

incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.

(3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in Sub-Article (2) hereof and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.

(4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.

#### CHAPTER 11

### *Principles of State Policy*

#### Article 95

##### **Promotion of the Welfare of the People**

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:

- (a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;
- (b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;
- (c) active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;
- (d) membership of the International Labour Organisation (ILO) and,

# Legal Assistance Centre Annual Report 2003





The Legal Assistance Centre

## Our mission

The Legal Assistance Centre, being a public interest law centre, strives to make the law more accessible to those with least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

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## The staff of 2003 (most of us)





## Foreword

During the year under review, the Legal Assistance Centre celebrated its 15<sup>th</sup> anniversary. A series of events was held during the week of 7 to 12 July 2003 to mark this milestone. These included the screening of an acclaimed Zimbabwean film on property grabbing, followed by a panel discussion. There were public presentations on the Draft Communications Bill, HIV/AIDS and human rights, and a discussion on paralegals and access to justice.

Also in that week, a paper was presented entitled "Is water a human right?" and the Journal on Contemporary African Studies was launched. A panel discussion was held on the needs of children in conflict with the law versus the needs of vulnerable children. These talks were, for the large part, presented by the Centre's lawyers and other staff.

The birthday events culminated in a successful fundraising dinner. At this function a commemorative video, featuring 15 years of the Legal Assistance Centre, was shown. The main address of the evening was delivered by former Centre employee, Trustee and previous Ombudswoman of Namibia, Bience Gawanas. This happened to be the day she heard of her prestigious appointment as a Commissioner at the African Union. This outstanding accolade added to our celebrations.

The memorable dinner was a fitting climax to the interesting and worthwhile events held during that week. It not only brought together many of LAC's partners in development and several longstanding friends, but also served to raise much needed funds.

In this anniversary year, the LAC continued with its work as a public interest law centre, and contributed to the development of our constitutional democracy through litigation, education, research and advocacy.

Another highlight of the Centre's work during the year under review was the publication of a guide to the communal land reform legislation in English and in six local languages. This past year also saw the inauguration of the San Human Rights Capacity Building Project. It will be implementing a recommendation that arose from an intensive research project, funded and initiated by the LAC. The project comprises a much needed paralegal training component. The Centre furthermore played a vital role in the promulgation of long awaited gender and child rights legislation, including the Combating of Domestic Violence Act and the Children's Status Bill.

These are but a few highlights of the LAC's work during the past year that form part of its contribution to the development of a human rights culture in Namibia.

On behalf of the trustees, I would like to record our warm gratitude to Clement Daniels for another year of impressive leadership at the helm of the Centre. We are also most grateful to the entire staff at the various offices of the Centre for their continued commitment and dedication. I also thank our donors for their invaluable support.

In closing, I extend my warm thanks to my fellow trustees for their unselfish commitment to the LAC.

DAVID SMUTS  
Chairperson





## Overview of the year

The work of the LAC is becoming more crucial for ordinary citizens as the social and economic disparities increase in Namibia. During 2003 we have seen an increased demand from people who face social and economic hardship as a result of unemployment, lack of access to resources, such as land and housing, and lack of access to proper health care and education. The LAC has managed to successfully represent clients in some of these matters and have also embarked on a long-term awareness raising campaign to ensure that people have a better understanding of socio-economic justice and how to lobby for such resources.

The year 2003 was yet another exciting time in the life of the LAC. The organisation planned strategically for the coming three years and developed a document that will guide it during the coming years. The new strategy calls for closer cooperation with civil society and government to ensure that we use our limited resources in the most effective manner to ensure a vibrant democracy and human rights for all in Namibia.

The LAC also celebrated its 15<sup>th</sup> anniversary, which was a time for reflection and rejoice in the remarkable achievements since its establishment in 1988. The LAC produced an anniversary supplement that was distributed together with the *Big Issue* and *The Namibian*. Several NGOs and institutions placed adverts of support therein and this covered most of the printing costs. The LAC furthermore launched a film, *The Struggle for Justice*, which depicts the struggle of ordinary Namibians to gain access to justice.

Unfortunately basic civil and political rights violations remain the bulk of the LAC's litigation work. It is disappointing that 14 years after independence we are still litigating in cases of police brutality and unlawful detentions. We have found that many government officials do not have sufficient knowledge or understanding of human rights. The Human Rights and Constitutional Unit of the LAC finalised 73 files and opened a further 87 during the period under review. At present, the unit is dealing with 357 matters, which are mostly assault, unlawful arrest and detentions, torture, medical negligence and child abuse cases.

Progress has been made with regard to the Caprivi treason trialists' civil claims, despite their criminal trials being bogged down in the courts. In the last months of 2003 seven of the cases were settled out of court after lengthy negotiations and the clients have received compensation from Government.

On a positive note, two key gender-related laws were passed in



2003 – the Combating of Domestic Violence Act and the Maintenance Act. A third, the Criminal Procedure Amendment Act (the "Vulnerable Witnesses" Act) has been passed by the National Assembly. The Gender Research and Advocacy Unit of the LAC has been intensely involved with these laws in terms of research, technical advice, lobbying, training of service providers, public awareness-raising and follow-up work.

The LAC also spent much of the year working closely with the Ministry of Women Affairs and Child Welfare (MWACW) and the legal drafters at the Ministry of Justice on two pieces of children's legislation: the Children's Status Act and the Child Care and Protection Act. We were part of a Task Force assembled by the MWACW to finalise policies on these laws, and to incorporate the results of several public consultations.

With an ever increasing HIV infection rate and people dying of Aids, the Aids Law Unit of the LAC has embarked on aggressive litigation on behalf of a large number of lodge workers that were tested for HIV without their knowledge or consent. It is alleged that their employer was informed of their status by the doctor who did the testing. Summons had been issued in the High Court against the employer who requested the testing and the doctor. Damages for breach of confidentiality have been claimed. The doctor and the employer have given notice of their intention to defend this matter and the parties are in the process of exchanging pleadings.

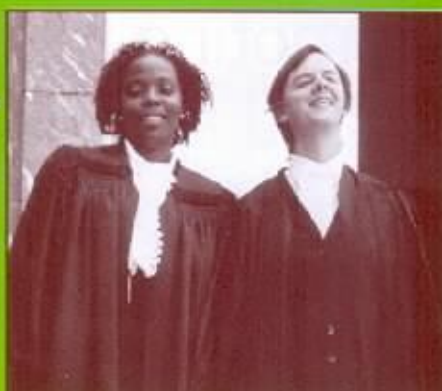
A multi-media treatment literacy campaign has been initiated by the LAC to raise awareness and understanding of HIV/AIDS treatment as a human right. T-shirts, posters, booklets and a series of radio programmes on access to treatment have been produced.

The LAC's involvement in land and natural resource-related disputes are on the increase. In a case concerning access to water in Kandu





**LEFT:** The Okakarara Paralegal Committee pictured with LAC Director Clement Daniels.



**RIGHT:** Linda Dumba (l) after her admittance in the High Court of Namibia, with LAC lawyer Lynita Conradie.

village in the former Bushmanland, litigation on behalf of the community was successful. Several other villages in that area also have problems to get access to water resources. They are being deprived of this by wealthy cattle farmers. The LAC is furthermore pursuing legal action in respect of overgrazing and overstocking of cattle, and illegal fencing by these cattle farmers.

Several cases have been dealt with concerning widows and female children and their rights to inherit property under customary law, but also under the proclamation that rules the administration and distribution of assets of deceased estates of black people. The most significant in this regard was the case of the Berendt family. It centered on the constitutionality of the draconian Native Administration Proclamation of 1928, which was blatantly racist. Its application mostly disadvantaged poor black women and their female children. In May 2003 the court stroke down the Proclamation and ordered the Master of the High Court to supervise the administration and distribution of the estate of the deceased. With this proclamation out of the way, the LAC and other NGOs will concentrate on lobbying government for a more responsive inheritance law.

During 2003 the LAC continued training community paralegal volunteers in all regions of the country. To date 280 paralegals have been trained and they in turn give legal advice and assistance to the rural poor. Paralegal training has been extended to San communities. Furthermore, 251 paralegals

were trained in 2003 as Civic Voter Educators. These educators have held 450 information meetings and 100 workshops with their respective communities. Voter education is an important component of the LAC's mission to ensure a vibrant civil society and a culture of human rights in Namibia. As part of this activity the LAC has produced a training manual, which is used by the educators when they conduct information meetings and workshops.

The Child Justice Project of the LAC has shifted its focus from direct service delivery to children in conflict with the law to building capacity of government officials who have to deliver these services. It is envisaged that Government will implement a national programme that caters for child offenders. In light of this several training workshops have been conducted with social workers, prosecutors, the police and youth officers. The LAC furthermore participated in drafting a Child Justice Bill that will establish an enabling environment for government to seriously tackle the situation of children in conflict with the law.

The LAC has accomplished these achievements and many more with dedicated staff and with the goodwill and trust from our clients and donor partners. We wish to continue this important work and rely on the broader Namibian public for support and faith in a truly Namibian institution.



**Some LAC staff enjoy a happy moment with trained paralegals in Omega, Caprivi.**



# Promoting the equitable redistribution of land and natural resources

## The work of the Land, Environment and Development (LEAD) Project

The aim of this unit is to assist Namibians, in particular poor and marginalised communities, to gain access to land and natural resources through legal means. The Communal Land Reform Act became operational early in the year and a lot of training was done in communities to ensure that stakeholders understand this new law.

During the period under review the unit was staffed by Norman Tjombe (Coordinator), Gerson Narib, Libertha Kapere, Linda Dumba (Project Lawyers) and Ilda Lomba (Project Assistant – shared with the Child Justice Unit). Gerson joined the Government Attorney's office in June 2003 and was replaced by Linda, who was previously with the Human Rights and Litigation Unit. Libertha left at the end of 2003 and joined the Namibian Parliament's legal department. Evelyn Zimba was appointed to fill the position. Zeka Alberto was sub-contracted for the year to coordinate and facilitate information and training workshops on the Communal Land Reform Act.

