of Human Rights, which states that 'everyone has the right to a nationality' and 'no one shall be arbitrarily deprived of his nationality.'

The Namibian Constitution, in recognition of the importance of citizenship, and as a natural extension of the struggle for independence and nationhood, contains detailed provisions with regard to the acquisition and loss of citizenship.

The LAC, as an organisation which strives to promote and maintain human rights, has increasingly become involved in defending persons whose right to Namibian citizenship are under threat.

In 1996, Clinton Light and Lynita Conradie of the LAC successfully brought an application before the High Court of Namibia on behalf of Stephen Charles Swart against the Minister of Home Affairs. Mr Swart was a South African citizen who had been resident in Namibia since 1982. It was his intention to become a Namibian citizen after independence, but his application was refused on the grounds that he was not in possession of a permanent residence permit. He contended, however, that he was lawfully

resident in Namibia, and that his application was to be considered despite the fact that he did not have a permanent residence permit.

The significance of the case, in part, lies in the fact that the Court was asked to consider what restrictions the state may place on persons who may be entitled to Namibian citizenship. In its judgement, the court stated the following:

'Given the historical background within which our Constitution was framed, it had to address the diversity of origin of all Namibia's people to bring about one nation under a common citizenship - accommodating everyone with a rightful claim to such citizenship, and at the same time, affording others the opportunity to become Namibians should they meet the prescribed criteria.' - *Swart v The Minister of Home Affairs per Maritz, AJ.*

In a well-publicised case, the LAC acted on behalf of Liz Frank, a German national who had been resident in Namibia since 1990, and who had formed a stable lesbian relationship with a Namibian woman. The Ministry of Home Affairs had refused to grant the applicant a permanent residence permit, and had refused to furnish reasons for its refusal. The Ministry, further, was of the view that Ms Frank's relationship with a Namibian woman was not one recognised by law, and could not be considered as a factor entitling her to permanent residence status.

The Ministry's argument, essentially, was that it was not required to furnish reasons for its refusal to a person of permanent residence status. The Court rejected this approach as arbitrary and ill-advised. On appeal, the Supreme Court referred the matter back to the Ministry for review.

The LAC acted on behalf of Liz Frank, a German national resident in Namibia since 1990, who had been refused a permanent residence permit. The Ministry of Home Affairs had refused to furnish reasons for its refusal



More recently, a controversy erupted around the status of Namibia's National soccer team's goalkeeper Ronnie Kanelelo. Pursuant to the discovery that Kanelelo had obtained a South African passport, the Ministry of Home Affairs, having been requested by the Namibian Football Association (NFA) to deliver an opinion, issued a public statement in which it was alleged that he would be stripped of his Namibian citizenship should he fail to renounce his South African citizenship. In response thereto, the writer contributed an opinion piece to *The Namibian* newspaper, from which the following is extracted: 'At the heart of the controversy, it appears, is the notion that the Namibian Constitution prohibits Namibian citizens from having or obtaining the citizenship of another country. The notion that 'dual citizenship' is prohibited by the laws of Namibia appears to be widespread and deeply ingrained, to such an extent that very few people have even begun to consider the possibility that it may, in fact, be entirely misconceived.'

Loss of citizenship is provided for in Article 4(8) of the Namibian Constitution, which states that: 'Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of independence:

- (a) have acquired the citizenship of any other country by any voluntary act; or
- (b) have served or volunteered to serve in the armed or security forces of any other country without the written permission of the Namibian Government; or
- (c) have taken up permanent residence in any other country and have absented themselves thereafter from Namibia for a period in excess of two (2) years without the written permission of the Namibian Government;

'provided that no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation.' [own emphasis]

It is patently obvious from the wording of Article 4(8) that no person who is Namibian by birth or descent may, under any circumstances, be deprived of their citizenship by an Act of Parliament.

The Namibian Citizenship Act, Act 14 of 1990, was passed by Parliament to regulate the laws applicable to citizenship. Section 26 of the Citizenship Act provides that:

'Subject to the provisions of this Act or any other law, no Namibian citizen shall also be a citizen of a foreign country.'

It is this enactment which has, in all probability, been responsible for the widespread misconception that 'dual citizenship' is prohibited in Namibia. It is clear, however, that section 26 of the Act, must be read in a manner which avoids conclusions which conflict with the Constitution, if it is not to be regarded as unconstitutional.

