

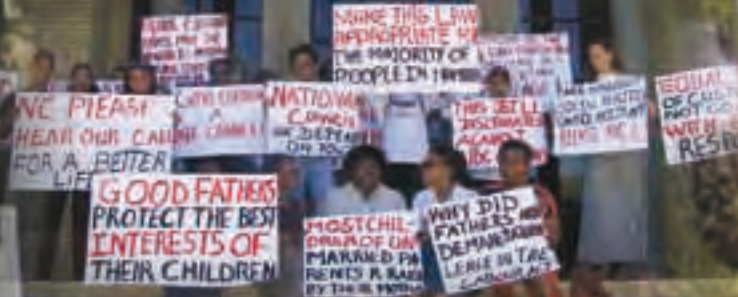


LEGAL
ASSISTANCE
CENTRE

LAC

ANNUAL REPORT 2006

18 YEARS
AT THE
HELM OF
HUMAN RIGHTS
IN NAMIBIA



MISSION

We, the Legal Assistance Centre, being a public interest law centre, collectively strive to make the law accessible to those with the 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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LAT Chairperson
Adv. Dave Smuts, SC



FOREWORD

A fearless, consistent 'watchdog'

The Legal Assistance Centre is truly a remarkable organisation. In over 18 years, it has never strayed from its mission of creating and maintaining a culture of human rights in Namibia. It is fearless and consistent in its role as a 'watchdog' in the protection and advancement of human rights in Namibia, and at the same time, it works with an array of stakeholders and partners, such as the Namibian Government and many non-governmental organisations, on policy and law reform efforts, education and training.

As always in the past, the work of the LAC highlighted in this annual report has demonstrated the Centre's acute understanding of the centrality of human rights in individual lives, and the need to practically entrench human rights in our nascent democracy.

Through the cases taken up in 2006 in which we litigated, and in the research, training and community education project activities undertaken, we have compellingly demonstrated that the law can and indeed does work to effect change towards the goal of social justice for all.

In a society still in political and social transition, with the effects of the apartheid era still apparent and felt, the LAC plays the important role of ensuring that law reform and socio-economic changes in the country are premised in and on

human rights. The Centre will continue to use the law to broadly advance social justice, and particularly to give content and meaning to the array of rights that find expression in the Namibian Constitution.

In this young country which has yet to overcome considerable social, economic and human rights challenges, the LAC plays a pivotal role in ensuring that communities and individuals, who often find themselves beyond the reach and protection of the law, are able to use the law to improve their lives, while at the same time setting legal precedents.

Our work comes with enormous challenges. Resource constraints, an ability to attract and retain skilled staff, and the highly political and strongly contested nature of the work, all require careful management.

The important work we do would not be possible without the support of our donors. On behalf of all the Trustees, I thank them most sincerely. We hope that they remain committed to the work of the LAC and to Namibia.

The dedication and professionalism of the Centre's staff and management are acknowledged and much appreciated. Their commitment to human rights and hard work has ensured that the LAC remains profiled as one of the leading public-interest litigation organisations in Africa and beyond.

Finally, I thank my fellow Trustees for their support in the year under review.

Adv. Dave Smuts, SC
Chairperson
Legal Assistance Trust





A dependable development partner



LAC Director
Norman Tjombe

In 2006 the Legal Assistance Centre (LAC) celebrated its 18th year in existence. As this report reflects, the Centre remains true to its mission of *creating and maintaining a culture of human rights in Namibia*, whether through public-interest impact litigation, information and training workshops, or research, advocacy and lobbying for legislative reform. As such, the LAC is widely recognised as playing a central role in the country's development and democratisation.

The LAC continues to challenge the constitutionality of laws that are clearly in conflict with the Namibian Constitution and international human rights law. Doing this by various means is our primary task.

For instance, a major litigation matter that we pursued in 2006 was that of challenging the outdated common law provision that excludes children born out of wedlock from inheriting from their fathers. This case is ongoing, with a ruling expected in 2007.

In another important case, the LAC is representing the community of Omafo village in northern Namibia, who will be displaced if the Helao Nafidi Town Council goes ahead with its plans to build the country's largest casino and entertainment complex. Land reform is a critical issue in Namibia, and we are seeking to protect the land rights of this community.

In 2005, in response to a request from the Government of Namibia to assist with the drafting of a **National Policy on HIV and AIDS**, our Aids Law Unit commenced with the task of consulting numerous stakeholders across the country for their input. This was a massive task of extreme national importance, as HIV and AIDS constitute a major human rights issue, not only for those infected and directly affected, but indirectly for *everyone* in Namibia, hence very wide consultation on the policy was imperative. Most stakeholders approved the draft policy produced by the ALU in 2006, and the Government ultimately adopted it. It remains for the public to judge

whether the LAC was equal to the task. The Centre will play a major role in the implementation of the policy, including the 'watchdog' role, to help ensure that the Government and other stakeholders fulfil their obligations under the policy.

We view the Government's policy-drafting request as a recognition of the importance of the LAC's work, and of our expertise regarding the links between human rights and HIV and AIDS. But crucially, this request is evidence of a much-improved relationship between the LAC and the Government - an improvement that the Centre has worked very hard to attain. Among government officials and other development stakeholders in the past, there was a common misperception of the LAC as an 'adversary', whereas today the Centre is readily accepted and valued as a **development partner**.

Further confirmation of this partnership was the Ministry of Gender Equality and Child Welfare's commissioning of the LAC Gender Research and Advocacy Project to develop a **Gender Training Manual and Resource Guide** to support the implementation of the National Gender Policy, which publication was completed in 2006.

Furthermore, the LAC's Human Rights and Constitutional Unit is working with the Government to draft a **new law on mental health**. In this undertaking the Centre is focusing strongly on the rights of State President's Patients. This focus is greatly informed by the

numerous cases over the last 10 years in which we litigated for the appropriate treatment of people with mental illnesses who were accused of committing criminal offences and deprived of some of their constitutional rights.

The LAC's Land, Environment and Development (LEAD) Project has contributed a great deal to developing and implementing Namibia's land reform programme - another matter of extreme national importance. In 2006, LEAD started developing an **environmental resource and training manual** that will help the Ministry of Environment and Tourism and the Communal Land Boards to make environmentally sound decisions when dealing with land-related matters in communal areas.

Returning to the matter of HIV/AIDS, our **international impact** is worth mentioning. In August 2006 we attended the **Annual International AIDS Conference** in Toronto, Canada. Prior to the conference, an LAC staff member participated in an expert panel discussion on strategies for raising the profile of HIV/AIDS and Human Rights at the conference itself. The LAC contributions to the efforts at the conference to advocate for a human rights-based approach to dealing with HIV and AIDS had a significant impact. The Centre was well publicised at the conference, not least by means of wide distribution of a T-shirt prominently displaying our name and logo, and bearing the message, "*HIV and Human Rights: Now More Than Ever!*"

Funding remains a critical issue for the Centre. The LAC is the only organisation of its kind in the country, and many factors constantly increase our burden to act, with the attendant budgetary considerations. Prime examples of these factors are that civil society organisations are relatively small and face multifarious operational challenges, the political system is dominated by the ruling party, poverty levels are extremely high across the country, and many people are unaware of both their rights and duties.

Yet, despite an often dire lack of funds for particular activities, the Centre has continued to thrive in every aspect of its work (litigation, research, advocacy, etc.), and that fact is attributable chiefly to the competence, commitment and selflessness of the staff, whom I thank for their outstanding service to the Centre and the people of Namibia.

This review indicates that many of the Centre's activities in 2006 would not have been possible without donor support. Our donors may rest assured that we made prudent use of their generous funding, and that their investment in the LAC was a sound investment in Namibia as a whole. Thus, on behalf of all Namibians, I thank and express deep gratitude to the LAC's donors.

Our activities would also not have been possible without the research informants, workshop participants, clients and others who stood up to be counted when the calls came to protect human rights. We thank them for their contributions, and we hope they agree that the LAC has served their interests well in turn.

The LAC will continue to exist and to pursue the same mission for as long as this mission remains relevant.

Norman Tjombe
LAC Director



The six winners of the first-ever Human Rights Awards for Combating Gender-based Violence in Namibia, flanked by Gender Research and Advocacy Project Coordinator Dianne Hubbard and LAC Director Norman Tjombe. (See pages 24-25 for details on the awards.)

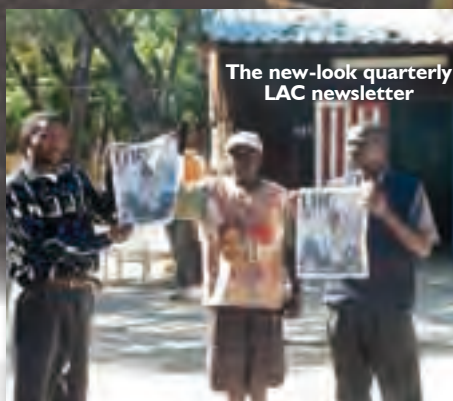
“The LAC is one of the most prominent NGOs in Namibia, has made a huge contribution to the democratisation of the country and continues to play a crucial role in the entrenching of human rights in law and in practice. ...

LAC has been a founding member of NANGOF and has been instrumental in giving this umbrella organisation direction. The fact that LAC's director Norman Tjombe is the chairperson of NANGOF adds to the picture that LAC has a pivotal role for the NGO sector.”

– Michael Bollig and Ruth Hall,
“External Evaluation of the LEAD Project at the LAC”, 2006/07.



Publication launch in the LAC garden



The new-look quarterly LAC newsletter



The LAC Christmas party in 2006



Trustees of the Legal Assistance Trust (LAT)

The LAT oversees the work of the LAC. Most of the Trustees have served on the LAT for several years.