## Litigation and legal advice

### Access to natural resources

*Project lawyers Linda Dumba and Norman Tjombe investigate their clients' claim about not having access to water resources in Omatako village.*



Frustrated with illegal fencing that cut off their access to water and grazing, several small scale farmers in the Omusati instructed the project lawyers to initiate a court case to remove the fences on their communal lands, which were erected by wealthy cattle farmers. The case will probably be heard in mid-2004. In a similar case, the project represented a headman and his community of Kandu village near Tsumkwe in the first ever Water Court of Namibia to regain access to clean water, which was refused to them for close to ten years. Several other villages in that area also have problems with accessing clean water resources, and the project will take these cases to court in 2004. LEAD was furthermore instructed to pursue legal action with regard to overgrazing and overstocking of cattle in this area.

## Urban land rights

LEAD has received several requests for legal intervention in urban housing problems. Most of the problems emanated from poor people's (pensioners and unemployed persons) inability to pay skyrocketing municipal accounts for the supply of basic services, such as water and electricity. So far, the unit has failed to effectively intervene because the attitudes of local councils and, unfortunately, the law are not very responsive to poor people's daily struggles. An initial angle of litigation as intervention has been to look at basic services, particularly water, as a basic human right under international law, and to read this in our Constitution (right to life, dignity and not to be discriminated against on the basis of economic status). Research had been conducted in these aspects and future litigation strategies will be based on this approach.

## Inheritance laws

The project dealt with several cases concerning discriminatory inheritance laws. In one



important landmark case, *Berendt vs Stuurman and others*, the project's lawyers succeeded in having the notorious Native Administration Proclamation of 1928 declared unconstitutional. With this old draconian law out of the way, the unit will concentrate on lobbying government for a more responsive inheritance law.

A number of cases, which involve discrimination against women and female children under customary law, were filed in court. The case of Hanna Nepembe, who was evicted from her common home by relatives after the death of her husband, is a case in point. This will be the first case to go before the Communal Area Land Board of Oshikoto region.

It must be pointed out that LEAD is not advocating for the abandonment of customary laws, but rather the development of these laws so that they comply with the Constitution.

Numerous cases concerning illegal fencing and women's property rights will come up once the Communal Land Reform Act is fully implemented. For example, the Act makes provision for applications to regional land boards for decisions over fences in communal areas. LEAD is planning to assist applicants in this regard.

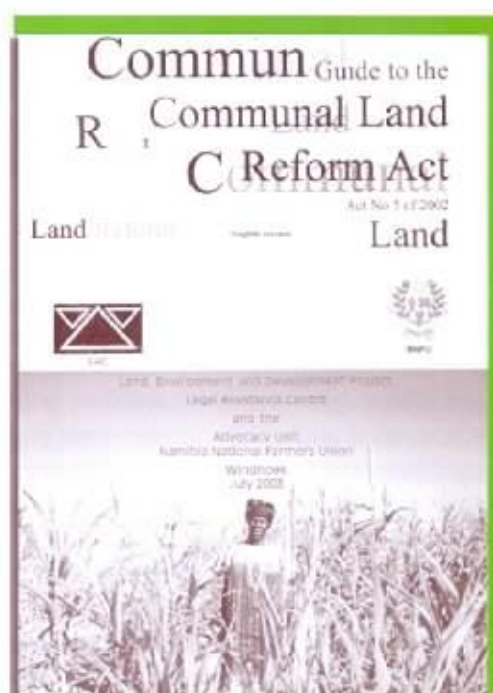
## Research

### Illegal fencing

The majority of Namibians live in communal areas, which comprises about 48 percent of the total landmass of Namibia. These communal areas belong to the State, which administers it on behalf of its residents. The Communal Land Reform Act of 2002 confirms this long established practice of not allowing private ownership of these lands. However, despite this prohibition, some individuals have and continue to "privatise" communal lands. They do this by fencing in good grazing areas or water points for exclusive use by themselves.

Although no specific research has been done on illegal fencing, the practise appears to be prevalent in the north central regions of Namibia. Several unempirical reports mention illegal fencing also in other communal areas.

It has been very difficult for the project to litigate on behalf of communities or individuals on the issue of illegal fencing. This is mainly due to the fact that many of the people "privatising" communal land resources are authoritarian traditional leaders (chiefs and headmen), wealthy business people or politicians, who intimidate poor rural farmers.



The project has employed a local social scientist to conduct a socio-legal study into the impact of illegal fencing. The research report, which investigated two areas – Otjozondjupa and Mangetti areas – was finalised at the end of 2003. The study will feed into our litigation, educational and advocacy activities.

### Inheritance under customary law

LEAD also enlisted the services of an anthropologist with expertise in the Himba culture for a small desk study on inheritance laws of the Himba. Her study, entitled *Women, Marriage and Inheritance Law in Himba Society* will be published early in 2004. Because government is in the process of drafting new legislation on customary inheritance, the project will do more research in the coming two to three years in this field. The research is aimed to inform policy makers and the public alike.

### Farm workers' tenure rights

In respect of farm workers' tenure rights, the unit has witnessed a number of evictions of farm workers from privately owned farms,



especially when ownership of a farm changes. The law currently does not provide tenure to farm workers who have lived there for decades. The project will intervene by conducting studies on tenure rights and will make proposals to policy- and lawmakers.

## Education, Training and Publications

LEAD conducted 15 workshops with women, traditional authorities, conservancy committees, communal farmers' associations and unions, government and NGO staff on the Communal Land Reform Act. The project published a *Guide to the Communal Land Reform Act*, which was used in the training workshops. At the request of the Minister of Lands, Resettlement & Rehabilitation, the guide was translated into six indigenous languages.

The content of these workshops will be broadened in 2004 and 2005 to include all laws relating to land and natural resources in communal areas. Ideally, environmental law (which is broader than laws on natural resources) should also be included, but these laws and policies are rather fragmented. The government envisages major changes in this regard, which may radically change environmental laws in the near future.

The project conducted a number of workshops on the Women's Property Rights theme, which were limited to the north central regions and Kavango region. Representatives from several government ministries, tribal authorities, four regional land boards, NGOs and paralegals attended the workshops. It is perhaps too early to assess the impact, but we do have an increase in litigation matters from these regions. The project's service delivery in this regard will expand across the country in 2004.

LEAD is rendering a significant service to San communities in the form of educational activities on land rights,

human rights in general and litigation on resources rights, such as deprivation of water and illegal fencing.

LEAD, together with one of its donors, the Evangelische Entwicklungsdienst, published a research report entitled *An Assessment of the Namibian Conservancy Programme*.

## Networking

The unit remained involved in the conservancy development programme. Most of the work involved drafting constitutions for emerging conservancies, and negotiating on behalf of and drafting agreements with joint venture partners for tourism and hunting activities. It is estimated that about 20 000 people will directly benefit from conservancy projects.

LEAD, together with other NGO partners such as WIMSA and the Omaheke San Trust is in a process of establishing advice offices in four areas as part of the San Human Rights Capacity Project. These offices will render legal and human rights assistance to San communities. The project will supervise the paralegals at these offices and will make decisions over which cases it will take to the courts.

Over the past years LEAD assisted several community-based organisations to gain access to land to build houses on. With increased urbanisation and a deteriorating socio-economic situation of the poor, demands for access to urban land will increase. The unit assists communities to form democratic organisations that are capable of negotiating with local authorities on land rights and essential services.



LEAD is active in the conservancy development programme where it often negotiates on behalf of communities, and develop agreements with joint venture partners for tourism and hunting activities.



# Protecting and promoting the rights of people living with HIV/AIDS

## The work of the AIDS Law Unit, ALU

The unit's main objective is to promote and protect the human rights of people living with HIV/AIDS in Namibia. During the period under review the unit was staffed by Michaela Clayton (Coordinator), Tenu Avafia (Project Lawyer - left in April), Delme Cupido (Project Lawyer), Monica Nganjone (Paralegal / Legal Educator) and Collette Campher, Naomi Kisting and Maggie Amweelo respectively as Project Assistant.

## Research, policy formulation and law reform

- Research was ongoing with regard to discrimination on the basis of HIV status in access to insurance and medical aid. Outcomes of the research will inform the ALU in deciding whether to launch a test case, in which the constitutionality of such discrimination will be challenged.

*The Treatment Action Forum (TAF), an initiative of the ALU, has held candlelight vigils in Windhoek, Walvis Bay, Keetmanshoop and Opuwo. They were attended by close to 2000 people altogether.*



- Research on the right to health (as contained in the Constitution and in international agreements to which Namibia is a party) has been completed. In view of government's recent undertaking to provide PMTCT (mother to child transmission prevention medication) and anti-retrovirals to all the regions, the ALU decided not to pursue litigation at this time.

- The ALU monitors developments regarding access to essential medicines within the broader context of health as a human right and the current trade negotiations taking place at the World Trade Organisation. Since the Doha Declaration of November 2001, WTO members have been involved in negotiations to give meaning to paragraph 6, which empowers developing countries to set aside their international trade commitments to provide access to essential medicines for their citizens.

- Research on grants and social services available to orphans and vulnerable children and their caregivers has been completed. The results will be published to raise awareness.

- The ALU leads the process of developing a national OVC (orphans & vulnerable children) policy at the request of the Ministry of Women Affairs and Child Welfare.

- The ALU assisted Commercial Bank of Namibia, Windhoek Vocational Training Centre, NAMCOL, SWACO, Namibian Engineering Corporation, Walvis Bay Corridor Group, NACSO, NANGOF, Government Institutions Pension Fund, Namibian Agricultural Union, Ministry of Works, Transport and Communication, Ministry of Agriculture, the Ministry of Lands, Resettlement and Rehabilitation, Ministry of Foreign Affairs and the Ministry of Local and Regional Government with the development of HIV policies in the workplace.