This question was considered by the High Court of Namibia in the 1993 case of *Alberts v Government of Namibia and Another*. The case is particularly interesting, in the context of the Kanelelo controversy because the applicant, Alberts, was a person who was excluded from representing Namibia in rugby on the basis that he was a member of the South African Police. Alberts ultimately lost his application to be reinstated to the national squad for reasons which are related to the internal rules of the Namibia Rugby Union. The Court, however, in considering the interpretation of Article 4 of the Constitution and section 26 of the Citizenship Act, stated its conclusions as follows:

'... the Namibian Citizenship Act does not apply to citizens by birth. This is probably because of (the proviso to Article 4(8)) which would have rendered any provision in conflict therewith unconstitutional.'

The court went on to say that: 'Where any decision is based on citizenship, this must mean citizenship as legally defined, and not as defined by whim of a government official. Nor can any policies be formulated on the basis of a definition which has no basis in law.'

It must be emphasised that Article 4(8) makes it abundantly clear that any person who is a Namibian citizen by birth or descent will always remain a Namibian citizen irrespective of whether he/she is a citizen of another country.

Indeed, it is possible for a Namibian national to have citizenship of three, or more, different countries, for example, when a person is born in Germany of a German father, and is thus a German citizen, but his/her mother is Namibian, thus entitling him/her to Namibian citizenship, and he/she subsequently acquires American citizenship by virtue of a marriage to an American national.

The aim in publishing this article was to raise awareness of issues surrounding the rule of law in general, and citizenship as a right which may not arbitrarily be interfered with.

From the response to the article, it is obvious that there are a number of Namibians who fear that they may be deprived of their citizenship/nationality, and that there is a need to be vigilant of such attempts.

Delme Cupido wrote this article for the May 2000 LAC Newsletter.

LAND DISPUTES

The land, environment and development project LEAD was involved in a number of land disputes during the course of the year. They acted in various cases as litigators and legal advisors, in cases focusing mainly on the more marginalised communities.

EPUPA HYDROELECTRIC SCHEME

Since 1997 LEAD has represented the Ovahimba community at Epupa in the Kunene region in negotiations with government over government's proposal to build a hydroelectric power scheme on the Kunene River, which traverses the Ovahimba's traditional land. Negotiations are still continuing. However, nothing has been forthcoming from the side of the governments of Namibia and Angola. The LAC's continued support to the community on various other issues, such as tourism development, is strengthening the community to deal more effectively with such threats.

PURROS COMMUNITY

The LEAD Project is representing the Purros Community in their bid to reclaim their community campsite from a family who have taken up occupation of the community-based tourism area.

CONSERVANCY AND TOURISM RIGHTS

Though a number of Conservancies are up and running, the LEAD Project has been requested, by both the Integrated Rural Development for Nature Conservation (IRDNC) and by the Conservancies and communities wanting to set up conservancies, to remain involved with rendering legal services.

THE SESFONTEIN COMMUNITY AND THE SALAMBALA CONSERVANCY

The Project is currently providing representation for the Sesfontein Community and the Salambala Conservancy, who are involved in legal disputes.

MASUBIA LAND DISPUTE

The LEAD Project is representing the Masubia community and the Salambala Conservancy Committee in the Caprivi in a land dispute where the Salambala Masubia community had set up a conservancy, but four families are refusing to move out of the core wildlife area and are jeopardising the whole enterprise. In 1998 the LEAD Project successfully opposed a High Court spoliation application by the families and instituted proceedings to evict them from the area and will soon institute an eviction action against the four families.

INSECURITY IN THE CAPRIVI REGION

The Community Based Natural Resource Management (CBNRM) work in the western Caprivi has been tremendously disrupted by the ongoing conflict in region. The LEAD Project is giving advice to the IRDNC concerning various



Purros crater

aspects ranging from the killing of a community game guard, the arrest of another. The LEAD Project is also assisting the Kxoe community in the West Caprivi with advice in relation to harassment from the Namibian security forces.

SESFONTEIN COMMUNITY

The LEAD Project is currently consulting with the Sesfontein community with a view to assisting them to register the proposed Sesfontein Conservancy. The registration has been blocked by a traditional chief who, it appears, is in fear of losing some of his powers to the Conservancy.