LAT Chair Adv.
Dave Smuts



Dr Sakeus
Akweenda



Mr Nico Hosea
Kaiyamo



Mr Hosea
Angula



Mr Clement
Daniels



Mr Norman
Tjombe



Hon. Wilfried
Emvula



Dr Teopolina
Tueumuna



Adv. Bience
Gawanas



Hon. Ben
Ulunga

- **Dr Sakeus Akweenda**, a legal practitioner, is General Manager of Legal and Corporate Services of the Namibia Power Corporation (NAMPOWER).
- **Mr Hosea Angula** is a practising lawyer and senior partner at a Windhoek-based law firm, Lorentz Angula Inc.
- **Mr Clement Daniels** is the previous Director of the LAC and the current Chairperson of the District Labour Court.
- **Hon. Wilfried Emvula** is Namibia's Ambassador to Ethiopia.
- **Adv. Bience Gawanas**, formerly Namibia's Ombudswoman, is now the African Union Commissioner for Social Affairs, resident in Ethiopia.
- **Nico Hosea Kaiyamo**, formerly a Namibian Parliamentarian, is now a businessman in northern Namibia.
- **Adv. Dave Smuts** is the LAT Chairperson, one of its founding members and the first Director of the LAC. Currently he is a full-time advocate at the Windhoek Bar. As one of its senior members, from time to time he is called to the bench as Acting Judge of the High Court.
- **Mr Norman Tjombe** is the current Director of the LAC.
- **Dr Teopolina Tueumuna** is a medical doctor practising in Windhoek.
- **Hon. Ben Ulenga** is the President of the Congress of Democrats (CoD) and Member of Namibia's Parliament.



Staff of the Legal Assistance Centre (LAC)

We thought that people approaching us for services might appreciate a closer introduction to our team, so each staff member wrote a sentence or two about themselves to accompany the staff photos in this year's report. The only guidance given was that they should say something about their work as well as their personal interests. We hope that the 'quirky' outcome makes us less faceless and more human!

Administration

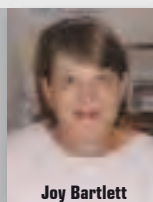
- **Norman Tjombe**, LAC Director, appointed as such in mid 2004, has been with the Centre since 1992, working first as a Law student on an LAC scholarship, and as a lawyer since 1996. He practices martial arts in his spare time.
- **Sophie van Wyk**, Assistant to the Director, has worked for the LAC in various administrative capacities since 1992.
- **Joy Bartlett**, Receptionist and Administrative Assistant, has been with the LAC for over 16 years and is the Centre's longest-serving staff member.
- **Romy Zwirner**, Librarian and manager of the LAC's computer network and website, is an avid cyclist who competes in all of the major cycling competitions in Namibia.
- **Rudolf Gaweseb**, Chief Financial Officer, is also a 'weekend farmer' of goats in Damaraland.
- **Patricia Farmer**, Assistant Financial Officer, has been with the LAC for 12 years, and is studying towards qualifying as a chartered accountant.
- **Anitha van Wyk**, Bookkeeper, has served the LAC in this position for seven years, and plays netball as a hobby.
- **Rudolph Gabriel**, Messenger, is a graduate of the Namibian College of Open Learning (NAMCOL), who wants to study Law to become a human rights lawyer at the LAC.
- **Amalia Shipingana**, Cleaner, enjoys the positive vibes at the LAC and is happy to be part of a family of formidable human rights defenders.



Norman Tjombe



Sophie van Wyk



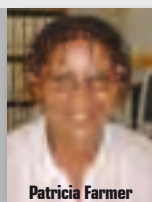
Joy Bartlett



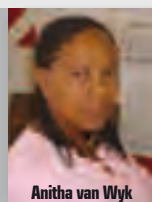
Romy Zwirner



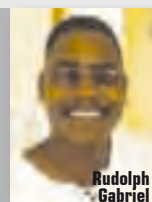
Rudolf Gaweseb



Patricia Farmer



Anitha van Wyk



Rudolph Gabriel



Delme Cupido



Amon Ngavetene



Basilia Ngairo



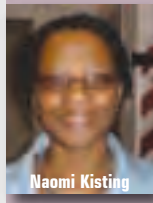
Damoline Muruko



Gabriel Augustus



Dianne Hubbard



Naomi Kisting



Wairimu Munyinyi

AIDS Law Unit (ALU)

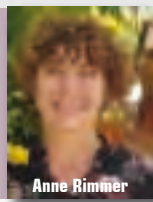
- **Delme Cupido**, ALU Coordinator until October 2006, spends his spare time with his adorable one-year-old daughter Tiger-Anne.
- **Amon Ngavetene**, Legal Educator and ALU Coordinator as from November 2006, is studying for a Law degree through the University of South Africa. He loves nature and regularly camps in the Namib Desert.
- **Basilia Ngairo**, Project Assistant, most enjoys disseminating information on human rights and HIV/AIDS in Namibia's rural areas.
- **Damoline Muruko**, Project Lawyer, loves to travel in her spare time and wants to travel to all the continents before she turns 40!
- **Gabriel ('Gabes') Augustus**, Legal Educator, hails from Namibia's fishing town of Walvis Bay, and hopes to own a fishing company one day.

Gender Research & Advocacy Project (GR&AP)

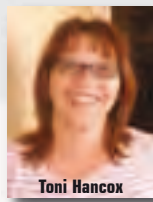
- **Dianne Hubbard**, GR&AP Coordinator, is a graduate of Harvard Law School, who has lived in Namibia for 18 years, working for the LAC for almost as long, and today farming sheep and dairy cows in her spare time.
- **Anne Rimmer**, Training Coordinator, joined the LAC in 2003 after working for Amnesty International as a human rights trainer for 15 years.
- **Naomi Kisting**, Project Assistant, has served the GR&AP since 2001. As a pastor's spouse, she also established the Tanidare Empowerment Centre at her church, where she trained women from her church community on gender-related laws.
- **Wairimu Munyinyi**, a VSO Volunteer, is a Kenyan citizen sponsored by the British VSO programme for a 2-year placement with the GR&AP as a field research supervisor.
- **Mercedes Ovis**, Legal Researcher, has a Law degree from the University of the Western Cape, South Africa, and served the GR&AP until June 2006 on a 2-year contract specialising in research on customary law and rural women.



Mercedes Ovis



Anne Rimmer



Toni Hancox

Land, Environment & Development (LEAD) Project

- **Willem Odendaal**, LEAD Coordinator, joined the LAC's GR&AP in 1999, left in 2003 to study for an LLM in International Law at Oxford Brookes University, and returned in 2004 to take up his present post, studying trees and playing squash in his spare time.
- **Joseph Kahuika**, Paralegal and Client Screener, is studying for his LLB and intends working as a human rights lawyer.
- **Ilda dos Santos**, Project Assistant, is studying for a Law degree through the University of South Africa, and hopes to stay on at the LAC as a human rights lawyer.
- **Shadrak Tjiramba**, Research Assistant, studied Land Management at the Polytechnic of Namibia, and in his spare time is an enthusiastic cattle farmer in eastern Namibia.
- **Roswitha Gomachas**, Project Lawyer, is a graduate of the University of Namibia, whose passion is reading fiction, especially legal thrillers.
- **John Hazam** has worked for over 30 years in African countries with Parks, community-based natural resources management and environmental policies and legislation. Prior to working with the LAC, he was a technical advisor to Namibia's Ministry of Environment and Tourism for seven years.

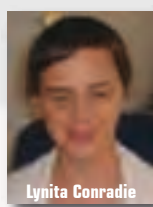
Human Rights & Constitutional Unit (Huricon)

Toni Hancox, Huricon Coordinator and Legal Practitioner, has worked for government and in private practice, but has found her passion in human rights law which helps her "sleep peacefully at night".

Community Paralegal Volunteer Training Project (CPVTP)

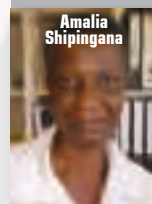
Zeka Alberto, CPVTP Coordinator and previously a Trainee Lawyer for LEAD, first worked as interpreter in the Opuwo Magistrate's Court, and then studied Law at the University of Namibia. He loves travelling in Namibia's Kunene Region.

The Namibian Law Report

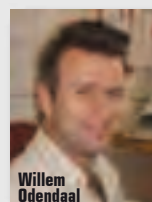


Lynita Conradie

Adv. Lynita Conradie, Editor of *The Namibian Law Report* and In-House Counsel for all LAC units/projects, is also an ordained Methodist minister with two degrees in Theology.



Amalia Shipingana



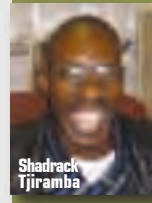
Willem Odendaal



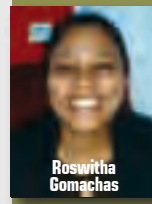
Joseph Kahuika



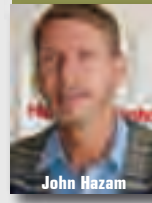
Ilda dos Santos



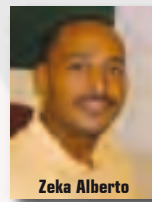
Shadrak Tjiramba



Roswitha Gomachas



John Hazam



Zeka Alberto



OPINIONS FROM OUTSIDE



Justice
Johan
Strydom

During my years on the Bench, first as a puisne Justice and later as Judge-President of the High Court and Chief Justice of Namibia, the LAC was regarded as a fierce champion of the constitutional rights of the people of Namibia. In playing this role, the LAC acted without fear or favour, and on many an occasion it found itself on the wrong side of public opinion and even the Government. This did not deter the organisation from seeking redress, often in the Courts, for those seeking protection of their rights.

The LAC's role, however, is not limited to the protection of the individual. During the first sensitive years of a young democracy, the LAC brought with it the assurance that matters such as Human Rights, the Rule of Law and the Independence of the Judiciary would be zealously guarded.