## Legal advice

The ALU runs a legal advice clinic for people living with and affected by HIV/AIDS in





*The secretariat of the AIDS and Rights Alliance (ARASA) and its regional office are coordinated and hosted by the ALU. ARASA held successful training workshops on HIV and human rights in Johannesburg, South Africa and in Lusaka, Zambia during the course of the year.*

Katutura every Thursday from 10h00 to 11h30. The clinic also serves as a referral agency in respect of problems that are not of a legal nature.

## Litigation

A large number of lodge workers have been tested for HIV without their consent. Their employer was later informed of their statuses. Summons has been issued in the High Court against the employer who requested the testing and the doctor who conducted it. Damages for breach of confidentiality have been claimed. Both the doctor and the employer have given notice of their intention to defend this matter and the parties are in the process of exchanging pleadings. In addition, a complaint has been lodged in the District Labour Court on behalf of one of these employees who was subsequently unfairly dismissed. The matter was settled out of court in the period under review and client has been paid damages.

In another case a young professional was required to undergo an HIV test by his employer without being counselled and without his permission being obtained. The client was originally reluctant to pursue the case until such time as he had completed his articles. Subsequent to completing his articles he took up employment elsewhere and elected not to pursue the matter.

It is hoped that litigation of this nature will encourage medical doctors to give pre- and post- test counselling and that results will be released to the person who underwent the test, and not to a third party. Sadly, experience has shown that there are still doctors who do not respect doctor-patient confidentiality with regard to HIV.

## Advocacy

- The Treatment Action Forum (TAF), which consists of AIDS Service Organisations and activists, has held candlelight vigils in Windhoek, Walvis Bay, Keetmanshoop and Opuwo. They were attended by close to 2000 people altogether.
- A treatment literacy campaign has been initiated by ALU to raise awareness and understanding about HIV/AIDS treatment as a human right. T-shirts, posters, booklets and radio programmes have been produced.
- The work of TAF's initial campaign came to fruition when the Minister of Health and Social Services announced in October 2003 that the Ministry would make ARV treatment available at six sites in Namibia in the first year and expand the service to other sites later. TAF monitored the provision of antiretrovirals by the Ministry.
- The coordinator and project lawyer respectively gave various presentations at different forums on HIV/AIDS and human rights during the year.
- The art collection entitled "Breaking the Silence", which focuses on HIV and human rights and which was acquired by the ALU with funding from Standard Bank, has been displayed at various venues to raise awareness.



## Networking

- The secretariat of the AIDS and Rights Alliance (ARASA) and its regional office are coordinated and hosted by the ALU. The primary functions of ARASA are to disseminate information, regional alerts, training, publications, establish and maintain a database, and facilitate internships and south/south exchanges of expertise. An advisory board of representatives from South Africa, Swaziland, Zambia, Zimbabwe, Angola and Namibia has been established. Focal points have been identified in countries that are not represented on the board. ARASA held successful training sessions on HIV and human rights in Johannesburg, South Africa and in Lusaka, Zambia during the course of 2003.
- The ALU is represented on the OVC (Orphans and other Vulnerable Children) Permanent Task Force and ALU's coordinator chairs the subcommittee on Human Rights and Child Protection. Funds are currently being sought for its work. The ALU assisted with finalising the national OVC policy for Namibia, which is expected to be submitted to Cabinet early in 2004.
- The project lawyer attended a few international meetings, such as the ICASA conference in Kenya and

a meeting of international experts on access to HIV treatment in Canada. The legal educator attended an international training meeting on HIV/TB co-infection and advocacy in France.

## Education and training

### Training materials

- Pamphlets and posters on access to treatment were printed and distributed. The poster and pamphlet campaign on access to treatment won the designers, DV8, a Gecko Award.
- A pamphlet on HIV in the workplace has been completed and sent for printing.
- A paralegal training manual has been finalised and printed.
- A pamphlet on the rights of orphans and vulnerable children and their caregivers and social grants has been completed and printed.

## The AIDS Law Unit conducted these workshops in 2003:

| TOPIC  | TARGET GROUP   | PARTICIPANTS | w/p | PLACE                |
|--|--|--------------|-----|----------------------|
| HIV/AIDS in the workplace                                      | IRDNC staff  | 22           | w   | Katima Mulilo        |
| Socio-economic rights & vulnerability to HIV                   | students & staff   | 40           | p   | UNAM                 |
| HIV/AIDS & the law - discrimination, confidentiality           | 3 Ministries, 2 trade unions, activists, police                  | 29           | w   | Keetmanshoop         |
| HIV/AIDS in the workplace                                      | paralegals   | 20           | w   | Windhoek             |
| HIV/AIDS & constitutional rights                               | peer educators   | 12           | w   | Okahandja            |
| HIV/AIDS, human rights & children                              | British Council & Rainbow Project                                | 40           | p   | Windhoek             |
| Access to insurance & social benefits, workplace stigma etc.   | social workers, nurses, counsellors, paralegals                  | 32           | w   | Gobabis              |
| Confidentiality & human rights                                 | health care volunteers   | 30           | p   | Witvlei              |
| Will writing and estates                                       | home-based caregivers  | 25           | w   | Windhoek             |
| Access to insurance & social benefits, stigma, confidentiality | staff & activists  | 31           | w   | Divundu clinic       |
| HIV/AIDS & the law   | SWAPO Youth League   | 20           | p   | Windhoek             |
| HIV/AIDS - a country overview                                  | students & public  | 25           | p   | College of Education |
| Access to treatment, confidentiality & testing                 | entrepreneurs  | 20           | p   | Windhoek             |
| HIV/AIDS & the law   | reps from youth groups, fishing companies, home-based caregivers | 30           | w   | Walvis Bay           |

\* w/p stands for workshop or presentation



| TOPIC   | TARGET GROUP  | PARTICIPANTS | w/p | PLACE                |
|---|---|--------------|-----|----------------------|
| Identifying legal problems re. HIV/AIDS                               | paralegals  | 3            | w   | Walvis Bay           |
| Stigma & discrimination   | learners and educators  | 300          | p   | College of Education |
| HIV and human rights  | SADC police officers  | 30           | w   | Windhoek             |
| HIV workplace policy development                                      | UN agencies, embassies  | 40           | p   | Windhoek             |
| HIV workplace policy development                                      | Walvis Bay Corridor Group                                       | 30           | w   | Walvis Bay           |
| HIV/AIDS & people with disabilities                                   | national conference on disabilities                             | 200          | p   | Windhoek             |
| HIV and human rights  | nurses  | 15           | w   | Windhoek             |
| HIV and human rights  | USAID regional retreat  | 80           | w   | Midgard              |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | reps from youth groups, peer educators, home-based caregivers   | 22           | w   | Khorixas             |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Red Cross, Ombetja Yehinga, Ministry Education, police officers | 15           | w   | Opuwo                |
| HIV workplace policy  | NACSO members   | 15           | w   | Windhoek             |
| HIV/AIDS and human rights   | various embassies   | 12           | w   | Windhoek             |
| Drawing up a will   | Philippi Namibia trainers                                       | 19           | w   | Rehoboth             |
| HIV/AIDS & the law  | FNB's workplace peer educators                                  | 30           | w   | Windhoek             |
| Incorporation of antiretrovirals in medical aid schemes               | senior managers: parastatals and private companies              | 100          | p   | Windhoek             |
| Legal aspects of counselling for HIV testing                          | counsellor trainees   | 30           | w   | Windhoek             |
| Regional AIDS workshop - Khomas region                                | various Ministries and NGOs                                     | 21           | w   | Windhoek             |
| HIV workplace policy development                                      | AIDS service organisations, Ministries                          | 20           | w   | Windhoek             |
| HIV and employment & the writing of a will                            | regional representatives of the HIV/AIDS Task Force             | 50           | w   | Okahandja            |
| HIV and socio-economic rights   | Futures for Southern Africa conference                          |              | p   | Windhoek             |
| Will writing  | Nampower employees  | 13           | w   | Windhoek             |
| Testing, confidentiality, access to medication                        | regional workshop   | 17           | w   | Mariental            |
| Mainstreaming HIV for resources                                       | NACSO members   | 30           | w   | Windhoek             |
| HIV, human rights and ethics  | focal persons - various Ministries                              | 30           | w   | Windhoek             |
| HIV workplace policy development                                      | HIV committee of the GIPF                                       | 9            | p   | Windhoek             |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Otjozondjupa regional workshop                                  | 17           | w   | Otjiwarongo          |
| National Policy on HIV/AIDS for the Education Sector                  | Education Ministries' senior management                         | 40           | p   | Windhoek             |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Caprivi regional workshop                                       | 20           | w   | Katima Mulilo        |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Kavango regional workshop                                       | 25           | w   | Rundu                |
| HIV workplace policy development                                      | Namibia Agricultural Union                                      | 18           | w   | Windhoek             |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Otjikoto regional workshop                                      | 22           | w   | Tsumeb               |
| HIV surveillance screening in the workplace                           | representatives from banks                                      | 8            | p   | Windhoek             |
| HIV workplace policy for GIPF   | GIPF staff  | 40           | w   | Windhoek             |
| National OVC Policy on HIV/AIDS                                       | various stakeholders & Ministries                               | 24           | w   | Windhoek             |
| HIV/AIDS & the law: stigmatisation, confidentiality, medication, etc. | Ohangwena & Omusati regional workshop                           | 26           | w   | Oshakati             |
| HIV workplace policy development                                      | Ministry of Lands, Resettlement                                 | 8            | w   | Windhoek             |



# The struggle against gender discrimination and gender-based violence

## The work of the Gender Research and Advocacy Project, GR&AP

The unit initiates and contributes to law reform where it will bring the fastest possible change to previously unfair or unbalanced situations with regard to women and children. These laws often fall within the ambit of family law or violence against women.