WOMEN'S RIGHTS TO INHERIT LAND AND LAND RIGHTS

The LEAD Project has been approached via the Human Rights Centre to legally assist a widow in preventing male relatives of her late husband from evicting her from her and her late husband's homestead. All the affidavits have

been prepared and only the affidavit of the expert on Kwanyama customary law is outstanding. The application will be launched in December 2000.

ADEQUATE COMPENSATION OF PRIVATE LAND

The LEAD Project is representing four clients in Oshakati in an eviction bid. The University of Namibia and the Oshakati Town Council gave notice to evict the clients from their land which has been demarcated for UNAM's regional campus development. They have been offered ridiculous amounts (the highest being N\$2000.00!) as compensation for their conventional brick houses. The Project has made counterproposals for compensation, but the matter is still pending.

The LAC realises that it cannot be isolated from the human rights struggles taking place in other countries in our region, our continent and in the world. Oppression and the lack of democracy in other countries inevitably affect us all, as the political instability in the Democratic Republic of Congo so vividly demonstrates. By forging and maintaining links with other human rights groups in the region, we are exchanging experiences and expertise, and developing common strategies and goals.

With this in mind, the LAC accepted an invitation by the Legal Resources Centre in South Africa to send Delme Cupido on a two-month internship with the LRC's Land Unit in Cape Town. Delme's visit coincided with the final preparations of the case between The Richtersveld Community and The Government of South Africa and Alexcor (Pty) Ltd., a landmark test case involving a land claim based on the novel concept (at least in southern Africa) of 'aboriginal title'. The case encompasses aspects of land law, mineral rights, international law, as well as factual disputes, which cover practically the whole history of dispossession and colonialism in South Africa.



RURAL COMMUNITY DEVELOPMENT

COMMUNAL LAND REFORM BILL FAILS WOMEN

The long awaited Communal Land Reform Bill was tabled in the National Assembly last year, but was only debated and passed in February this year. The Bill is currently before the National Council and it is not known when it will be promulgated.

Many people would appreciate the Bill, as it will regulate access and use of communal land, which in the past has been severely abused and exploited due to the lack of clear and proper laws.



In line with the decentralisation policy of the Government, the power to allocate and cancel customary land rights in the communal areas vests with the Chief and the Traditional Authority under whose jurisdiction the land in question is situated. Not only will this provision empower the rural communities to decide on the access and use of their land, but it makes sense that the communities themselves should administer the allocation of land rights as they know what is best for them. The Bill would create a Communal Lands Board with a mandatory representation of at least four women on it. The function of the board is primarily to exercise control over the allocation of land and the cancellation of customary land rights by Chiefs or Traditional Authorities.

However, whilst the Communal Land Reform Bill makes provision that at the death of a holder of a customary land right, the Chief or the Traditional Authority will reallocate the right to the surviving spouse of the deceased, the Bill does not address the question of whether women may own customary land rights in their own name.

In other words, should a single woman apply to be allocated a piece of customary land, she might be faced with a Chief or Traditional Authority adamant to impose the customary practices in land allocation, which leaves women out.

Rights to leasehold (which are granted not by the

Chief or Traditional Authority, but by the Communal Lands Board) cannot be inherited by a surviving spouse. This right can be allocated to a person up to 99 years, and at the death of the holder, the right will revert back to the Traditional Authority - not to the surviving spouse of the deceased.

In this regard, the Bill falls short of the National Land Policy, which states that 'women will be accorded the same status as men with regard to all forms of land rights, either individual or as members of a family land trust.'

The Bill is also in direct conflict with Namibia's National Gender Policy, which stipulates that the State '... shall enact legislation to ensure administrative and economic reforms that shall give women equal access to economic resources, including rights to inheritance and ownership of land and other properties ...'

The Bill further reflects nothing of the fact that the State is obliged to '... analyse, from a gender perspective, all policies and programmes with respect to their impact on the economy, and on inequality with particular reference to women.'

Apart from a concerted public education effort on the various aspects of the Bill, Parliament should have added a general provision to the Bill, stating that men and women shall have equal rights to all customary and common law rights under the act, and to prohibit discrimination on the basis of sex.

This article was written by Norman Tjombe for LAC News

EDUCATION AND TRAINING

Professor Sidney Harring of the United States of America, a world-renowned expert on aboriginal land claims, presented his views at a roundtable discussion on the land reform process in Namibia and aboriginal title. The roundtable discussion was organised by the LEAD Project and was attended by people from the University of Namibia's History department and Law Faculty, other NGOs and staff of the Legal Assistance Centre.