This, in itself, strengthens the development of a culture of democracy where the rights of others, such as free expression, even in criticism, will in time come to be accepted and tolerated by all.

We still have a long way to go, but then, hopefully, the LAC will also be there for a long time to help us achieve this goal.

– **Johan Strydom**, former Chief Justice of Namibia.



Gwen
Lister

The Legal Assistance Centre is a pivotal force in Namibia's nascent civil society and fragile democracy, and over the almost two decades of its existence, it has contributed greatly to the maintenance of human rights and the rule of law in this country.

When it opened its doors in 1988, it was a welcome move in a country suffering under the jackboot of apartheid, and it served to strengthen and complement the work of *The Namibian*, which had been alone since its founding in 1985, in exposing human rights abuses and fighting for self-determination, equal rights and justice for all.

Since independence in 1990, the LAC's work has broadened into other vital areas, including HIV/AIDS, education, research, law reform, gender, children, land and environmental issues.

While independence has brought many positive changes, Namibia's democracy remains a fragile and vulnerable one, and much still needs to be done to instill this concept in the hearts and minds of our people. The LAC's role remains essential in order to consolidate our hard-won gains.

– **Gwen Lister**, Editor of *The Namibian* newspaper



Helao Joseph Shityuwete

The LAC is not only the defender of the defenceless, the protector of the vulnerables and the voice of the voiceless, but also it is one of Namibia's civil society institutions that is truly independent, non-partisan and non-profit-driven, and one which truly holds the interests of the poor at heart. Throughout its history, the LAC has demonstrated its commitment as an advocate of civil liberties, freedom and justice for all in Namibia. If the LAC's impeccable efforts to carry out its vital social responsibilities are to continue, they must be supported by each and every Namibian. Indeed the country and its people need more LACs – particularly in and for rural communities.

– **Helao Joseph Shityuwete**, Director of the Namibian Former Robben Island Political Prisoners Trust, which sees to the wellbeing of former Robben Island prisoners.



Prof. Sid Haring

I have been most impressed by the way that the LAC is 'out there' on the ground all over Namibia, engaging directly in cutting-edge legal issues as well as legal and policy research on the major human rights issues with which Namibians may be struggling for decades to come – land reform, women's rights, racial equality, HIV, workers' rights and poverty amelioration. During the 10 years that I have worked with the Centre, the dedication, hard work and creativity of the staff have never failed to impress me. Their goal is to create a culture of human rights in Namibia that ensures human dignity and a reasonable quality of life for all. This is a big task, but with support I believe the Centre will continue to make its impressive contribution.

– **Prof. Sidney Haring**, Professor of Law at City University, New York School of Law, and researcher for the LAC's LEAD Project.



Martin Schulze-Allen

Having had the privilege of working with the staff of the LAC, and having experienced first hand a high level of respect as an 'LAC representative' here in Namibia, it is obvious to me that the LAC plays an important role within the Namibian legal community and in Namibian society in general. It is my opinion that the LAC, in its dual role as a defender of individual human rights in Namibia and partner of the Namibian Government in strengthening human rights at both governmental and legislative level, could hardly be replaced by any other organisation in Namibia.

Based on my own professional background and my experience in the area of human rights, I believe that the work of the LAC deserves even more credit during these times of dwindling international financial support for Namibian NGOs. The LAC is a truly Namibian organisation in that through all of its projects it addresses

Namibian concerns and issues, and any kind of support for the LAC is an investment in Namibia's democracy and human rights – the ultimate investment in people.

– **Martin Schulze-Allen**, Manager of the Investigations and Compliance Division of the Nova Scotia Human Rights Commission in Canada, who worked at the LAC on an exchange programme.

Know your rights

Workplace

AIDS LAW UNIT (ALU)



A workshop
on HIV/AIDS
and Human
Rights
conducted
by the ALU
for regional
councillors.



Putting LIFE first ...

The primary objective of the ALU is to promote an approach to HIV/AIDS in Namibia based on human rights. The project activities enhance understanding and respect for the rights and requirements of people living with HIV/AIDS. The focus is on the infringement of civil and political rights on the basis of HIV status, and the denial of socio-economic rights which both increases vulnerability to HIV and impacts negatively on health outcomes. Discrimination and other HIV/AIDS rights issues are addressed on a number of levels and by various means, including policy formulation and research for law reform, litigation, advocacy, education and training, networking, publishing, and provision of basic client services such as legal advice and referral.



Policy formulation and research for law reform

The ALU believes that one of the most effective strategies for attaining a culture of human rights is to **lobby legislators** to adopt and enact policies and laws that further such culture. Thus we engage regularly in debates in various fora at different levels to positively influence legislators.

The project **develops policy at national level and for the workplace**. A major focus in 2006 was our contribution to finalising the **National Policy on HIV and AIDS**. We also assisted the Ministry of Lands and Resettlement, the communal farming sector and the Namibian Business Coalition Against HIV/AIDS in developing/reviewing their **HIV/AIDS workplace policies**, and

reached the final stage in drafting a **Charter on HIV/AIDS in the Public Service** for the Office of the Prime Minister.

We presented a paper at a **workshop for journalists on "Good Governance and HIV/AIDS and the Role of Media"** organised by the Institute for Democracy in South Africa (IDASA), the Namibian Polytechnic and the Namibian chapter of the Media Institute of Southern Africa (MISA). The paper dealt with "The Qualitative State of Legislative Response to HIV/AIDS in Namibia". The workshop was attended by 25 media practitioners as well as the Vice-Chairperson of the National Council and a Member of the National Assembly.

For **Equality Now** (international organisation) we produced a paper on Namibia's implementation of the **African Union's Protocol on Women's Rights in Africa**.

We attended a meeting to discuss the findings of research on how HIV/AIDS affects the **elderly** in Namibia's Omusati Region.

We facilitated a **training workshop in Mauritius** for civil society activists wanting to make inputs into an HIV/AIDS Prevention Bill being drafted by the Mauritian Parliament. A few high-ranking government officials also attended, and the Attorney-General assured us after the workshop that human-rights-friendly provisions would be strengthened in the bill. ■



Advocacy and awareness-raising

In recognition of the strong link between HIV/AIDS and income insecurity, the ALU joined the **Basic Income Grant (BIG) Coalition** established in 2005 with the aim of lobbying government to pay a monthly grant of N\$100 to every citizen from birth up to 65 years of age. In 2006, as a member of the Coalition secretariat, we joined others in paying a courtesy call to the Speaker of the National Assembly to promote the BIG concept within government and stimulate the national debate on the BIG. The Speaker supported the concept, and was tasked to distribute the *BIG Resource Book* and introduce the concept to the Parliamentary Standing Committee on Human Resource, Social and Community Development. Thereafter, a visiting International Monetary Fund (IMF) delegation invited the Coalition to a consultative meeting. Though sceptical of the concept, the IMF endorsed it with the proviso that it must not affect the country's micro-economic stability. The BIG will be implemented as a pilot project in 2007.

We were invited to contribute to a week-long **HIV/AIDS Awareness Campaign** run by a community-based youth organisation, Okarindi Kozonguvi, located in the large village of Okotjitundu near the main town of Okakarara in Otjozondjupa Region. The campaign targeted all villages in the area. We made presentations on HIV/AIDS, human rights and the law. Many in attendance were amazed by the human-rights-based approach to dealing with HIV/AIDS, and our input evoked intensive discussion.

The ALU also made a presentation at the **Yelula Annual Conference** which is intended to bring together people living with HIV/AIDS (PLWHA) in the Oshana, Omusati, Ohangwena and Oshikoto Regions in Namibia's far north. Our presentation

covered a range of HIV/AIDS-related topics, such as stigmatisation and discrimination, confidentiality and privacy, HIV/AIDS in the workplace, insurance, and the right of access to antiretroviral treatment. The session was attended by about 200 people.

The ALU uses the **media** as an advocacy strategy, and gave a talk in 2006 on a popular national TV programme, *Tupopyeni*, focusing on the importance of writing a will.

We also responded to an article on the **National HIV/AIDS Policy** published in *The Namibian* newspaper (20/11/06), which stated that the new policy will place HIV/AIDS in the same category as TB, cancer and diabetes, i.e. notifiable diseases, meaning that one's HIV status would no longer be treated as confidential. The article failed to highlight the policy provisions on procedures to be followed in disclosing a person's status and thereby gave the wrong impression, which our response corrected.

At the request of clients and partner organisations when **polio** broke out in 2006, we asked the Ministry of Health and Social Services for clarification on the effects of the vaccine on immuno-compromised persons.

We facilitated a session of the **National Conference of Lironga Epari**, an association of PLWHA, held in Ongwediva in Oshana Region. The session focused on the greater involvement of PLWHA in decision-making. During the conference we participated in Lironga's "Walk of Hope" led by the State President, the Minister of Health and Social Services and the UNAIDS Country Representative, with other UN Country Representatives also participating. The walk was aimed at reducing stigma and reaffirming PLWHAs' commitment and hope to live.

For **World AIDS Day** in December the ALU designed posters focusing on individual rights and HIV/AIDS in the workplace, and the socio-economic rights of PLWHA (see



back cover). The Kunene Regional Governor officially launched the posters in Opuwo in November, and we participated in the national commemorative event hosted in Opuwo on 1 December.

To encourage PLWHA to assess their needs and challenges, particularly with regard to treatment, we are undertaking a post-test needs assessment study in all of Namibia's regions. ■



Litigation

The project takes up cases in which human rights are infringed on the basis of HIV/AIDS. Such cases involve, for example, breaches of confidentiality by public servants entrusted with confidential information on HIV status, testing of employees for HIV without their consent, inaccessibility to employment and insurance, harassment on the basis of HIV status, medical negligence, and problems of inheritance and guardianship. Examples of our cases in 2006 appear on the right.