The unit was staffed by Dianne Hubbard as Coordinator, Evelyn Zimba as Junior Legal Researcher and Naomi Kisting as Project Assistant. Four interns were responsible for, inter alia, research on and writing of an advocacy manual.

## Law Reform

Three key gender-related laws were passed in 2003 – the Combating of Domestic Violence Act, the Maintenance Act and the Criminal Procedure Amendment Act (the “Vulnerable Witnesses” Act). GR&AP has been intensely in-

involved with all three these laws in terms of research, technical advice, lobbying, training of service providers, public awareness-raising and follow-up work.

GR&AP also spent much of the year working closely with the Ministry of Women Affairs and Child Welfare (MWACW) and the legal drafters at the Ministry of Justice on two pieces of children’s legislation: the Children’s Status Act and the Child Care and Protection Act. The unit was part of a small Task Force assembled by the MWACW to finalise policy on these laws, and to incorporate the results of public consultations. GR&AP did extensive research on specific aspects of these bills, provided technical advice, and it successfully motivated arrangements for additional public input on selected topics.

The unit continued to work with the government’s Law Reform & Development Commission (LRDC) on refining a draft Divorce Bill. Of the 12 projects the LRDC has undertaken since its inception, the GR&AP has been intensely involved in seven of them.

Key research topics underway include sexual harassment, marital property, cohabitation and legal responsibilities of step-parents.

Gender-related law reform still lags in the area of customary law, such as the legal recognition of customary marriages and inheritance. GR&AP wants to expand its activities and expertise in this area.

## Domestic violence

The unit worked closely with the Multi-Media Campaign on Violence Against Women (MMC) and Children to lobby Parliament to pass the Combating of Domestic Violence Bill and to raise public awareness on actions which can be taken to reduce domestic violence.

One key lobbying effort was a demonstration which coincided with the opening of Parliament early in the year. Police efforts to block

*GR&AP served on a Task Force assembled by the Ministry of Women Affairs and Child Welfare to refine the Children’s Status Bill and the Child Care and Protection Bill. The unit provided background research on several new issues that were included.*





this demonstration led to an urgent application in the High Court seeking to remove restraints on the demonstration. Although the application was not successful, the police action actually produced a higher level of media attention than the demonstration would have otherwise received. Simultaneous demonstrations were held nationwide, organised primarily by women's organisations.

The unit drafted sample lobbying letters and provided background briefings to MMC members, which assisted them with their independent lobbying efforts.

The unit suggested and participated in the White Ribbon Campaign on International Women's Day to end violence against women and children. The pledge which participants make when they wear the white ribbon is the following: *"I will do everything within my power to put an end to violence against women and children in our society."*

Another major intervention was an assessment of last-minute amendments made in the National Assembly on the Combating of Domestic Violence Bill. The paper was circulated to interested NGOs in view of forming a lobbying strategy. The amendments passed in the National Assembly too quickly to allow for lobbying, but the MMC attempted to persuade the National Council to oppose one amendment (on factors to be considered in respect of joint occupancy of a shared household) which they feared might disadvantage rural women. This effort was unsuccessful. However, the basic structure and philosophy of the bill remained unchanged in its final form.

### Other lobbying activities included:

- several appearances in the media
- wide distribution of a Summary of the Combating of Domestic Violence Bill
- provision of background materials to the National Assembly and National Council committees dealing with the bill
- development of a short play explaining the bill, three presentations of the play and distribution of the dialogue to NGOs for use at grassroots level.

GR&AP assisted the Ministry of Justice with drafting regulations and forms to accompany the Combating of Domestic Violence Act. The Protection Order form was piloted for its workability.

GR&AP gave detailed comments to the Ministry of Health and Social Services on the draft WHO Multi-Country Study on Women's Health and Domestic Violence Against Women. This study will present findings of a study on domestic violence as a health issue in the Khomas Region.

## Maintenance

GR&AP advocated for the Maintenance Bill through the Multi-Media Campaign on Violence Against Women and Children (MMC) which lobbied Parliament to push this bill forward. The unit summarised National Assembly amendments for the benefit of MMC members. The NGOs represented on the MMC afterwards decided to support the Bill as amended, in a joint submission to the National Council.

The unit advised the Ministry of Justice on regulations and forms to accompany the Act. The emphasis was on making the forms and the process as accessible and user-friendly as possible.

## Vulnerable witnesses

GR&AP facilitated a range of lobbying efforts with its partners on the Vulnerable Witnesses Bill. The unit, inter alia, held meetings with the Office of the Prosecutor-General, who worked on child-friendly court arrangements. GR&AP urged the office to lobby directly for passage of this bill. The unit provided information on the issue to some judges who lobbied independently in favour of the bill, and gave information for several articles that appeared in the local media.

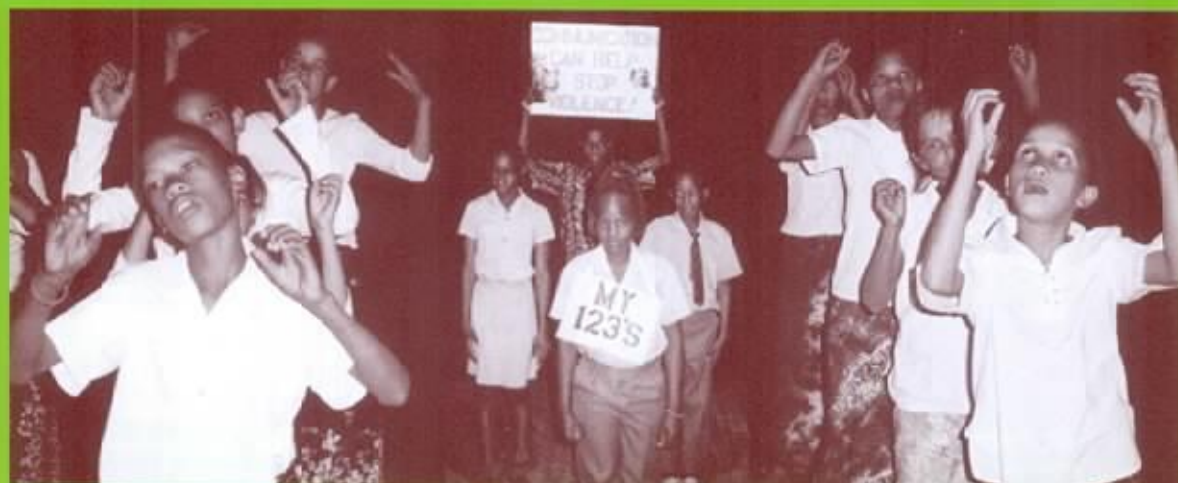
GR&AP had several meetings with a group organised by the Office of the Prosecutor-General to advise on court arrangements to assist vulnerable witnesses. The Victim Friendly Sexual Offence Court Room at the Katutura Regional Magistrates' Court was officially launched in 2003.

The Vulnerable Witnesses Bill, now known as the Criminal Procedure Amendment Act, was passed by Parliament late in 2003.

## Rape

The project of publishing the six rape protocols (for police, social workers, magistrates, prosecutors, medical practitioners and accused perpetrators) as a package could not be finalised as planned. Despite intensive efforts on our side, the unit was not able to secure official approval of the medical protocol,





*A book of poetry against domestic violence by local author Petrus Hakskeen was launched on the Day of the African Child. At the occasion, hearing-impaired children presented a play on communication. The message was that good communication is one way to prevent family violence.*

which is crucial in terms of both evidence and health concerns. The unit plans to take a different route in 2004 by publishing an unofficial booklet of what the public can expect from service providers in this regard.

Despite this setback, the other rape protocols have been influential. In particular, the police and social work protocols appear to have influenced the response in these professions. Lobbying the Ministry of Home Affairs to make the police guidelines into formal police directives on rape is ongoing.

GR&AP has been concerned that the revised J-88 form used to record information from the medical examination of a rape complainant, was not yet widely available. The unit assisted the Office of the Prosecutor-General with revising the form to suit the new act. The problem was taken up with this office and the Women & Child Protection Units. GR&AP will monitor the situation until the forms are distributed more effectively by government. A plan to monitor the effectiveness of the Combating of Rape Act has been postponed due to a lack of staff capacity.

## Children's legislation

GR&AP served throughout the year on a Task Force assembled by the MWACW to refine the Children's Status Bill and the Child Care and Protection Bill. The unit provided background research on several new issues, including:

- child-centred terminology
- sterilisation of mentally deficient children

- the age of consent to medical operations and treatment
- issues relating to places of safety in these bills and in the Child Justice Bill
- interim measures which could facilitate inter-country adoption of children already in the care of foreign foster parents, pending the anticipated adoption of the 1993 Hague Convention on Inter-Country Adoption.

GR&AP served as an informal secretariat for the group by summarising and recording policy decisions for the benefit of the legal drafters.

On the key issue of social welfare grants to children, LAC facilitated arrangements for a study on problems with the existing system and possible economic and administrative models for future grants systems.

GR&AP provided comments on several drafts of the government's Orphans and other Vulnerable Children (OVC) policy in view of harmonising it with the children's bills.

## Poverty

GR&AP has worked with IPPR on strategies to stimulate public discussion on better welfare grant systems for Namibia – particularly the possibility of a Basic Income Grant (a monthly grant to every person in the coun-





*Petrus Hakskeen, author of 'Cry the Abused Mother and Child' poses with artist Nicky Marais in front of the children's artworks from which several were chosen to illustrate his book.*



*The women's march to urge parliamentarians to pass the Combating of Domestic Violence Bill early in the year once again showed how Namibian women unite for a cause.*

try, which could be phased in beginning with children). IPPR is doing a study for the Ministry of Women Affairs and Child Welfare on grant systems as a means to alleviate poverty.

The unit participated in a briefing to the UN Technical Committee on Poverty on the interplay of private maintenance and maintenance grants, and on possible grant options for Namibia. The idea of a Basic Income Grant is being introduced to NGOs through meetings and articles, with discussion of this topic intended to intensify once the IPPR report is finalised and made public.