A workshop in the Namib desert hosted by the Desert Research Foundation of Namibia, (DRFN) on Community-based Drylands Tourism, was attended by staff who gave input on the laws applicable to community-based tourism.

In July 2000 LEAD staff members attended a workshop hosted by Namibia Community Based Tourism Association (NACOBTA) on reviewing the community-based tourism policy and joint venture agreements. The general feeling was that the Legal Assistance Centre should be more involved in the sector, with particular responsibility for reviewing joint venture agreements and general advice to emerging conservancies.

NACOBTA organised a workshop with the Spitzkoppe Development Committee, which was attended by LEAD staff. We are now assisting the Development Committee in establishing themselves into a legally recognised body and advising on a Permission to Occupy (PTO) and a tourism concession.

PLANS AND PRIORITIES OF THE LEAD PROJECT

The LEAD Project's priorities and plans were discussed with representatives of HIVOS in March 2000, with favourable comment. The following is a summary of the plans and priorities presented to Hivos:

Education & Advocacy

The LEAD Project will:

- › continue to review, together with other NGOs, the Land Reform process (particularly the Communal Land Reform Bill)
- › produce educational material in respect of the Communal Land Reform Bill, such as a plain language version of the Bill for use by the general public
- › embark on extensive training and information activities to educate the people on communal land (traditional authorities and the end users) on the mechanisms, rights and obligations created in the Communal Land Reform Bill
- › continue to provide training for communities wanting to establish communal area conservancies and other tourism activities

Litigation and advice

The LEAD Project will:

- › continue to advise the Kxoe community on their land and cultural rights, and assist them to develop a strategic response to the envisaged Babwata proposal (particularly as the government is in the process of establishing a Presidential Commission of Inquiry to investigate the Kxoe community's land rights)
- › continue with advice to the Epupa community in respect of the Epupa Hydropower scheme (particularly as a final decision would probably be made in 2001)
- › continue to assist the Epupa community with legal assistance and advice on developmental activities (especially community tourism) undertaken by them

Other

The LEAD Project will:

- › continue to investigate illegal fencing in communal areas, especially in the northern regions, and eastern parts of the Otjozondjupa and the Omaheke region
- › together with other NGOs, continue to investigate the viability of introducing a project to provide the capacity within the national Community Based Natural Resource Management for the resolution of conflict over the use of natural resources
- › continue networking in the region on land reform and environmental protection
- › continue to provide training and information activities, together with the workers' unions, on occupational hazards, in especially the mining and fishing industry

RESEARCH

Andrew Corbett of the LEAD Project produced a paper entitled 'Southern African Public Interest Law and Community-based Property rights' which was presented at a workshop in Arusha, Tanzania in August 2000. The workshop was organised by the Centre for International Environmental Law based in Washington, USA and the Legal Environmental Action Group of Tanzania.

In October 2000 Andrew attended a conference hosted by the Programme for Land And Agrarian Studies (PLAAS) at the University of the Western Cape in Cape Town, South Africa and presented a paper entitled 'Legal aspects of Governance in CBNRM in Namibia.'

An informative research paper 'The Nature of legal assistance required for the Community Based Natural Resources Management

Programme' was delivered by Andrew at the conference of the CBNRM Association of Namibia (CAN) in October 2000.

The 18-month regional research project titled 'A Situational Analysis of the San People in Southern Africa' has been completed. The report was published in December 2000.

During the latter half of 2000, the LEAD Project and Gender Research & Advocacy Project conducted a research study on the implementation of the Commercial (Agricultural) Land Reform Act.

Namibia's National Land Policy has been translated into a simple English version. During 2001 the Policy will be translated into all national languages for maximum accessibility.

Gender and Land Survey Update



The Gender/LEAD Project is currently busy with research on resettlement projects in Namibia.

Pictured here are representatives of Herero returnees from Botswana, who were settled at Gam in 1993. The representatives participated in focus group discussions with the Project



Gam community

JUVENILE JUSTICE

AN OVERVIEW OF THE LAC'S JUVENILE JUSTICE PROJECT Crime and Punishment of Children

Incarceration of children due to custodial sentence or pre-trial detention tends to turn children who are first offenders into hard-core criminals. The fact that police cells and prisons are breeding grounds for criminals has been scientifically proven. Therefore, if it is true that a nation's wealth is its children, then as a nation we owe them a good life. Arrest, pre-trial detention and custodial sentences should be measures of last resort.