In addition to their litigation work, the Project Coordinator and Project Lawyer conduct general screening of clients, and provide legal advice and referral services to individuals and institutions.

The ALU also provides a broad range of legal services to AIDS service organisations, non-governmental organisations, faith-based organisations and support groups for people living with HIV/AIDS. ■

Discrimination

- A prisoner at Walvis Bay Prison has instituted a civil claim against a nurse at the prison clinic whom he claims discriminated against him on the basis of his HIV status.
- We are assisting a young woman with making representations to the Australian High Commission which refused her a student visa for study in Australia on the grounds that she is HIV-positive.
- We gave legal advice to a client who alleged that his wife was discriminating against him on the basis of his HIV status. His wife had insisted that he use his own towels and cutlery, and advised him to be careful when playing with the children. The Project Lawyer wrote to the wife advising her appropriately and referring her to counselling.
- We settled a case for a client who had been retrenched, and who alleged that she lost her job as a result of her HIV status.
- We attended a meeting hosted by the Namibian Food and Allied Workers Union (NAFAU), in Walvis Bay to discuss a potential HIV discrimination case against a certain fishing company. The union agreed to facilitate the investigation and the ALU is awaiting the outcome.

Confidentiality

- Our client's HIV status was disclosed to her co-employees without her consent. The case is ongoing.
- Our client's HIV-positive status was disclosed by a matron at the Otjiwarongo State Hospital. The case is ongoing.
- We are helping a man to stop his previous employer informing potential employers of his HIV-positive status when they call for references.
- For another client we have instituted complaint procedures against a nurse employed by the Ministry of Health who treated an inmate in the presence of a prison officer despite our client's insistence that he should not be present. The nurse indirectly disclosed the inmate's status to the prison officer without consent. The complaint was filed with the Medical Superintendent of the relevant hospital and the Minister of Health. We await feedback from the Ministry and envisage legal action.

Inheritance

- Our client, the girlfriend of a deceased man, was pregnant with his child when he died. She is HIV positive and unemployed. The man also left a minor child born to another woman. As a businessman, the deceased owned a number of properties which his family repossessed. The executrix of estate refused to settle outstanding debts claimed by our client. The case is ongoing, our instructions being to recover the 'stolen' money and goods, and to lodge a maintenance claim on behalf of the minor child.
- We assisted several clients with drafting a will.

Child maintenance

- We assisted a woman with a maintenance claim for her minor son from his late father's estate. The deceased's brother was the sole beneficiary of the estate and the child did not inherit anything.
- In a 'property-grabbing' matter, we secured a sum of money for the maintenance of three minor children born out of wedlock to three different mothers, which monies we paid into the guardian's fund at the Master of the High Court. This case is only partially settled as we have also opened a criminal case against the executor of the estate.

Insurance and pension

- We settled a matter involving an insurance company's refusal to pay our client's claim to her deceased daughter's death benefits on the grounds that the woman had died of HIV-related ailments. The deceased left a minor child. After an exchange of letters the company agreed to pay, and we arranged for the money to be paid into the guardian's fund administered by the Master of the High Court for the benefit of the child.
- Our client in another case took out a funeral policy for her deceased brother, but the claim was repudiated on the grounds of HIV/AIDS. We are investigating the matter while awaiting documents from our client.
- We assisted a deceased man's surviving girlfriend who has an HIV-positive daughter. The man left benefits for the daughter and our client also receives a monthly amount from his pension fund. Our client, however, was experiencing problems with the officials handling the child's money.
- We settled a labour case in which an employer refused to release our client's pension after dismissing him. After several letters to the employer, our client received his pension.

“The LAC's workplace programmes of promoting a human rights-based response to HIV/AIDS are remarkable. HIV/AIDS threatens the livelihoods of many workers and those who depend on them, like their families, communities and enterprises, so let us join hands to spread hope among our workforces.”

– Workshop participant, May 2006.

Medical negligence

We advised an attorney dealing with a medical negligence claim. He was uncertain whether or not his client had been made aware of her HIV-positive status, and if she was aware, whether this information had been given to the client pursuant to appropriate counselling.

(In)voluntary testing

Our client, a school teacher, was forced by the principal of her school to go for an HIV test. We provided legal advice but took no further steps as our client informed us that she wants to settle the matter personally. We await any further instructions.

Access to treatment

- We took instructions from two Treason Trial inmates undergoing anti-retroviral (ARV) treatment who complained about the conditions of treatment in the relevant prison. We have arranged for consultations in this matter.
- We are assisting a woman whose baby was turned away from a state hospital because she was unable to pay the consultation fees.

Sick leave and dismissal

- We have taken up a case in which our client's request to be declared medically unfit for work was refused by a state doctor as per Ministry of Health guidelines. The doctor referred our client to his employer who also refused the request. We approached the Ministry for information and met with the Permanent Secretary of Health to discuss the matter, which is ongoing.
- We advised a man who felt aggrieved by his dismissal. After being discharged from hospital where he was treated for TB for six months, he had remained at home for about two months to stabilise. Upon returning to work he was dismissed on the grounds that he had been absent from work for more than 30 days.
- We have consulted with a client who was dismissed on the grounds that she has TB. The case is ongoing.

Eviction

- We have received instructions from a woman who was evicted from her home after her husband sold their house to his brother without her consent. Her marriage certificate states that our client was married *in community of property*, but because she was married north of the Police Zone, her marriage is in fact automatically *out of community of property*. Having provided the necessary legal advice, we are working on an application to the High Court for an order setting aside the sale and transfer of the house and challenging the constitutionality of the Native Administration Proclamation's position on the marital regime.
- We consulted with a woman who was evicted from her home by her husband's family after he passed away. They were married under Oshiwambo customary law. She relocated to the informal settlement area in Windhoek where she lives with her two minor children. The deceased's family is insisting selling the house. We wrote to the City of Windhoek urging them not to authorise the sale pending finalisation of the matter, and arranged for a meeting with the family members to discuss a settlement. Should a settlement not be reached, we will approach the court to evict the deceased's family from the property.



Education and training

Here, due to space constraints, we provide little detail on the content of ALU training sessions, but rather focus on **who** we are training, highlighting the ever-improving **gender balance** in our outreach.

The ALU helps to empower Namibian **traditional authorities** by enhancing their knowledge and skills in respect of HIV/AIDS, human rights and the law. This training is tailor-made for grassroots communities. In 2006 we facilitated two sessions. Both were attended by high-level delegations of leaders:

- A seminar for the **Zeraeua and //Toada-men Traditional Authorities** in Otjimbingwe, Erongo Region, was attended by 23 leaders (13 women).
- A workshop for **leaders in the four north-central regions**, hosted by the Ongwediva Rural Development Centre in Oshana Region, with 20 leaders (6 women) from numerous constituencies attending. A few more constituency councillors attended ad hoc or as observers.

The ALU conducts **regional seminars on HIV/AIDS, human rights and the law**. In 2006 we reached 7 of the 13 regions:

- The seminar in **Omusati Region** was attended by the Regional AIDS Coordinating Committee, teachers and representatives of community-based and faith-based organisations, with 24 attendees (16 women).
- The **Omaheke** seminar in Gobabis was attended by 28 delegates (19 women) from all of the region's constituencies, including the most remote. As part of our strategy to empower vulnerable groups, we also gave a special presentation on HIV/AIDS and the law to the Omaheke San Trust, with 12 people in attendance.
- The **Kunene** seminar in Outjo was attended by 33 people (12 women), most of whom were town councillors from the region, while a few were National Council members.
- The **Erongo** seminar in Swakopmund was attended by a total of 18 delegates (11 women) of, among others, the Erongo Regional Council, the Youth Health Development Programme, the Namibian Police and Ministry of Safety and Security, New Start, the Anglican Church and the hotel industry.
- The **Kavango** seminar in Rundu was attended by a total of 28 members (6 women) of the Regional Council and Regional AIDS Coordinating Committee.
- The **Caprivi** seminar in Katima Mulilo was attended by the Regional Council, the Regional AIDS Coordinator, local church and youth club members, and local line ministries, with 25 attendees (7 women).
- The **Otjozondjupa** seminar in Otjiwarongo was attended by a total of 25 representatives

(11 women) of all of the region's major towns and constituencies.

The ALU also trains **specific interest groups on request**. In 2006 we fulfilled four such requests:

- We gave a talk to International Development students visiting Namibia under the auspices of the Global Centre for Education.
 - We conducted a seminar requested by the Community Skills Development Centre (COSDEC) in Otjiwarongo, aimed at sensitising the participants to the importance of a written will in the context of HIV/AIDS. The 20 participants were representatives of the Ministry of Education, the Joy Centre, Nasoma, the Namibia Childcare Organisation, Otjiwarongo Municipality, Otjiwarongo Art Centre, Otjiwarongo Youth Club, the Peace Corps, the Redemption Gospel Church, and the youth health programme named "My Future, My Choice". The focus was on the basic requirements of a will, validity, competency, the duties of an executor and the administration of estates.
 - We facilitated a workshop for paralegals in Swakopmund (20 participants, 11 women), and another for paralegals in Oshakati (17 participants, 7 women).
 - We gave a presentation on HIV/AIDS and human rights in Namibia to 20 new Peace Corps volunteers in Tsumeb who had been placed at duty stations across the country.
- ALU staff also receive training from time to time. In 2006 we attended a workshop in South Africa organised by the **Rights Alliance for Southern Africa (ARASA)**, focusing on HIV/AIDS and human rights with specific emphasis on the criminalisation of HIV/AIDS, routine testing and individual liberty, discrimination and advocacy. ■



Orphan care

For several years the ALU has contributed to the activities of the Permanent Task Force on Orphans and Vulnerable Children (OVC) charged with implementing the **National Plan of Action for OVC**. In 2006 we attended two meetings on the plan - the first focusing on implementation costs and the second on activities in 2006 and 2007.