## Shadow CEDAW report

The unit attended three consultative workshops on the government's draft CEDAW report and provided written comments to the Ministry. Finding that subsequent drafts still omitted pertinent points (both positive and negative developments), the unit decided to write a shadow NGO report. The junior legal researcher therefore attended a SADC regional workshop on NGO shadow reporting in respect of international conventions. A draft will be circulated to NGOs for input and finalised early in 2004.

## Sex workers

After consulting the various attorneys and advocates involved in sex work cases in Namibia and South Africa, it appeared to be strategically unwise to pursue any of the sex work cases at hand in Namibia at the present time. Further action in the arrest cases handled by LAC was also not deemed to have sufficient chance of success.

The unit undertook some follow-up actions to the 2002 research. It is currently seeking funding to prepare an information booklet on rights and health issues for Namibian sex workers, as a strategy towards further empowerment. It furthermore arranged for the Stand Together group of sex workers to be interviewed for a study on school fees by UNICEF and NEPRU, as many women in this group reported problems with obtaining exemptions. The 30 women who were interviewed had about 50 children in their care who were not in school.

Ongoing contact with individual sex workers is difficult, as their addresses are often not fixed, and their allegiances to groups change frequently. The unit continued to give legal advice to individual sex workers on occasion, on issues such as maintenance.

## School fees

Problematic issues relating to school fees came up repeatedly during the Task Force meetings on children's legislation, and in meetings with sex workers. In response, GR&AP is in the process of drafting a research document on the meaning of the right to education in the Namibian Constitution. This is being done in consultation with Huricon, as it may feed into their larger project on socio-economic rights.



## Customary law

Intensive efforts to engage a consultant to focus on issues relating to customary law were unsuccessful. A funding proposal has been written for a trainee lawyer in this area and for a trainer with appropriate expertise to be seconded from the region.

## Domestic workers

In the period under review a local newspaper reported that "government plans to introduce a minimum wage for domestic workers" as a follow-up to the Presidential Commission to which GR&AP made submissions several years ago. The unit will monitor this development to see if further interventions are needed.

## Publications

- *Guide and Summary to the Combating of Rape Act* – re-prints in English and Afrikaans, translations into Oshiwambo, Otjiherero, Rukwangali, Khoekhoe-gowab-Nama/Damara & Silozi.
- GR&AP is in the process of drafting further educational material on the Combating of Domestic Violence Act and the Maintenance Act.
- A poetry book illustrated by school students, *Cry the Abused Mother and Child*, was published by the LAC. The poems were written by Petrus Hakskeen and the best illustrations by students from three schools in different parts of Namibia were used. The launch of the book formed part of other lobbying activities in celebration of the Day of the African Child, 16 June. Copies have been sent to all secondary schools in Namibia.
- The National Democratic Institute and GR&AP are in the process of publishing an advocacy manual aimed at NGOs and grassroots-based groups. The unit is responsible for research, writing and workshop facilitation with regard to this project and one 'testing of content' workshop was held towards the end of the year with 30 NGO representatives.
- The sex work research report, *Whose Body Is it?* has sold out but is available in full on the LAC website.
- A draft research report on sexual harassment, including field research with companies and institutions was completed. The report will be published early in 2004.
- *Namlex Update 2002/03*. This update covers statutes through June 2003 and case law through 2001. It was made available to the public in October 2003. This version included inputs from the Ministry of Foreign Affairs to improve the accuracy and completeness of

the international section. Although more frequent updates would be convenient for users, the tremendous amount of work involved to make the information accurate makes this unrealistic for the LAC.

## Videos

- *Whispers in the Wind* (locally produced video on domestic violence and HIV)
- Five animated shorts on child abuse completed and aired on NBC

All videos produced by the unit are sent to the Ministry of Information and Broadcasting for screenings throughout the country as part of their information-sharing programmes. GR&AP is in the process of writing discussion guides for its videos for training purposes.

## Radio, newspapers and periodicals

- Several interviews have been granted to a number of radio stations and newspapers on the general work of the unit, domestic violence, abortion, and the relevant bills that went to Parliament.
- An article on the study *Whose Body Is It?* was published in *Research for Sex Work*, an annual publication on HIV prevention and health promotion for sex workers.
- Three articles for the newsletter of Ombetja Yehinga (an AIDS awareness groups active in several rural areas) on faithfulness and the law, domestic violence and abortion were written.

## Networking

- The Multi-Media Campaign on Violence Against Women and Children network was revived in 2003 and has been the main vehicle for coordinating lobbying around domestic violence, maintenance and vulnerable witnesses legislation. GR&AP has liaised closely with this network.
- GR&AP staff assisted the Multi-Media Campaign on Violence, School Net, Sister Namibia and the Namibian Girl Child Organisation with drafting of constitutions and deeds of trust.



## The GR&AP conducted these workshops/presentations in 2003:

| TOPIC   | TARGET GROUP   | PARTICIPANTS | w/p | PLACE                   |
|---|--|--------------|-----|-------------------------|
| Gender rights in the Namibian context                                   | USA university visitors: students, faculty members                     | 33           | p   | Windhoek                |
| Introduction to gender concepts   | Forum of African Women in Education members                            | 12           | w   | Windhoek                |
| Rape and domestic violence  | police officers - different ranks                                      | 30           | w   | Police Training College |
| Rape and domestic violence  | Trainers from Namibian Women's Manifesto Network                       | 60           | p   | Windhoek                |
| Use of media for advocacy   | MISA and various NGOs  | 20           | w   | Windhoek                |
| Rape and domestic violence  | police training: police officers local & SADC                          | 30           | p   | Police Training College |
| Rape & abortion, legal issues, how to assist rape survivors sensitively | medical professionals from state hospitals and clinics in Namibia      | 30           | p   | Windhoek                |
| Panel discussion: Property-grabbing & Inheritance                       | general public at LAC 15th anniversary                                 | 30           | p   | Windhoek                |
| Domestic violence panel discussion                                      | Namibian Women's Manifesto Network: Training of Trainers               | 60           | p   | Windhoek                |
| Domestic violence: the new law  | Women and Child Protection Units: police officers                      | 30           | w   | Windhoek                |
| Advocating for rural empowerment - LAC plans for advocacy manual        | NID symposium for civil society grantees                               | 50           | p   | Windhoek                |
| Gender, Patriarchy and Power - comments on presentations                | Symposium on 'Futures for Southern Africa'                             | 30           | p   | Windhoek                |
| Domestic violence & Maintenance - new laws                              | Lifeline/Childline counsellors   | 30           | w   | Windhoek                |
| Gender tools & gender training  | Gender Trainers' Network   | 12           | p   | Windhoek                |
| Combating of Domestic Violence Bill                                     | members of Multi-Media Campaign on Violence Against Women and Children | 12           | p   | Windhoek                |
| Sex workers' rights & dilemmas  | National Conference of the Social and Auxiliary Workers' Board         | 100          | p   | Windhoek                |
| Domestic violence: the new law  | police officers - different ranks                                      | 30           | w   | Police Training College |
| Gender policy recommendations for SADC                                  | Women's Action for Development regional workshop                       | 150          | p   | Windhoek                |

\* w/p stands for workshop or presentation



# Promoting access to justice and a human rights culture through litigation and education

## The work of the Human Rights and Constitutional Unit, Huricon

Namibian laws have not been sufficiently revised to incorporate the ideals of the Namibian Constitution or those of regional and international covenants ratified by government. Government officials and ministries have also not fully incorporated the ideals of the Constitution into practical application. A human rights culture has not been fostered and nurtured by government. The majority of the Namibian population does not have access to the law in order to challenge unconstitutional practices and unequal treatment. A large number of government officials do not have sufficient knowledge or understanding of human rights. These are the realities, which Huricon, together with the other units of the LAC address. Huricon in particular does this through test cases, human rights education, applied research into economic, cultural and social rights and the training of candidate legal practitioners. The strategic value of using test cases and impact litigation is that it restricts the future violation of rights and compensates a client for a past violation.

The unit is faced with increased litigation and a shortage of personnel with no funding to employ more legal practitioners. The unit hosts interns whenever possible to assist with research.

Toni Hancox is Coordinator of the unit and Beatrix Greyvenstein the senior project lawyer. Linda Dumba was admitted as a legal practitioner in April and shortly thereafter transferred to LEAD. Erenstine Kalomo was shared between the ALU and Huricon as a candidate legal practitioner. Werner Boesak left the unit and the LAC at the end of 2003. Ilda Lomba assists the unit with administrative functions in between her duties to the CJP and LEAD. The unit shares an intern from the Netherlands (a trainee judge) with GR&AP.

## Litigation

The unit finalised 73 files and opened a further 87 files during the year under review. At present, the unit is dealing with 357 matters.

Some of the more interesting cases are referred to below:

## Constitutional rights

### Caprivi detainees

The unit is still dealing with these matters in which approximately 135 persons instituted civil actions against the security forces (Minister of Home Affairs and Minister of Defence) for assaults and/or unlawful arrests and detentions and/or denial of medical treatment. In seven of the cases government made settlement offers before trial, which were accepted.

A further ten cases proceeded to a pre-trial conference in December, where after trial dates can be obtained in early 2004. These matters will hopefully be set down for trial by the middle of next year. All the detainees experience financial difficulties after spending more than four years in prison. Therefore Huricon considers it vitally important for these compensation claims to be finalised.

However, the Caprivi High Treason trial has in the meantime commenced and the civil matters can only be set down when the High Court does not hear the criminal matter in Grootfontein, as most plaintiffs and witnesses are involved in the criminal trial. Should the criminal matter be transferred to Windhoek (there are rumours that such an application will be brought in the criminal matter), it will be easier to set the civil matters down.