In the past, far too many children went through the criminal justice system without being given proper protection, as the full force of law would have demanded. The courts and the police cells were overloaded with juveniles, many of them charged with minor and economic offences or offences related to homelessness. In addition, the sometimes misleading perception that an increasing number of children were committing crimes reinforced the tendency to call for tougher and more rigid punishment or measures to protect the public. However, this trend is changing. The

experiences of juveniles who are in conflict with the law in Namibia now is much different from what it used to be. In 1995 the Legal Assistance Centre started the Juvenile Justice Project (JJP). The main rationale behind the project stemmed from a number of concerns regarding the plight of children in conflict with the law locally. The treatment they received was far from the democratic constitutional norms, which characterised an independent Namibia. It also was not in line with the acceptable norms as prescribed in the UN Convention on the Rights of the Child (CRC). Namibia signed and ratified the convention in September 1990.

ACTIVITIES

Since the inception of the JJP, which started at the Windhoek magistrate's court, it has spread to almost every corner of the country. A number of innovative programmes and pre-trial diversions centred on restorative justice have been introduced, including the following:

- 1. The screening/assessment service, which is the backbone of our juvenile justice system and takes place (formal and non-formal) in 18 of the 33 magistrate courts in Namibia. A screening service largely determines what appropriate action should be taken with regard to children alleged of having committed a crime, and which possible resources and services will be made available to them.
- 2. Pre-trial diversion services for children (under 18 years of age) who have been diverted from the criminal justice system are offered to prevent them from re-offending. The programme helps them become accountable and responsible for their actions. Last year 511 (118 female and 393 male) cases were assessed at the Windhoek magistrate's court. This number includes those children who were screened more than once. One hundred and fifty attended the Life Skills Programme, 17 juveniles performed Pre-Trial Community Service, 62 cases were withdrawn unconditionally, 25 were referred for counselling services and 62 cases were solved through the process of Consensus Decision Making (CDM).
- 3. The project lobbied and advocated for the establishment of coordinating structures throughout the country. There are Juvenile Justice Forums (consisting of government line ministries, NGOs and individuals from the community in all 13 political regions). The forums meet monthly to discuss juvenile justice issues in their particular region.
- 4. Other important structures include the Arrest and Awaiting Trial Committee (consisting of police officers, prosecutors, magistrates, and social workers) responsible for monitoring the treatment of children during arrest, trial-awaiting period and during trial.

- 2 The Inter-Ministerial Committee (IMC) on Juvenile Justice has added another dynamic to the juvenile justice field. This body heralds the first official and overt acceptance of the government's stake in the programme. It is a policy and decision-making structure which aims for an integrated and comprehensive juvenile justice system.

The project sensitises and does skills upgrading with other role-players, such as police officers, justice personnel, youth officers, teachers, social workers and volunteers with regard to juvenile justice.

Main challenges

Laws (inherited from South Africa and which are outdated) which govern children's issues do not provide adequate protection for children in conflict with the law. This means that the Juvenile Justice Project operates without meaningful juvenile justice legislation.

Screening and pre-trial diversion is not legally regulated and there isn't a national policy with guidelines to complement the current arrangement of screening children before their court appearance.

The current diversion options need to be expanded to cater for the varying needs of children, especially serious and repeat offenders.

There are few social workers and youth officers available to facilitate a diversion programme and conduct daily screening at courts, police stations and prisons in the regions.

In a nutshell, the Juvenile Justice Project strives for a juvenile justice system that is fair, equitable and humane. Then main focus areas are law reform, training and capacity building, system development, research, advocacy and networking. The project is funded by the Austrian Development Cooperation.

CHILDREN IN CONFLICT WITH THE LAW

Children in conflict with the law are at risk of being abused and ill-treated, resulting in their social life being negatively affected. Therefore greater efforts should be directed at those who are working with juvenile offenders to promote fair and humane treatment of children at each step in the criminal justice system.



The JJP is committed to introducing youth crime prevention strategies into communities at all levels

Children in Conflict with the Law (continued)

Every child alleged of having infringed the criminal justice system must be treated in a manner that promotes the child's sense of dignity and worth, taking into account the child's welfare and his/her potential to assume a constructive role in society.