The ALU presented the National Policy on OVC at the **First Caprivi Regional Conference on OVC** held in Katima Mulilo under the auspices of the Ministry of Gender Equality and Child Welfare. The conference was attended by OVC, their caregivers and service providers, and members of the Parliamentary Standing Committee on HIV/AIDS. During the conference we also gave presentations on will-writing and inheritance.

The ALU also **assists orphans** in need of legal services. ■



Networking

The ALU attended a stakeholder consultation on Human Rights and HIV/AIDS hosted by UNDP and the Office of the UN High Commissioner for Human Rights (OHCHR) in Johannesburg.

Until June 2006 the ALU served as the Secretariat of the AIDS Rights Alliance of Southern Africa (ARASA), and remains a member of ARASA's Advisory Board. In 2006 we conducted a workshop on HIV/AIDS and the law hosted by ARASA in Johannesburg for AIDS service organisations in SADC.

We were included in the Namibian Government's delegation to a UN General Assembly Special Session (UNGASS) High Level Review in New York. We served as technical advisors to the Namibian negotiator and participated actively in the final negotiations and civil society activities around the meeting. Our input was widely hailed.

As part of the ALU **Treatment Literacy Campaign** we addressed an international meeting on "Ensuring Universal Access to AIDS Treatment through Strengthened Health Systems" sponsored by the Rockefeller Foundation and hosted by Gay Men's Health Crisis. The recommendations of the meeting were distributed widely. ■



Publications



The ALU did not publish new materials in 2006 apart from more translations of English materials in indigenous languages, but we contributed to producing *A Simple Guide to the Commercial Agricultural Sector's Policy on HIV/AIDS* along with three other organisations.

The ALU guides to treatment for HIV/AIDS are thus far available only in English, while the following ALU publications are available in English, Afrikaans, Oshiwambo, Otjiherero, Rukwangali and Khoekhoegowab:

- *HIV/AIDS in the Workplace*
- *Namibian HIV/AIDS Charter of Rights*
- *Guide to Will Writing and Inheritance*
- *Educators' Handbook on Writing a Will*



Staff 2006

Delme Cupido – Project Coordinator up to August
Amon Ngavetene – Project Coordinator as from November; previously Legal Educator
Damoline Muruko – Project Lawyer
Gabriel Augustus – Legal Educator
Basilina Ngairo – Project Assistant



LAND, ENVIRONMENT AND DEVELOPMENT (LEAD) PROJECT



L EAD's overall aim is to ensure marginalised groups' rights to communal land and security of tenure, by removing legal barriers hindering their access to these rights. We target rural populations who are socially, culturally and economically marginalised, such as farm workers, peasants and landless people, most of whom are women. We also render legal research, advice, litigation, education and training services to urban settler organisations such as housing groups, and to government and civil society institutions dealing with land reform. As the only project in Namibia focusing full time on land-related legal issues, LEAD plays a key role in the land reform programme. In the period 2004-2006 LEAD focused on, among other issues, land reform in communal and commercial areas, community-based natural resource management, minority rights, farm workers' rights, gender and land rights, urban housing tenure rights and environmental rights. Following is an overview of our work in and leading up to 2006.



Aiding reform in commercial and communal areas

The Namibian Government has greatly valued LEAD's expertise in the land reform programme, and the impact of LEAD studies on land reform, particularly in communal areas, has been extensive.

Perhaps due to these studies, the project has come to be a partner of the government and other development organisations in the training of Communal Land Boards (CLBs). This training is ongoing and is likely to remain important as all new board members need training. LEAD is singularly qualified to deliver high-quality training on land reform for administrative and extension staff.

Through LEAD the LAC has gained considerable influence in decision-making on how CLBs handle legally sensitive issues. In this regard the Ministry of Lands and Resettlement (MLR) and Ministry of Environment and Tourism (MET) consulted LEAD in 2006 on sensitising the CLBs to environmental sustainability issues. There is a great need in rural areas for information on legal reforms pertaining to land, and since 2004 LEAD has run courses for CLBs, traditional authorities, conservancies and communal farmers' unions on many issues relating to the Communal Land Reform Act.

Through LEAD, the LAC enjoys a high status as an NGO within the national land reform programme. The project is also well placed to enter into land reform case work and litigation, which we have not done to date, but cases are likely to arise in both commercial and communal areas, and ideally LEAD should strategically select those with potential to influence public discourse and policy-making on land reform. Given the symbolic capital that the project has gained with government institutions, it is likely that LEAD litigation would indeed have an influence. ■



The impact of LEAD publications on land reform in communal areas has been extensive. LEAD has published several studies on land reform, such as *"One day we will be equal": A Socio-Legal Perspective on the Namibian Land Reform and Resettlement Process* (Harring & Odendaal 2002), which summarises the legal reforms on land and links these to the history of land settlement, and *"Our Land we Farm": An Analysis of the Namibian Commercial Land Reform Process* (Odendaal 2005), which summarises recent legal changes in the land reform process in commercial agricultural areas. The latter is one of the first evaluations of the land reform process in commercial agricultural areas. It has proved of outstanding value to policy-makers as a precise and reader-friendly summary of legal reforms, including data on their consequences and recommendations. LEAD's *Guide to the Communal Land Reform Act 5 of 2002* summarises the Act and the functions and composition of the Communal Land Boards. This booklet has had a tremendously positive impact on the education of the emergent boards. In 2006 it was translated into several Namibian languages. LEAD also produced a report on the situation of farm workers on communal and commercial farms (see next page for details).



Securing land by building conservancies

Since the inception of LEAD's conservancy programme in 1998, the project has assisted emerging conservancies in (a) drafting constitutions, (b) negotiating contracts with private sector companies and (c) resolving internal conflicts.

In drafting constitutions especially, LEAD has been an active partner of the NGOs facilitating rural conservancies (IRDNC, RISE, NNF, NDT). Writing a constitution is a lengthy undertaking. Several visits to a community are usually necessary for negotiations with neighbouring communities on boundaries, mediation and litigation in internal conflicts, and generating representative and democratically legitimised institutions of internal control and outward representation – all essential steps to be taken before a constitution can be finalised. Also, few people in the communal areas are accustomed to producing such documents. In many conservancies LEAD has

been involved from the start in developing a constitution.

LEAD has worked with 31 conservancies over the last few years. The number of conservancies continues to multiply rapidly and we do not have the capacity to go on servicing all emergent conservancies. Occasionally our work has been delayed by a staff shortage and NGOs have had to resort to other lawyers in the field.

The two major LEAD activities within the conservancy programme in 2004-2006 were conflict mediation and drawing up or amending of constitutions. Setting up and running a conservancy often creates internal and external conflict (i.e. with neighbouring communities). Due to its high standing in rural areas, the LAC/LEAD is often drawn into conflicts to act as arbiter or put forward ideas for compromise, or simply to explain the legal situation.

The increasing number of conflicts generated by new forms of community property resource management will confront LEAD with ever more requests for mediation. In several instances LEAD has cooperated closely with the MET to settle disputes.

Overwhelmed with 'nitty-gritty' work in registered and emergent conservancies, LEAD has not yet undertaken research on key challenges in community-based natural resource management. A systematic study on conflict and conflict resolution within conservancies would help to refocus input into conservancies. Such a study could also give direction to further planning and training for conservancies. While the Namibia Association of Community Based Natural Resource Management Support Organizations (NACSOS) and perhaps others also provide training to conservancies, LEAD is best placed to train them on drafting/amending a constitution and conflict mediation. ■



Workshop with San in Baraka, Eastern Otjozondjupa Region.



Workshop with the Kavango Communal Land Board in Rundu.



Workshop with community leaders near Nkurenkuru, Kavango Region.



Workshop with Sorris-Sorris, Dora !Nawas and Uibasen conservancies.



Helping minority communities to secure land

LEAD has done considerable work to help secure the land rights of minority communities, notably San.

In 2006 the project published a comprehensive report on the history of San land rights in Namibia, entitled *“Our land they took”: San land rights under threat in Namibia*. Scientifically thorough, this study draws on many reports and publications, particularly the LAC’s landmark 5-volume *Assessment of the Status of the San in Southern Africa* published in 2001. It details the situation of the Khwe of West Caprivi, the Hai//om of Etosha, the Nǃa Jaqna Conservancy of the !Kung of Tsumkwe West and the Nyae Nyae Conservancy of the Ju//hoansi of Tsumkwe East, but it also covers the situation of dispersed San working on commercial farms or squatting among non-San communities. Contemporary San land rights are discussed in the light of common law, customary law and international law, and the chances



of reclaiming land taken from San communities are evaluated. The study closes with recommendations and advice on improving administrative services to marginalised San communities.

LEAD’s work on San issues has featured fairly prominently in the media. The situation of Nǃa Jaqna Conservancy has attracted a great deal of public attention. About 2 000 !Kung live in the area. Though the conservancy was formally gazetted in 2003, this did not prevent a constant encroachment of conservancy land by outsiders, notably Kavango and Herero stock farmers, and the fencing of significant tracts of land by wealthy stock barons. The Communal Land Reform Act deems such fencing illegal, but the government has not taken action. The situation has in fact been aggravated by plans of the Ministry of Lands and Resettlement to convert about a third of the conservancy land into commercial smallholder farms of 1 000 to 1 500

hectares each, to be settled by cattle owners from other communal areas. The LEAD report reflects in detail on the plight of the San here. We also published a lengthy article in *The Namibian*, and attended several meetings of the !Kung Traditional Authority and community members, who requested that the LAC and the Working Group of Indigenous Minorities in Southern Africa (WIMSA) take up their concerns with the Office of the Prime Minister.