## Pension claims

The unit is assisting 30 Caprivi detainees who are claiming pensions and other benefits from the government. They were employed as civil servants before their arrests. Some of them have received pension payouts, but did





*Some of the alleged Caprivi secessionists after a court appearance in Grootfontein. This mammoth case has been dragging on for many years.*

not receive leave and other benefits. Others were informed, "In the wake of the Caprivi armed rebellion, payments to staff involved have been suspended". After discussions with the Government Attorney, it was agreed that the discharged persons were entitled to their pension and outstanding leave compensation.

Three of the suspects employed by the Ministry of Home Affairs and who were on suspension pending the outcome of the criminal proceedings, have recently been dismissed. It would appear to constitute unfair dismissals in that no disciplinary hearings were held.

### Prison assaults

Huricon represents twelve suspected secessionists who claimed that they were assaulted in prison by the authorities. The matter was heard in court but was postponed to 2004. Huricon has since decided to try and settle the matters out of court since it was so difficult to secure a court date that would suit all those concerned. Our clients have agreed with the decision and negotiations with the Government Attorney's office are underway.

### Corporal punishment: "U" minor

The mother of a school pupil laid a claim against the Ministry of Basic Education, Sport and Culture because a teacher assaulted her son with a hard plastic pipe. Corporal punishment in schools is in conflict with Article 8 of the Namibian Constitution. Summons will be issued early in 2004 against the teacher and the Ministry.

### Access by fathers to children born out of wedlock: Joseph M Shikongo

Client wanted to apply for custody of his daughter born out of wedlock. The daughter was in foster care of her grandparents without his consent after her mother had died. The provisions dealing with "illegitimate children" in the Children's Act of 1960 discriminate against fathers of children born out of wedlock, and against children born out of wedlock. The provisions are therefore unconstitutional in terms of Article 10 of the Constitution.

After careful consideration of all the facts the unit had advised the client not to proceed with an application for custody, but to try and obtain reasonable access to her through negotiations with her maternal grandparents. This was however, unsuccessful and the unit addressed a final letter to her grandparents demanding access. In light of a new law that has been drafted to replace the old Children's Act it might not be necessary to go to court with this case. Huricon is furthermore dealing with two other matters regarding the rights of children born out of wedlock.

### Right of husband to take wife's surname: Michael Müller

Huricon continued putting pressure on government to act in accordance with a decision by the UN Human Rights Committee so that it can be seen that government concedes to international instruments it has ratified.

### Ethnic identity: Wilma Isaacks

This case involved the use of a photograph on a telecard without the permission of the two people who appeared in the photo. The advertising agency involved at last settled this matter out of court and paid damages to the client and her grandmother. They also published an apology in two newspapers for the alleged derogatory description of Nama people, a caption that accompanied the photo.



### Police shot client: F Alweendo

A police officer allegedly shot the client, who was engaged in a brawl, in her leg in order to stop a fight. The client will suffer permanent repercussions as a result of the shooting. Client has firm medical evidence of this and if no settlement offer is forthcoming, the case will proceed to trial in 2004.

### Unlawful arrest: J S G

The client, a pensioner from Rehoboth, was arrested with another person whom the police suspected of dealing in illegal substances. While held in custody other prisoners repeatedly sodomised the client over a period of five days. He lost consciousness and was hospitalised as a result of this. The unit is suing government for unlawful arrest and for failing to ensure the safety of an awaiting trial prisoner in their care.

### Labour Act: P R Meintjies

Judgement was finally handed down in this labour matter. It is an important judgement for employees in Namibia. The court confirmed that it was not competent for an employer to give an employee notice, in terms of section 47 of the Labour Act, without providing a reason/s. Should the employee not accept the reason/s for the notice, proper disciplinary proceedings must follow failing which the employer will be guilty of an unfair dismissal in terms of section 45 of the Act. Leave to appeal this decision has subsequently been granted to the employer.

### Beatings by police: A T

The police allegedly beat two minors (children of the client) into confessing that they had stolen money. Damages are being sought on their behalf.

### Unlawful detention: J D Sikunda

The unit has taken over this matter from another attorney after client's funds were depleted. This is a damages claim against government for a lengthy period of unlawful detention, which was exacerbated by the fact that even a court order could not convince the Minister of Home Affairs to release client.

### Medical negligence

Since the unit's decision to deal with matters of medical negligence, requests for assistance have flooded in and Huricon presently deals with a number of these cases.

### Three are referred to below:

#### S Vilander

This is a case of a woman who fell pregnant 18 months after she was sterilised by a state doctor in a state hospital. The client is suing for maintenance.

#### "E" minor and another

The unit instituted a claim against the Minister of Health and Social Services for negligent medical treatment client received from one of the doctors in their employ. The doctor is cited as the second defendant. Summons was issued for pain and suffering as well as medical expenses.

#### M Esterhuizen

Client's vocal cords were damaged during an operation to remove her goitre, after which corrective surgery had to be done. Client lost her job as a result of her medical condition and her house was re-possessed. An attempt will be made to settle this matter amicably in order to avoid a lengthy and arduous court process for both parties. Otherwise the matter will proceed to trial.

### Education and training

Candidate legal practitioners: During the period under review one candidate legal practitioner completed her studies with the Justice Training Centre and was admitted as a legal practitioner. Training of the candidates entails much support and assistance from the unit's other staff. The candidates complete a one-year course at the Justice Training Centre and obtain practical training through their attachment with the unit. The training necessitates close supervision on the part of the admitted legal practitioners.

The unit holds regular meetings to ensure that important changes in the law and definitive court cases are brought to the attention of all candidates and legal practitioners. It is also here where decisions are made about cases that should be taken aboard.



## Screening

Possible clients are screened on a daily basis with a view to identifying truly important cases and needy clients. Although this is a very time-consuming and sometimes frustrating task, it is perceived as important in view of the fact that the LAC is the only public interest law firm in Namibia. The screening process affords needy clients a forum for being heard, even if the only action taken thereafter is to refer clients to offices where they can seek further help.

## Networking, research and publications

Huricon's coordinator is a trustee of the Hoofbeats Trust, Archillen Gawanab Trust and Maria Geelbooi Trust. She is also the secretary to the newly established Professional Arbitration and Mediation Association of Namibia (PAMAN). The coordinator serves on the board of trustees of the Children's Hope Project, concerned with early childhood development and she is a member of the Coalition for Responsible Drinking in Namibia. The coordi-

nator regularly meets with the Inter-ministerial Committee on Human Rights to be briefed on the extent and progress of Namibia's reporting requirements in terms of regional and international instruments.

The intern is busy completing research on the right to primary education. Huricon published a booklet on torture, which was printed in seven languages. The booklet, together with t-shirts, balloons, pins and other literature were disseminated on 26 June, which is the International Day against Torture. Huricon

also developed training materials for the Ministry of Regional and Local Government and Housing and finalised a pamphlet on the activities of the unit.



*Huricon published a booklet on torture which was printed in seven languages.*

## Huricon attended/conducted these training events in 2003

| TOPIC  | TARGET GROUP  | PARTICIPANTS | W/P    | PLACE      |
|--|---|--------------|--------|------------|
| Arbitration course   | Legal practitioners, HR officials, unions                               | 20           | w      | Windhoek   |
| Speed reading course   | Legal practitioners, managers, deputy directors, other professionals    | 12           | p      | Windhoek   |
| Strategic Planning 2x  | LAC staff   | 14           | w      | Windhoek   |
| A human rights commission in Namibia                             | various stakeholders - govt. & civil society                            | 18           | p      | Windhoek   |
| Advanced international human rights                              | Raoul Wallenberg Institute  | 24           | course | Sweden     |
| Advanced international human rights                              | University of Pretoria  | 20           | course | Pretoria   |
| Legal aid workshop   | Lawyers, students, staff of legal aid clinics - various nationalities   | 20           | w      | Canada     |
| The role of the defence lawyer - three sessions                  | Police Training College   | 50           | p      | Windhoek   |
| Trial advocacy course  | legal practitioners   | 40           | course | Okahandja  |
| Legal aid workshop   | Officials from Legal Aid Directorate & office of the Prosecutor General | 19           | w      | Swakopmund |
| Combating Domestic Violence Act & the role of the defence lawyer | Police Training College   | 50           | p      | Windhoek   |

\* w/p stands for workshop or presentation



# Making the law accessible to communities

## The work of the Legal Education Unit, LEU

The Legal Education Unit aims to ensure that the Namibian Constitution, in particular Chapter Three (the Bill of Rights), and other laws having a bearing on human rights become public property. Its work is towards a civil society that upholds and maintains a human rights culture. LEU establishes strategic alliances and networks with a number of government ministries, agencies, NGOs and community-based organisations to ensure that its work reaches a maximum number of beneficiaries.

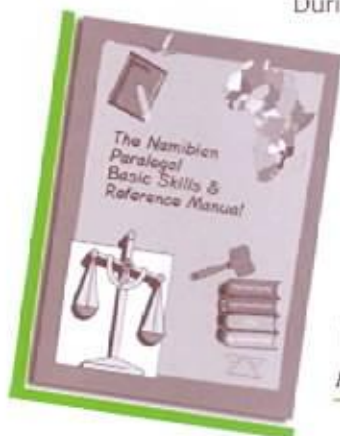
The unit is currently staffed by John Nakuta (Coordinator) Julia Shuuya, Senorita Gases, Trudie Narimas, Ruth Hekandjo, Josua Vaendwanawa and Aloysius Katzao. Lena Haarmann from Germany joined the unit as an intern. She was mainly involved with materials development and assisted Siballi Kgobetsi with the production of LEU's weekly radio programme "Your Rights Today" on Katutura Community Radio.

The unit ran four programmes in 2003, namely:

- Community Paralegal Volunteer Training (CPVT)
- Civic and Voter Education (CVE)
- Human Rights Awareness Project
- KCR radio programme: *Your Rights Today*

## Community Paralegal Volunteer Training

### Materials Development



During the period under review a *Paralegal Basic Skills and Reference Manual* was produced, printed and distributed to paralegals. A resource manual for paralegals was finalised towards the end of the year.