With this in mind, the LAC's Juvenile Justice Project conducts juvenile justice workshops and training throughout the country to empower and upgrade the skills and knowledge of those who are working with children in conflict with the law. All the government personnel working with children in the criminal justice system need to be trained if a sustainable and effective service is to be rendered to all children. Sustainable, effective services in juvenile justice enhance respect for all children irrespective of their social, economic and cultural background.

The purpose of such training and workshops is to improve the juvenile justice service delivery system, therefore creating favourable standards of treatment in the best interests of the child.

The project offers general and specific training, targeting government officials who provide direct services to or work with children in the juvenile justice area. The main targets are social workers (screeners), police officers, prosecutors and magistrates, youth officers and teachers, because their work brings them in daily contact with children.

Overall, the training is directed at top and middle management, professionals and semi-professionals in the government to effect an efficient and effective service delivery system, therefore promoting a culture of human rights and good governance in the public sector.

Training is also aimed at capacity building and the development of a pool of skilled workers in the field.

Within the mandate by which the LAC was entrusted with spearheading the implementation of a juvenile justice programme in the country, the overall running of the programme rests with the government. It is therefore imperative that government officials are adequately trained and prepared for the formidable tasks they face.

The training covers important components such as screening services, diversion options and the national and international framework of laws and human rights instruments applicable to juvenile justice. These entail the handling of juvenile offenders, advocacy for the rights of children, development of alternative measures in the criminal justice system, lobbying for law reform and minimising the risk of offences among children.

The Juvenile Justice Project brings together various partners from government and civic organisations. Training is facilitated and conducted on a joint basis with partners such as UNICEF, other NGOs and government line ministries, e.g. the Namibian Police and the Ministry of Health and Social Services. The project trains about 500 government officials annually, mostly police officers, social workers, youth officers and magistrates. Our experience is that participants are enthusiastic about the training and they are eager to learn more.

Conducting training has assisted the Juvenile Justice Project in prioritising and coordinating its activities. It has also assisted in identifying the needs and gaps as well as how better to share resources with all the partners in juvenile justice to achieve the intended goals.

This article was written by Ndumba J Kamwanyan for LAC News Issue 3



Juvenile Justice Project staff
From left to right front,
Celeste Zaahl (Coordinator),
Letitia Alpheus (Student),
Serorita Gases, Monalisa Zatjirua
Back left to right, Ilda Lomba,
Ricardo Mukondo and
Joyce Nakuta (Directorate of
Youth and Sport)

The juvenile justice programme in Namibia is rapidly expanding. Innovative efforts and structures to widen the net of accessibility of the juvenile justice service to all children who come into contact with the criminal justice system are being piloted and implemented around the country. The demand to support and sustain such innovations on the ground is also increasing. There is a need for a holistic approach to ensure that the programme is effectively implemented in all the 13 political regions.

The Legal Assistance Centre's Juvenile Justice Project (JJP) has been instrumental, and is central to, the making of the juvenile justice system in Namibia.

The project is actively involved in the following activities:



Police officers who completed training in how to deal with juvenile offenders

Crime Prevention

Crime Prevention in Windhoek Prison

The project participated in a crime prevention week organised by the Windhoek Prison. The prevention week focused on rehabilitation, reintegration and life after imprisonment.

Crime Prevention Workshop in Erongo Region

The project conducted a crime prevention workshop for secondary schools in Swakopmund and Walvis Bay.

Three schools in Swakopmund (Swakopmund Secondary School, Westside High and Hermann Gmeiner Technical High) participated in the workshop as well as two schools in Walvis Bay (Kuseibmond Secondary and De Duine Secondary schools).

The aim of the crime prevention workshops was to inform and educate young people about the effect and consequences of infringing penal law, including rights and responsibilities.

Steering Committee on Youth Crime Prevention

The project serves on the Steering Committee on Youth Crime Prevention. The committee formulates, consolidates, coordinates and implements youth crime strategies, including crime prevention curricula being introduced into schools.

The Launching of Girl-Child Project at Windhoek College of Education (August 2000)

The project was invited to take part in the launching of this project. One of our staff made a presentation on gender implications in the juvenile justice programme in general and pre-trial diversion in particular, including crime awareness and the importance of empowering the girl-child.