LEAD works with a group of six paralegals placed in different parts of the area – Tsumkwe town, Mangetti Dune and Omatako. LEAD and WIMSA trained these paralegals in 2003. Their task is to advise San on matters of human and constitutional rights, HIV/AIDS, domestic violence, divorce, inheritance, maintenance and labour.

In collaboration with the LAC’s Gender Research and Advocacy Project, LEAD also provides information to the Namibian Broadcasting Corporation’s local radio station for translating and broadcasting weekly to the San of Tsumkwe. The broadcasts can be heard only within a 60km radius from Tsumkwe, but the programme is very well received by those able to tune in. ■



Promoting farm workers’ rights

LEAD promotes farm workers as a priority beneficiary group in Namibia’s land reform and resettlement programme.

We advocate a rights-based approach to resolving the problem of tenure insecurity, to bring about the strengthening of statutory rights for farm workers residing on commercial farms. This approach, widely deemed to have failed in South Africa, has not gained political support in Namibia, due in part to the weak lobbying power of farm workers themselves. While LEAD’s work to date has not provided a clear alternative paradigm, our research outputs have shaped the debate on farm workers in Namibia.

Farm workers frequently approach the LAC for legal advice on labour matters. As the LAC does not take up labour cases, we refer these workers to the Ministry of Labour and Social Services. In the absence of legislation to protect farm worker tenure rights, LEAD’s interventions in labour matters have been advocacy and research rather than litigation.

In 2004–2006, LEAD produced three study reports on farm worker rights. The first was a *survey on farm worker land needs* commissioned by the Permanent Technical Team tasked to review and develop land reform policy. We conducted this study together with the Institute for Public Policy Research (IPPR) in Namibia and Hamman

& Schumann, a land reform consulting company in South Africa. The study explored the nature of farm worker livelihoods and land needs, and investigated the actual and potential impact of land reform on farm workers, including loss of jobs for farm workers due to minimum wage and tenure legislation. The report drew attention to the situation of farm workers on communal farms, where wage levels are less than half of those paid on commercial farms. The report concludes that farm workers fall outside the scope of the two primary land reform instruments, i.e. the Resettlement Scheme and the Affirmative Action Loan Scheme, and where land reform has impacted on their lives, the impact has been negative, with lower living standards and job losses.

In 2005 LEAD produced a report on the commercial land reform programme with the focus on *farm workers as potential beneficiaries*. The report noted that because farm workers tend to be poorer than other beneficiaries, and more dependent on state support for extension advice, production infrastructure and access to markets, prioritising them could lead to unproductive land use. The report promotes joint venture initiatives in which workers co-own commercial enterprises, and specifically the model of farm worker equity share schemes adopted in South Africa, though with variable results.

“In the field of San minority rights LEAD has been heavily engaged in case work and litigation, research, the development of materials, training, development facilitation and advocacy with a remarkable consistency. The voice of the LAC/LEAD is well heard in issues pertaining to minority rights and LEAD has been the central hub in a network of support organisations.”

– Michael Bollig and Ruth Hall,
“External Evaluation of the
LEAD Project at the LAC”,
2006/07.

In 2006 LEAD conducted a feasibility study on the *incidence and impact of evictions on farm worker livelihoods*. An absence of data rendered this an exploratory study, but in addition, our method, i.e. a review of labour court records, yielded little information, hence the report failed to make the case for a major national study on this topic. ■



Enforcing women's land and property rights

Gendered land relations and women's property rights, and particularly legal interventions to protect widows from dispossession, constitute a major LEAD focus, inseparable from the project's work to implement and enforce the Communal Land Reform Act (CLRA).

In 2004-2006 we concentrated on rights education and legal literacy training to ensure that people in communal areas and those representing them in various fora are familiar with and abide by the CLRA measures to protect women's property and inheritance rights. At the same time we have an ongoing advocacy focus on the need to reform inheritance law since the customary law of intestate succession is still governed by the Native Administration Proclamation 15 of 1928, despite its inconsistency with both the Namibian Constitution and the CLRA. LEAD's voice has been prominent in the media and public fora as an advocate of women's (and by extension children's) property and inheritance rights, and our contribution has been noted by many interviewees in our studies on these rights.

In November 2005 LEAD launched a film, *Carry My Weight*, produced in collaboration with Quiet Storm (a local film production company) to serve as a rights education tool. The film deals with inheritance issues as provided for in the CLRA, telling the story of a young widow in Omusati faced with the threat of property-grabbing by her in-laws. She invokes her rights under the CLRA to retain ownership of her marital home and belongings. The film was launched at the same time as the LAC Gender Research and Advocacy Project (GR&AP) launched its book entitled *The Meanings of Inheritance: Perspectives on Namibian Inheritance Practices*. Copies of the film and the book were disseminated to all of the Communal Land Boards for their own use and for educating the communities under their jurisdiction.

In the period 2004-2006, LEAD and the GR&AP jointly hosted workshops on the implications of Native Administration Proclamation 15 of 1928 for women's property and inheritance rights in the north and north-central regions. The workshops were attended by traditional authorities, communal land boards and women in communal areas.

LEAD also conducted a fact-finding mission in these regions to ascertain how traditional authorities were interpreting section 26 of the CLRA, which prescribes the duration of a land right and the manner of inheritance, and establishes the basis



San women and children in Tsumkwe, Otjozondjupa.



A San woman outside her hut in Mangetti Dune, Otjozondjupa.



A Himba woman and children in Purros, Kunene.

for gender equality in inheritance practices by requiring that on the death of a person holding a customary land right, this right reverts to the chief or traditional authority for allocation to the surviving spouse.

A substantial portion of LEAD's case work involves issues of gender, land rights and inheritance. Mediation often suffices to resolve family disputes, while litigation is sometimes necessary, though to date most cases of our have been settled out of court. Inheritance cases often necessitate directing a pension enquiry to the government pension fund. Many cases are further complicated by the fact that customary law has considered all marriages north of the Police Zone to be out of community of property

unless a couple has an antenuptial contract.

Together with the GR&AP, LEAD has provided commentary in the media and various fora to bring questions of gender, land rights and inheritance to the attention of the government, civil society and the general public. The LAC also provided the key analysis of these questions at a conference on these issues hosted jointly by the Government of Namibia and the United Nations Food and Agricultural Organisation (FAO) in 2005. The conference resolutions repeatedly referred to the LAC's work thus far, acknowledging its ground-breaking nature, and set further tasks for the LAC. One resolution was that "traditional authorities should take advantage of the materials already published by the LAC and ensure the information is disseminated in their communities" (Republic of Namibia and FAO 2005: 23). The LAC was also listed in the resolutions as one of the "agents of change", i.e. institutions called to coordinate their efforts to bring about law reform and enforcement of land and other property rights for women in the context of HIV/AIDS, through awareness and gender sensitisation campaigns, provision of training on women's rights, and dissemination of information on existing laws. LEAD has taken up some of these tasks, but lacks capacity to do so fully. In the absence of coordinated follow-up to the conference, it appears that many of the organisations called upon to play a role have not done so, whereas LEAD has made an exceptional contribution through advocacy, law reform, training, developing materials, mediation and litigation.

In 2006 LEAD and the GR&AP worked with a wellknown local land reform expert, Wolfgang Werner, on a gender-based study of communal land reform, investigating, among other things, whether the provisions of the CLRA pertaining to widows are being implemented. This is an extensive study, for which communities, traditional authorities and communal land boards in Oshana, Ohangwena, Oshikoto and Omusati Regions have been consulted. The report will be published in mid-2007. ■

“Although the MLR produced an operational manual on the CLRA, a senior official from this Ministry indicated in an interview that the MLR is using the LAC's guide to the CLRA extensively, and would like to have an additional 1 000 copies in the vernacular to distribute, particularly to traditional authorities.”

– Michael Bollig and Ruth Hall, "External Evaluation of the LEAD Project at the LAC", 2006/07.



Looking at urban housing and tenure rights

LEAD has extended its focus from a predominantly rural one to address urban land rights as well, with the aim of making urban land and housing accessible to the poor, and protecting the tenure rights of residents of informal urban and peri-urban settlements.

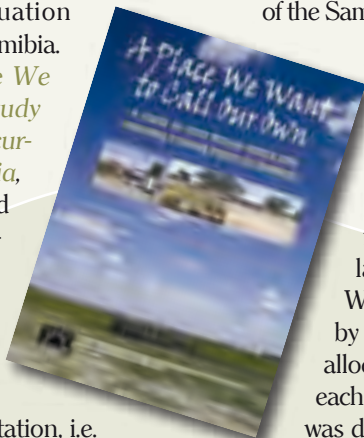
UN Habitat commissioned LEAD to write a report on the situation regarding urban housing in Namibia. The report, entitled *A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia*, was published in 2005. Beyond that study, LEAD has not conducted extensive research, and has had relatively little contact with other organisations in the urban housing sector. Instead, the project has focused on development facilitation, i.e. assisting community-based organisations (CBOs) with the registration of legal entities, drawing up Deeds of Trust, and mediating their dealings with local authorities.

Most of LEAD's work on urban housing and tenure rights has been legal case work and litigation. LEAD takes up general cases relating to urban housing, e.g. evictions, damages claims, inheritance claims and the registration of legal entities where communities hold land jointly.

LEAD has taken up two **high-profile cases** concerning urban housing and tenure rights.

The first was a **damages claim** instituted against the City of Windhoek by residents of Katutura for flood damage to their homes and belongings caused by the construction of the Sam Nujoma Stadium. LEAD succeeded in this case.