### Assistance to the Namibia Paralegal Association

The association was officially registered in 2003, in terms of the National Welfare Act of 1965 as amended by Act 9 of 1993. LEU assisted the association with writing funding proposals and also helped with organising logistical matters in setting up an office.

## Training

Paralegal training for the Kwe, !Xoo, Ju/Hoan and Hai//om San communities have taken place. The San community opened an office in Outjo and some paralegals successfully took up cases in Grootfontein. A paralegal desk was established at Gobabis through the Omaheke San Trust (OST). Another desk is to be opened at Tsumkwe and in Western Caprivi.

Paralegal training was given to the Windhoek Rural Women Support group. Human rights training was given to prison staff from various prisons.

The last group of the Omaruru paralegals received advanced training early in the year. Two regional conferences (north west, Kavango and Caprivi) were held with paralegals from those areas. Several follow-up training workshops were held for paralegals from Khomas, Omaheke, Hardap and Erongo regions.

Representatives from LEU's funding partners, the Swedish & Finnish embassies visited paralegals in Ondangwa, Outjo, Okakarara, Oshakati, Oniipa and Omuthiya to familiarise themselves with the work and challenges of the para-legals. Paralegal offices are currently operational in the following towns: Omaruru, Okakarara, Outjo, Omuthiya, Ondangwa, Oshakati, Sauyema, Rundu and Mariental.

## Civic and Voter Education

The LAC, the Electoral Commission of Namibia (ECN) and the Namibia Institute for De-



mocracy (NID) signed a Memorandum of Understanding in 2002 to conduct a joint three-year civic and voters education campaign. The aim is to reverse the trend of declining voter participation. In view of the Second General Voter Registration campaign in 2003 and Regional and Local Government, National Assembly and Presidential elections scheduled for 2004, LEU produced a training manual to be used by the civic and voter educators.

Part one of the manual deals with general civic education and cover topics such as essential features of a democracy, democratic elections, the voting system in Namibia and developing political tolerance. Part two deals with voter education and contains practical lessons. Pre-testing workshops were held to test whether the manual was user-friendly and whether its content was appropriate for the educational level of the educators.

A total of 251 paralegals from all thirteen political regions were trained as Civic and Voter Educators. Since their training the educators have held 450 information meetings and 100 workshops in their communities. Special efforts were made to train women, persons with disabilities and representatives from San communities as educators. This is in line with an objective of the unit to mainstream gender and minority issues in our activities.

## Human Rights Awareness Project

It can be said that this project is the backbone of the unit's work. Full time legal educators stationed in Windhoek, Keetmanshoop and Ongwediva are employed to educate through workshops, conferences and semi-

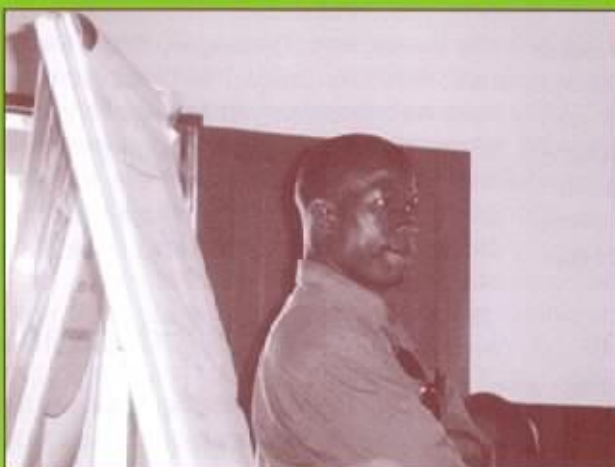
nars. A thematic overview of their training include workshops on:

- Combating property grabbing through the writing of a will
- Matrimonial property regimes
- Domestic violence
- The status/standing of customary law and the exercise of traditional authority within the parameters of the Namibia Constitution and the Traditional Authorities Act
- Communal Land Reform
- Paralegal training
- Civic and Voter Education
- Parliamentary democracy
- Conservancies
- Social security
- Human rights education

## Radio programme: *Your Rights Today*

The Katutura Community Radio (KCR) started broadcasting again towards the end of the year, but a lot of work went before its re-launch, such as setting up new structures and equipment. The LEU has been actively involved in this process. The LAC has a 30-minute slot on Wednesdays to produce its own magazine programme and the unit was tasked to do it. A team of representatives from all the units ensures that the issues covered are reflective of the aims of the LAC.

*Several follow-up training workshops were held for paralegals from Khomas, Omaheke, Hardap and Erongo regions. Over the years LEU has trained several hundred paralegals.*





# Promoting restorative justice for children in conflict with the law

## The work of the Child Justice Project, CJP

CJP aims to help develop and support programmes that divert child offenders away from jails in a just manner, and contribute to crime prevention programmes for the youth.

Celeste Zaahl is the Coordinator. Mona-lisa Zatjirua, Amelia Musukubili and Vilyo Ndapopiwa are Social Workers at the unit. Ilda Lomba is the Project Assistant. Ndafu Hambira is the intern social worker for 2004.

## Assessment and Diversion

Social workers of the Ministry of Health and Social Services assess children who are in conflict with the law. Decisions about diversion are made based upon these assessments. CJP experienced many difficulties with the ministry in securing an assessment proc-

ess that fulfills the aims of diverting children from sentences.

It is regrettable that despite the many meetings with officials and training workshops for social workers the system of rotating social workers every six months has not been changed. As a result the CJP came across many incomplete assessments and impractical diversions. Eighty seven cases were not recorded for recommendation due to incomplete assessments. According to the CJP's statistics 299 child offenders were assessed, of whom 41 were girls. Fifty seven children were referred to the Lifeskills Programme, 13 for pre-trial community service, three for counseling and 28 for the Journey Programme. Whenever CJP staff conducted workshops in other towns they usually spent individual time with the social worker of that town to go through the assessment form step by step.

It is envisaged that another approach to assessment, namely the developmental assessment approach, will be piloted in 2004 to find out whether it is more suitable for Namibia.

## Diversion Programmes

### ♦ Lifeskills Programme

CJP organised in-depth training on facilitation and presentation skills during 2002 to equip youth officers in the Ministry of Basic Education, Youth and Sport to take over the Lifeskills Programme for young offenders. In 2003 CJP remained true to its goal of completing the phasing-out and handing over process to the ministry.

### ♦ Pre-trial community service

Some traditional leaders in Ondonga agreed to, after training, serve as supervisors over young offenders doing pre-trial community service. This will benefit children because they can now do the services in their own villages.

### ♦ Journey Programme

One programme was facilitated for 12 boys. We intended to have another for girls, but we couldn't recruit enough girls for a group. The components of the programme are selection/assessment, Lifeskills, the wilder-

*CJP trained volunteers to trace the parents of children who break the law. Here some volunteers pose with their certificates.*





ness/outdoor component, pre-trial community service, vocational training and aftercare. Assessments of 25 children were done over 2 weeks, and the court was informed of the 12 who qualified.

The sessions covered self-concept, decision-making, different types of behavior, preparation for the wilderness/outdoor component through team building, trust building, and solo's. The wilderness component, based on experiential learning, was held at Rock Lodge, and one of their staff took care of the hard skills sessions. The hard skills included hikes, rock climbing, rope exercises and abseiling.

The facilitators paid a lot of attention to trust building. It took some time for participants to bond. They did not like the solo part, as they were alone for long periods and had to reflect on their lives, and make decisions about how to change it. That is seen as the beginning of the healing process. When coming from a solo, a person is very emotional and honest about their lives.

Community service was done over four weeks at two old age homes. Vocational skills training was done at Windhoek Vocational Training Centre. Unfortunately, classes could only be presented in the evening, and the children had to be transported. The boys were enrolled for welding and fabrication and nine received certificates. Three did not attend regularly. One boy re-offended and could not finish. Due to a shortage of staff, after-care was not done effectively.

The Journey Programme should also be phased out to government. A phasing out plan was drawn up and discussions with the Directorate Youth Development are ongoing.

## Lobbying and Advocacy

CJP staff represented the unit on different non-governmental and governmental committees related to children's rights. The Inter-Ministerial Committee on Child Justice met on a monthly basis. Issues discussed were, among others, the draft Child Justice Bill, updating the new Minister of Justice, assessment of certain police cells for suitability to hold children and quality of assessments. Various staff members had media interviews about the Bill and the work of the CJP in general.

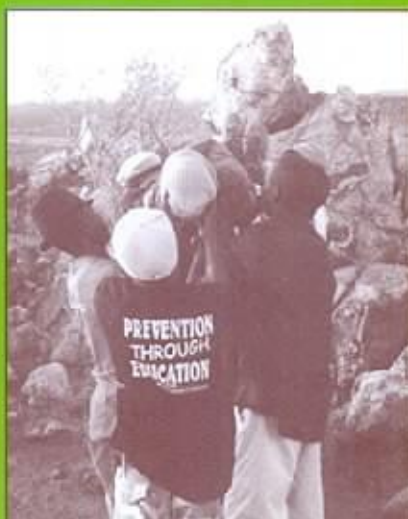
## Monitoring human rights of child offenders

Monitoring for human rights infringements of arrested children was conducted through cell visits and the monitoring form, which is completed during assessment. CJP staff in Windhoek paid visits to cells every second Friday while volunteers did it once a week.

**SUCCESSFUL DIVERSION:** Young offenders who have completed the Journey Programme pose with their vocational training certificates.



Participants busy with a trust building exercise during a Journey Programme







*Social workers and youth officers take a break during training in the details of the Journey Programme.*



*Police officers received training in the concept of restorative justice for child offenders and the importance of a diversion system that works.*

Cell visits in the northern part of the country were done by student social workers. Physical abuse of arrested children in police cells still occurred. Tracing parents of arrested children in Windhoek remained a problem due to transport problems.