Screening at the Windhoek Magistrate's Court

The screening service is conducted daily (Monday-Friday) at the magistrate's court to assess all accused juveniles before their appearance in court. This service is increasingly proving to be effective because it determines the appropriate action to be taken regarding the minor accused in the criminal justice system. Social workers from the LAC and the Ministry of Health and Social Services conduct the screening at court. This arrangement sometimes leads to practical problems such as lack of coordination among screeners, problems related to referral procedures and non-screening processes, and unnecessary delays. In total the project screened close to 500 children during 2000, including children who were arrested more than once.

Screening Service in the Regions

Screening services outside the Khomas region are conducted by social workers from the Ministry of Health and Social Services (MOHSS). Various juvenile justice forums oversee the implementation of the screening service in their regions. The JJP provides technical support and expertise such as training on juvenile justice, screening, pre-trial diversion, advice and provision of relevant information and materials. Screening services in the regions vary from place to place and according to factors such as the juvenile crime rate, the commitment of

role-players, the vastness of the area, the availability of magistrate's courts and police stations, and the available resources.

The screening process in the regions is hampered by a lack of alternative diversion options. There is shortage of life skill facilitators (youth officers) making it difficult for the Life Skills programme to be implemented. During 2001, the project will concentrate on introducing pre-trial community services in the regions.

Life Skills Programme in Windhoek

The attendance rate for the Life Skills Programme this year was high. Many parents also gave their cooperation and attended sessions as required. One hundred and two children were diverted to the programme, of whom 92 completed their sessions successfully and had their cases withdrawn. Of the total number of children diverted to the life skills programme, 21 were female and 81 were male.

Pre-Trial Community Service

Fourteen children were diverted for pre-trial community service. The diverted children performed their services at community oriented institutions. This service is proving to be appropriate for those children who cannot be accommodated in the life skills programme. However, it is hampered by a lack of placement agencies. A workshop was held early this year for the purpose of identifying suitable placement agencies.

MONITORING AND RESEARCH

Police Cell Visits in Windhoek

The project visits police cells regularly to assess the condition of children kept in the cells. One of the problems identified is the fact that there are no recreational activities for children in police cells. Through the Windhoek Juvenile Justice Forum, UNICEF has provided some games and other materials to be used for recreation.

Tracing of Parent Volunteers

The appearance of parents at court has been high. This could be attributed to the work of the tracing volunteer group. The volunteers also assist with the facilitation of the life skills programme. Some of the active volunteers were selected for the national life skills training for youth officers programme in November.

Comparative Data Review of Children Screened in Windhoek (1997-1999)

The project reviewed and analysed the available data for comparative purposes. The review gives detailed statistical information as well as breakdowns in gender, age and offence type.

TRAINING

As part of ongoing support to the regional juvenile justice forums and capacity building of role-players in juvenile justice, the following workshops and training were conducted:

- › Outapi juvenile justice training
- › Juvenile Justice Forum Consolidation Workshop in Grootfontein
- › Follow up Screening Training Session in Opuwo
This session was held with people who are involved in the actual services of the screening process such as screeners, prosecutors, magistrates and police officers, including community organisations that could assist in rendering screening. The aim was to strengthen and sustain the screening service in Opuwo.
- › Juvenile Justice workshop in Okahandja
The purpose of this workshop was to introduce participants to the basic information on juvenile justice and to establish the first juvenile justice forum in Okahandja.
- › Juvenile Justice Workshop in Rundu
- › Pre-Trial Diversion Workshop in Lüderitz
- › Training in Karasberg
- › Training on juvenile justice and crime prevention strategies in schools at Tsumeb
- › Juvenile Justice workshop in Eenhana
- › Introductory Juvenile Justice Workshop for final-year University of Namibia Students (Social Work and Law)
- › Juvenile Justice Training Course for New Recruit Police Officers at Patrick Lyambo Police Training College

Some of the new recruit police officers who participated in the Juvenile Justice course at the Patrick Lyambo Police Training College in October



NETWORKING

National Networking

The project continues to network actively with juvenile justice partners through structures such as the Juvenile Justice Forum, the Inter-Ministerial Committee on Juvenile Justice, the Family and Life Empowerment Programme, the National Street Children Committee and the steering Committee on GRN/UNICEF Programme Cooperation.

International Networking

The project was requested to assist Malawi to establish a juvenile justice program. JJP staff went to Malawi to help formulate a strategy and plan of action document. The Project also contributed to the 10-Point Plan for Juvenile Justice. The 10-Point Plan was presented by Penal Reform International to the Committee on the Rights of the Child Day of General Discussion on 'State Violence Against Children', in Geneva in September.