The second was the case of **Omkhai**, a Katutura CBO that attempted to provide urban land and housing for its members. On land it obtained from the Windhoek Municipality by way of hire-purchase, it allocated a plot of 180 m² to each member household. This was done on the presumption that the Municipality would service the land and dwellings, and the expectation that Omkhai would eventually subdivide the land to give members plots that they could register as full owners. but neither of these things happened. When the group defaulted on the payments, the Municipality repossessed the land, reasserting its legal rights as the owner of the land, and threatening residents with eviction. LEAD is helping the CBO to find alternative land.



Housing in Oshakati, Namibia's largest and most densely populated city, in Oshana Region in the north. The Oshakati Town Council is building brick houses (top photo) as part of its broader efforts to upgrade informal and make-shift housing (bottom) in the city centre. The aim of the **Flexible Tenure System** is to provide better housing to people who have no basic housing facilities. LEAD will continue lobbying the Ministry of Lands and Resettlement to pass the **Flexible Land Tenure Bill**. With the Act in place, the Ministry will have an official duty to support low-income households throughout the country by making housing tenure rights available to non-owner occupiers of residential land. (See above for more detail on the Bill.)

LEAD has also been involved in advocacy to promote law reform to secure **legal rights for non-owner occupiers of residential land**. The project's major achievement in this area has been to promote and contribute to the development of the **Flexible Land Tenure Bill (FLTBT)**. We have commented on its various drafts, and LEAD staff have presented the Bill in Parliament, explained it to the media and made legal input for civil society organisations concerned with the implications of the Bill for the urban poor. However, given that the Bill has not yet been promulgated, and the political impetus for doing so appears to have dwindled, a priority now is to renew our advocacy in its favour, pressurise Parliament to address it and ensure that systems are developed to implement it. The FLTBT is expected to address many of the problems of group-based landholding in an urban residential context, as well as the insecure legal rights of residents in informal urban settlements. ■

“The importance of LEAD to NGO work has been stressed when visiting various LEAD NGO clients. NNF director Chris Brown saw a great need for the sort of qualifications the LEAD team offered to other NGOs and felt that LEAD had importantly contributed to the overall success of the conservancy programme.”

– Michael Bollig and Ruth Hall,
“External Evaluation of the
LEAD Project at the LAC”, 2006/07.



Staff 2006

Willem Odendaal – Project Coordinator and Researcher
Roswitha Gomachas – Project Lawyer
Zeka Alberto – Trainee Lawyer
Shadrack Tjiramba – Research Assistant
Ilda dos Santos – Project Assistant
Joseph Kahuika – Paralegal and Client Screener
John Hazam – Short-term Environmental Consultant
Alice Göttler – Intern (lawyer from Germany)
Julian Dayal – Intern (law student from New York University)
Sidney Harring – Researcher (Professor of Law at City University, New York School of Law)

Alice Göttler volunteered her services for three months (January to April) to do research on the church and land/property ownership in Namibia for a LEAD study. **Sidney Harring** assisted with field research in June and co-wrote with Willem Odendaal the report titled *Our Land They Took: San Land Right Under Threat in Namibia*. **Julian Dayal** did an internship with LEAD from June to August, spending most of his time on research for a LEAD study on San land rights. **John Hazam** is assisting with the development of a trainer's manual for Communal Land Boards (CLBs) as part of a training package for CLBs that the Ministry of Environment and Tourism has commissioned from LEAD with the aim of helping CLBs “to make environmentally sound decisions”.



Evaluation

External evaluators Michael Bollig and Ruth Hall were commissioned to evaluate LEAD. In December 2006 and January 2007 they interviewed representatives of the donor, government and non-governmental sectors, and in two field trips they met with communities served by LEAD. They also met with LAC trustees and staff. Though many problems were identified, the findings were very positive on the whole. One key finding was that **environmental rights** (mining and mineral rights, pollution, water rights and sanitation) should be prioritised in future. ■



GENDER RESEARCH AND ADVOCACY PROJECT (GR&AP)



Reshaping the legal landscape for women and children

For the last 13 years, GR&AP has been the only Namibian non-governmental organisation working in the field of law and gender. GR&AP's utilises a three-pronged strategy: (1) research and advocacy to influence law reform on gender issues; (2) training and education of women and men on their legal rights; and (3) monitoring and assessment of new laws to see if they are accomplishing their intended objectives.



Reforming law and policy

Gender-related legislation passed in 2006

Parliament passed very few pieces of legislation in 2006. The only new law directly addressing gender matters is the **Children's Status Act 6 of 2006**.

A new **Labour Bill** was introduced into Parliament with the intention of replacing the Labour Act 15 of 2004 (never brought into force aside from a few administrative provisions), but this Bill was later withdrawn. A replacement Bill will be introduced in early 2007 and is expected to cover maternity leave, sex discrimination, pregnancy discrimination and family responsibility issues along the same lines as the 2004 Act.

We are informed that the long-awaited **Child Care and Protection Bill** has been given to a new legal drafter in the Ministry of Justice. This Bill has been under discussion since 1994. We will make it a focus of increased lobbying in 2007 now that the Children's Status Act is in place.

Lobbying on the Children's Status Bill

The Children's Status Bill, first tabled in Parliament in 2003, continued in 2006 to invoke debate on who should have custody of children born outside marriage. Currently, mothers have sole custody and guardianship of such children and fathers have no clear rights – not even a right to access. This position is clearly unfair to both parents and children. However, the competing rights of single mothers and single fathers under the proposed laws proved to be a highly contentious issue.

GR&AP's initial position, developed in consultation with the broader NGO community, was that single mothers should have custody as a starting point (to mirror the current social reality), with single fathers having an automatic right of access and the ability to apply to a children's court for custody of

the child in a simple low-cost procedure, with the decision to be determined solely in accordance with the best interests of the child.

This position was adapted in consultation with other NGOs when it became clear that Parliament would not accept the approach initially proposed. As a compromise position we proposed that cohabiting parents should be able to agree to joint custody and equal guardianship if they wish – like married parents. Otherwise, one parent would have to take primary responsibility for the daily care of the child while the other would have access rights – like divorced parents. The parents could agree in writing on who would act as the primary custodian, or refer the matter to a children's court for decision. As a default position, the mother would be the child's temporary custodian – since only

the mother (for obvious biological reasons) would definitely be present at the birth. This fall-back position was intended to protect the child as an interim measure, without prejudicing either parent.

Lobbying on this Bill was one of our key activities in 2006. We kept in regular contact with a wide range of NGOs to get support for group submissions to the parliamentary committees dealing with the Bill, and all key strategies were decided upon in consultation with the broader NGO community.

To give the reader an idea of what it takes to lobby for law reform, we include on the next page a list of some of our concrete activities around this Bill – the list is not exhaustive:

A Word of Appreciation

I am delighted to write to you and express our sincere appreciation for the generous support rendered to our office by the Legal Assistance Centre during the Outreach Program we undertook from 27th September to 8th October 2006 at Erongo Region.

The Outreach Program was indeed a success and we are glad with the way Ms Kisting presented the Acts of Parliament we identified for the outreach and the materials made available by your office were really significant for the success.

We hope that your office will continue to be part of our effort to educate the public/citizens of our country about their rights until this goal is well achieved.

– Ms Panduleni N. Shimutkikeni, Secretary of the National Council,
letter to the LAC Director dated 6 November 2006

- We worked with the **Gender Sector of the Namibian Non-Governmental Organisations Forum (NANGOF)** to mobilise grassroots participation in the public hearings conducted by the National Council in February.
- We relayed Information from the hearings to **Katutura Community Radio** for its regular programme *Your Rights Today*, and discussed the Bill on the national TV programme *Good Morning Namibia*.
- We provided a written submission and oral testimony in public hearings to the **National Council committee** dealing with the Bill. This input was clearly influential in the committee's subsequent report and recommendations.
- With other NANGOF representatives we met with the **Ministry of Gender Equality and Child Welfare's legal advisor** to discuss the concerns communicated to the National Council committee.
- The National Council committee tabled a report with recommendations sensitive to the NGO concerns, but the National Council as a whole voted against most of the amendments recommended. In protest we drafted an article entitled **"Does Public Opinion Matter?"** which was signed by 11 NGOs and published in *The Namibian* on 3 March 2006.
- We worked with the NANGOF Gender Sector to organise a **demonstration on the steps of Parliament**. Each organisation which supported the group submission to Parliament was asked to send two representatives and a child if possible. We briefed UNICEF on our concerns, and the UNICEF Special Representative to Namibia agreed to the unusual step of being the keynote speaker at this demonstration. The demonstration received a high level of media coverage, and seems to have been a key factor in opening the door to further discussion of the Bill with the NGO community. The demonstration received prominent coverage on 15 March in four daily newspapers in Windhoek, in three different languages.
- We briefed the **Council of Churches in Namibia (CCN)** on key issues in the Bill, which they then took up in various forums. The involvement of the CCN in lobbying around the Bill was ground-breaking as the churches and NGO community have seldom joined forces on political issues since Namibia's independence in 1990.
- We discussed relevant issues with members of the **technical legal drafting department in the Ministry of Justice** and met with the key drafter several times to discuss the Bill's wording on technical issues.
- We approached several **individual MPs** in person and by phone to discuss areas of concern.
- We made personal phone calls to six **journalists** to discuss media coverage of the Bill, as a follow-up to faxes and emails to these journalists, and provided very brief background material to the journalists outlining the key issues of concern. We were interviewed by several other journalists on background and for publication (*The Namibian*, *Insight*, *Allgemeine Zeitung*, NBC Radio).
- On behalf of the NANGOF Gender Sector, we met with the **Minister of Gender Equality and Child Welfare** to discuss the Bill. The Minister was receptive to the NGO concerns, and we worked directly with her and her staff to draft a new set of proposed amendments with motivations.
- We drafted an opinion piece on the final set of amendments proposed by the relevant Parliamentary Committees, **"Leaving the child in legal limbo"**, and persuaded *The Namibian* to take the unusual step of publishing it mid-week (as opposed to in the Friday edition where opinion pieces usually appear), to enhance the chances of influencing the parliamentary debate. This article was discussed telephonically with several opposition MPs, and we also alerted the NGO community to the new proposals.
- Our interns attended **Parliament** on numerous occasions to track the Bill's progress in the final stages, and we kept in contact with key role-players on the Bill's movement.