A sub-committee of the Inter-Ministerial Committee visited police cells in Katima Mulilo, Rundu, Ondangwa, Oshakati, Tsumeb, Swakopmund, Walvis Bay, Luderitz, Mariental, Windhoek and Keetmanshoop. Their report, with recommendations in relation to international standards, will be available in 2004. It is notwithstanding known that many cells do not meet international standards on hygiene, for example.

But station commanders seemed to be lenient with visits by parents/relatives, and were not restricting them to weekends only. Also, the station commander of Ondangwa initiated transfer of children to his station to ensure that they were kept separate from adults.

The committee visited Elizabeth Nepemba, a prison facility for children near Rundu. Prison conditions of sentenced children were better than those of children detained in police holding cells. We discovered four children, aged 13 years, who served two year sentences for minor offences that could have been diverted. The importance of proper assessments prior to trials became glaringly obvious to the committee. And if diversion options are in place fewer repeat offences occur. The fact that the Child Justice Forums never got off the ground was lamented because they could have been the platforms where different stakeholders coordinated actions.

The sub-committee found situations where serious offenders were not guided to apply for legal representation, a sick boy did not receive medical attention, food

consisted mainly of carbohydrates and soap and toilet paper were not made available. The situation in Lüderitz was particularly worrisome because the town has no social worker. Many children in detention here attempt suicide and children as young as 10 are held in custody.

CJP intervention resulted in children being transferred from Oshakati police station to Ondangwa police station, so that they will not be detained together with adults. The Investigating Unit Commander of Ondangwa appointed two police officers who will in future specifically investigate cases in which children are involved.

## Research and Training

### CJP staff attended these courses and workshops:

- SOLVE course on integrating psycho-social issues such as stress, alcohol and drugs, violence, HIV/AIDS and tobacco into a comprehensive policy.
- Follow-up training of trainers on good prison management, alternatives to imprisonment and access to justice - facilitated by Penal Reform International.
- How to implement developmental assessments successfully.
- International Conference on Sustainable Safety - strategies to reduce crime, prevent violence and create safe environments.



## Crime Prevention

During 2003 the CJP started with work on the implementation and sustainability of crime prevention strategies in schools. The strategies include the school management based methods, (disciplinary methods), environmental modification (security-based measures and indirect behavioural-based method) and educational and curriculum method (the Lifeskills Programme). The CJP would like to see crime education being included in the school curriculum.

## Materials Development

CJP revised the Lifeskills, Pre-trial Community Service, Journey Programme and General Information pamphlets. It was translated into Oshi-ndonga. Translation of the Lifeskills Manual into Oshindonga and Afrikaans will be completed early in 2004. Revision of the Crime Education Manual started during the period under review.

### The Child Justice Project conducted these workshops in 2003:

| TOPIC   | TARGET GROUP  | PARTICIPANTS | W/P | PLACE                              |
|---|---|--------------|-----|------------------------------------|
| Child Justice   | police officers, social workers, youth officers, magistrates, prosecutors | 25           | w   | Grootfontein & Tsumkwe             |
| Child Justice & Crime Education   | police officers, social workers, youth officers, magistrate, prosecutor   | 20           | w   | Rundu                              |
| Child Justice & Crime Education   | police officers, social workers, youth officers, magistrate, prosecutor   | 18           | w   | Katima Mulilo                      |
| Rights of children in prison  | police officers   | 30           | p   | Police Training College - Windhoek |
| The effects of stealing   | orphans   | 12           | p   | children's home - Windhoek         |
| Juvenile Justice  | UNAM students   | 14           | p   | Windhoek                           |
| Child Justice   | police officers, social workers, youth officers, magistrate, prosecutor   | 30           | w   | Oshakati                           |
| Child Justice   | police officers, social workers, youth officers, magistrate, prosecutor   | 30           | w   | Rehoboth                           |
| Child Justice   | Rehoboth police   | 65           | w   | Rehoboth                           |
| Human Rights  | Officials from Ministry of Prisons and Correctional Services              | 30           | w   | Windhoek                           |
| Draft Child Justice Bill  | public - part of LAC at 15 anniversary programme                          | 60           | p   | Windhoek                           |
| Crime Education   | guidance teachers, regional councillors                                   | 41           | w   | Oshakati                           |
| Rights of children & the Liquor Act                                       | public  | 50           | p   | Rehoboth                           |
| Child Justice   | police officers, social workers, youth officers, magistrate, prosecutor   | 30           | w   | Gobabis                            |
| Child Justice & involvement in pre-trial community service as supervisors | traditional leaders   | 57           | w   | Oshakati                           |
| Diversion programmes and selection procedures                             | social workers  | 10           | w   | Windhoek                           |

\* w/p stands for workshop or presentation



**THE LEGAL ASSISTANCE TRUST OF NAMIBIA**  
**CONSOLIDATED INCOME SHEET AS AT 31 DECEMBER 2003**

| <b>DONATIONS RECEIVED</b>                      | <b>2003</b>       | <b>2002</b>       |
|--|-------------------|-------------------|
| Africa Group Of Sweden                         |                   | 57,000            |
| Agency de Francais                             | 7,230             |                   |
| ARASA  | 150,000           |                   |
| Austrian Agency for International Development  | 137,631           | 252,803           |
| Barlow World                                   |                   | 10,000            |
| Bischoffliches Hiltswerk Misereor              | 337,383           | 566,292           |
| Canadian Lawyers' Association                  |                   | 10,445            |
| Catholic Aids Action                           | 500               |                   |
| Embassy of Finland                             | 802,661           | 217,500           |
| Embassy of France                              | 50,000            |                   |
| Embassy of Germany                             | 10,000            |                   |
| Embassy of Sweden                              | 3,740,701         | 2,817,816         |
| European Union                                 | 73,325            | 1,704,082         |
| Evangelischer Entwicklungsdienst               | 914,883           | 899,643           |
| FAHAMU   | 21,927            |                   |
| Family Health International                    | 490,636           | 794,266           |
| Ford Foundation                                | 1,323,853         | 787,835           |
| Franco Namibian Cultural Centre                | 25,000            |                   |
| Friedrich Nauman Foundation                    | 5,099             |                   |
| German Development Services                    |                   | 75,400            |
| GTZ Support                                    | 27,200            |                   |
| HIVOS  |                   | 651,115           |
| Horizon T3000                                  | 1,313,714         | 357,429           |
| Legal Shield                                   |                   | 44,540            |
| Medical Research Council                       | 40,637            |                   |
| Namibia Nature Foundation                      | 236,521           | 178,672           |
| NID Advocacy                                   | 289,097           |                   |
| North / South Institute for Development        | 333,536           | 2,719,226         |
| Pupkewitz Holdings                             | 1,000             | 1,750             |
| Royal Netherlands Embassy                      | 100,130           | 258,700           |
| SAFAIDS  | 15,690            |                   |
| SALSLEP  | 441,987           |                   |
| Standard Bank Of Namibia                       |                   | 3,000             |
| SWAPO Khomas                                   | 600               |                   |
| The Bridge                                     |                   | 44,819            |
| UNESCO   | 4,400             | 120,000           |
| UNICEF   | 70,000            | 73,000            |
| United Nations - Violence against Women        |                   | 373,985           |
| US Embassy - International Day Against Torture | 28,000            | 47,502            |
| World Health Organisation - Domestic Violence  | 32,116            | 158,908           |
| <b>TOTAL DONATIONS</b>                         | <b>11,025,457</b> | <b>13,225,728</b> |



**THE LEGAL ASSISTANCE TRUST OF NAMIBIA**  
**CONSOLIDATED INCOME SHEET (CONTINUED)**  
**AND EXPENSES SHEET AS AT 31 DECEMBER 2003**

| <b>OTHER INCOME</b>                             | <b>2003</b>       | <b>2002</b>       |
|---|-------------------|-------------------|
| 15 <sup>th</sup> Anniversary expenses recovered | 60,602            |                   |
| Bookeeping and Management fees                  | 419,985           | 264,889           |
| Labour manuals, booklets and manuals            | 30,812            | 46,240            |
| Profit on sale of motor vehicles and equipment  | 163,773           | 6,430             |
| Insurance claims                                | 1,050             |                   |
| Interest received                               | 145,340           | 275,761           |
| Legal fees recovered                            | 216,267           | 2,232             |
| Photocopy income                                | 112,237           | 138,153           |
| Presentation Income                             |                   | 3,000             |
| Rent received                                   | 263,353           | 213,595           |
| Transport charges received                      |                   | 78,283            |
| Reprinting of San reports                       |                   | 12,504            |
| Sundry Income                                   | 128,167           | 131,405           |
| Advocate fees reimbursed                        | 79,101            |                   |
| <b>TOTAL OTHER INCOME</b>                       | <b>1,620,687</b>  | <b>1,172,492</b>  |
|   |                   |                   |
| <b>TOTAL INCOME</b>                             | <b>12,646,144</b> | <b>14,398,220</b> |

| <b>EXPENSES</b>                          | <b>2003</b>       | <b>2002</b>       |
|--|-------------------|-------------------|
|  |                   |                   |
| Windhoek - Core                          | 4,591,969         | 4,646,730         |
| Gender Research & Advocacy               | 848,996           | 1,754,072         |
| Child Justice Project                    | 1,007,117         | 1,084,946         |
| Human Rights & Constitutional litigation | 1,680,669         | 1,684,501         |
| Community Paralegal Training             | 911,214           | 785,681           |
| Aids Law Unit                            | 1,555,142         | 1,842,810         |
| Land Environment & Development           | 1,384,583         | 1,195,578         |
| Civic & Voters Education                 | 1,062,716         |                   |
| Oruano Artist Union                      | 419,700           |                   |
| Land Rights Central North Namibia        | 827,634           |                   |
| <b>TOTAL</b>                             | <b>14,289,740</b> | <b>12,994,318</b> |
|  |                   |                   |
| <b>SUPLUS / (DEFICIT)</b>                | <b>-1,643,596</b> | <b>1,403,902</b>  |