The project also contributed to a Penal Reform International Juvenile Justice Information Pack – a summary of juvenile justice reform models in developing countries.

LAC CONTRIBUTES TO INTERNATIONAL 10-POINT PLAN FOR JUVENILE JUSTICE

Jonah Kamwanyah and Ricardo Mukonda of the Juvenile Justice Project (JJP) of the LAC have been networking with Penal Reform International (PRI) and contributed to its 10-point plan for juvenile justice. The plan focuses on ways of reducing violence within juvenile justice systems around the world. The 10-point plan was presented as a contribution to the Committee on the Rights of the Child at the General Discussion on the State of Violence Against the Child in Geneva in September this year. The 10-point plan is condensed here.

Arrest and Interrogation

Arrest and pre-trial detention of children should be measures of last resort and pre-trial detention should be for the shortest time and not for more than 48 hours. Alternatives to arrest and pre-trial detentions such as a written warning and bail should be explored first. Pre-trial detained children should always be separated from adults. Children should be interrogated only by police officers trained in juvenile justice and selected to handle children's cases in the presence of the parents/guardians of the child.

Age of Criminal Responsibility

All countries should set an age of criminal responsibility that is high and all children below it should not be drawn into the criminal justice system but community-based remedies should be set up to help them.

Diversion

Instead of directing accused/suspected children into the criminal justice system, pre-trial and post-trial diversionary measures should be explored first. All diversionary measures should aim at enhancing the child's social responsibility.

Pre-Trial Detention

Pre-trial detention must always be a measure of last resort and for the shortest period of time. A maximum time for pre-trial detention should be set after which children held in detention should either be released on bail or on warning.

Alternative Sentences

Community-based alternative sentences are needed, particularly those based on restorative justice. Community-based programmes for 'repeat and serious young offenders' should be established.

Youth Courts

Special child courts/tribunals with less formal proceedings should be formed. Court officials should be trained in juvenile justice and the judges and magistrates must concern themselves with the applications of sanctions and other measures besides mere sentencing.

Custodial Sentences

Custodial sentences should be used only in exceptional cases and as a measure of last resort for the shortest period of time. Where custodial sentences are applied, education and rehabilitation should be the main priorities.

Detention Facilities

Separate facilities for adults and children should be established and children should at all times be separated from adults. The facilities should be child-friendly and should use appropriate means of discipline, control and restraint which are not based on the use of force.

Inspection

Independent monitoring agents should be established to scrutinise and inspect the institutions. Such a body must comprise of NGOs and government inspectors.

Family Links

Every effort should be made to encourage contact between detained children and their families and communities through private visits. Reintegration of the children back into their communities and families should be emphasised.

CONSOLIDATED ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2000

THE LEGAL ASSISTANCE TRUST OF NAMIBIA REPORT OF THE INDEPENDENT AUDITORS

To the trustees of

THE LEGAL ASSISTANCE TRUST OF NAMIBIA

We have audited the consolidated annual financial statements of The Legal Assistance Trust of Namibia set out on page 52 for the year ended 31 December 2000. These financial statements are the responsibility of the Board of Directors. 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 Namibian Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatements. An audit includes:

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

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

Audit opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of The Legal Assistance Trust at 31 December 2000 and the results of its operations for the year then ended in accordance with Namibian generally accepted accounting practice.



STIER HENKE ASSOCIATES
CHARTERED ACCOUNTANTS (NAMIBIA)

WINDHOEK
1 March 2001

**THE HUMAN RIGHTS TRUST OF NAMIBIA
CONSOLIDATED ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31
DECEMBER 2000**

REPORT OF THE INDEPENDENT AUDITORS

To the trustees of

THE HUMAN RIGHTS TRUST OF NAMIBIA

We have audited the consolidated annual financial statements of The Human Rights Trust of Namibia for the year ended 31 December 2000 set out on page 54. These financial statements are the responsibility of the Board of Trustees of The Human Rights Trust. 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 Namibian Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatements. An audit includes:

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

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

Audit opinion

In our opinion, these financial statements fairly present, in all material respects, the financial position of The Human Rights Trust of Namibia at 31 December 2000 and the results of its operations for the year then ended in accordance with Namibian generally accepted accounting practice.



STIER HENKE ASSOCIATES
CHARTERED ACCOUNTANTS (NAMIBIA)

WINDHOEK
1 March 2001