Group work during a GR&AP training course on advocacy conducted in Ongwediva.

Despite last-ditch lobbying efforts, the final set of amendments proposed by the Parliamentary Committee in November was accepted by the National Assembly with little discussion, and the **Children's Status Bill** was passed with one issue still unresolved to the satisfaction of the NGOs: children born outside marriage will have no legal custodian or guardian until or unless the parents make an agreement, or an application is made to a children's court for a decision on which parent it should be. We lobbied in the final stages of the parliamentary debate for a default position to protect the child in the interim, but this effort did not succeed.

In February 2007 we will hold a workshop with the NGO community to discuss a follow-up strategy on the new law, which has been published in the *Government Gazette* but was not yet in force by the end of 2006.



Dianne Hubbard making a presentation on behalf of 30 NGOs at a Parliamentary Committee meeting on the Children's Status Bill.

Community meeting on the Children's Status Bill in Katutura, Windhoek, to brief community women on how to make presentations at Parliamentary hearings. Several participants subsequently made powerful inputs at the hearings.



Labour Bill

The LAC supported the re-drafting of the Labour Act of 2004, as confusing provisions in this version could have caused unfairness and disputes. We collated recommendations from all LAC departments in 2005 and forwarded these to the Ministry of Labour, the Namibian Employers Federation (NEF), the National Union of Namibian Workers (NUNW) and the ILO technical advisor assisting the government with the project. When the Labour Bill 2006 was circulated, we examined it and found that most of the LAC concerns had been addressed.

We compiled more input highlighting three remaining issues of concern and urging the Ministry to address them before introducing the Bill: the rules concerning disputes between members of disadvantaged groups; reasonable notice to vacate employer-provided accommodation (particularly important for farm workers and their dependants); and the right to legal representation in labour arbitrations. This submission was also forwarded to the Ministry of Labour, the NEF and the NUNW.

We will examine the new version of the Bill in 2007 to see if these concerns have been addressed.

Marital property

The GR&AP Coordinator was appointed to the Law Reform and Development Commission (LRDC) Subcommittee on Marital Property, which held its first meeting in June 2006. This subcommittee used the LAC research report *Marital Property in Civil and Customary Marriages: Proposals for Law Reform* (2005) as its primary resource, and adopted all of the major recommendations put forward in that report with only minor fine-tuning.

In 2007 the subcommittee will convert its decisions into a layperson's draft for the LRDC's consideration.

Child Care and Protection Bill

We prepared a short paper examining proposed changes to the foster care system in Namibia, which the Child Care and Protection Act will address. The current law is based on an outdated Western model which does not suit the Namibian situation where most foster parents are extended family members. Other countries have come up with innovative approaches to foster care which could be instructive for Namibia.

Inheritance

We drafted an article on the Estates and Succession Amendment Act 15 of 2005, which amends the procedure for distributing deceased estates but not the substantive rules which are the source of continuing racial and gender discrimination. This article was published in *The Namibian* on 7 April 2006.

We also liaised with the LRDC regarding their plans for a new subcommittee to consider substantive law reform on inheritance. Indications were that civil society groups such as the LAC would be included on this subcommittee, which will be established in 2007.

National school policy on teenage pregnancy

We drafted a paper recommending revisions to the current school policy on teenage pregnancy, which has been interpreted to require that students who give birth stay out of school for one year. This project was conceived as a follow-up to the *Karuaihe* case, in which the LAC represented a schoolgirl disadvantaged by this policy but was unsuccessful in court. We interviewed stakeholders on this topic and examined similar policies in neighbouring countries. We presented the draft paper at a consultative workshop attended by about 20 persons working in the field of education.

The report will be finalised in 2007 after further consultations with schoolgirls who might be affected by the policy.

Grants for orphans and vulnerable children (OVC)

We worked with independent consultants Auriol Ashby and DeeDee Yates on a consultancy for the World Food Programme (WFP) on the transition for OVC from food aid to state maintenance grants. Our key recommendations concerned revision and expansion of the grant criteria to target the neediest children more effectively. Another focal issue was the overlapping relationship between maintenance grants and foster grants, which entail completely different procedures. The recommendations were discussed at a meeting with WFP representatives and staff of the Ministry of Gender Equality and Child Welfare. Government concerns were addressed, and the final report included detailed costings and a time-frame for specific actions to improve grant processing.

“... the *Advocacy in Action* Manual has arrived ... and a very fine production it is too! Congratulations to all involved – certainly we here at the CBA are very proud that we have made a contribution ... to the realization of this outstanding, and ongoing, contribution to women's rights in Namibia. The LAC and GR&AP can be very happy about this achievement, and the CBA is very happy to be a partner with them in their work. Thanks again for mailing us the Manual.”

– Al Cook, Canadian Bar Association

Discussions of the proposed new law on customary marriage.

Parliamentary hearing on affirmative action in employment

We made a presentation on affirmative action for women and people with disabilities before the Parliamentary Standing Committee on Human Resources, Social and Community Development in June 2006. The submission drew prominent coverage on NBC TV and radio, and was reported on in *The Namibian*.

Parliamentary hearing on crime

We compiled and presented a paper on crimes against women and children to the Parliamentary Standing Committee on Foreign Affairs, Defence and Security, on a Motion on Increase in Criminal Activities and Violence, which *The Namibian* covered on 20 October. The LAC was one of the few groups (possibly the only group) to present concrete data as opposed to subjective opinions unsupported by any research. ■





Training and sharing information

- We ran a well-received workshop in **Khorixas** on maintenance for 25 community activists (1 man).
- We trained a group (23 women, 3 men) in **Tsumeb** on maintenance and domestic violence. The group comprised representatives of the Tsumeb Women and Child Centre and Woman and Child Protection Unit (WCPU), the Tsumeb Public Prosecutor, the region's Chief Social Worker, other social workers, teachers, nurses and a medical officer. The group was lively, and though already partially informed, they said they learnt a lot.
- With the LAC's LEAD and ALU we facilitated one day of a two-day workshop on rape and domestic violence for the **San community in Tsumkwe** (±10 participants). The workshop was conducted in Afrikaans and English, with translation into the local dialects. A few participants already had some knowledge of the laws while some were completely unfamiliar with them. All were very interested and participated actively.
- We gave presentations on the preliminary findings of our rape research and on the application of the protection order in cases of domestic violence to the **WCPU Strategic Management Workshop** in Otjiwarongo. The 62 participants included WCPU officials, regular police officers, social workers from the Ministry of Health and Social Services and representatives of civil society organisations.
- We gave a talk to a class of law students at the **University of Namibia** on sexual violence in Namibia in general and the LAC's rape research in particular.
- We conducted a one-hour session at the **CCN Annual General Meeting**. About 40 people (±10 women) from different churches attended. Topics included the Married Persons Equality Act, maintenance and domestic violence. The input was well received and people expressed their appreciation and asked for more workshops for church groups.
- We conducted a workshop in **Keetmanshoop** on family laws, with 26 marriage counsellors from the **Catholic Church** in Karas Region participating (8 women, 2 priests and married couples being trained as counsellors). Topics included the Married Persons Equality Act, and an introduction to aspects of the Children's Status Bill, inheritance issues and the proposed bill on customary marriages. It was clear that more dissemination of information on marital property regimes is needed.
- We conducted a well-received training session for 8 new **magistrates** (6 from Zimbabwe) on maintenance and domestic violence.
- We presented our first draft of the *Gender Training Manual and Resource Guide* commissioned by the **Ministry of Gender Equality and Child Welfare** at a two-day workshop with the Ministry's staff. The input was incorporated into the final document.
- We trained 25 women and 10 men of **Women's Action for Development (WAD)/Women's Voice** from different regions. Topics were the Married Persons Equality Act, Maintenance Act, Combating of Domestic Violence Act and inheritance. Participants were shocked at the racist nature of the current laws on inheritance and said they would raise their concern in their meeting with the Namibian President the next day. They also said they would raise the lack of maintenance investigators with the Minister of Justice.
- In conjunction with the Namibia Institute for Democracy, we trained 7 men and 7 women (25-30 participants had been expected) from **civil society organisations and the media** (all based in Windhoek) on advocacy. One advocacy project identified was strengthening the Namibian Non-Governmental Organisations Forum (NANGOF).
- We trained 23 **VSO volunteers** (20 women) based in Caprivi, Kunene, Oshana and Khomas on gender, gender-mainstreaming and disability.
- At the request of Sister Aida in Katutura, we conducted a workshop on domestic violence and maintenance, in Afrikaans, for 6 men and 45 women from **various Catholic churches**. The participants will take the information back to their own church groups.
- We conducted an advocacy training workshop in Gobabis organised by the Namibia Institute for Democracy (NID) for **civil society groups, teachers and the Ministry of Youth** (21 men, 9 women).
- We visited **Erongo Region** with the National Council, the NID and Gender and Media Southern Africa (GEMSA) as part of a programme called "Bringing Parliament to the People". We covered the Married Persons Equality Act, Combating of Rape Act, Combating of Domestic Violence Act and Maintenance Act in Omihana, !Gaus, Okombahe, Omatjete, Otjimbingwe, Swakopmund and Arandis. The participants were regional councillors and community members, including youth. An average of 35 people attended each meeting (total ±255), of which about 30% were male. The age group was 30-60. Issues raised included schoolgirl pregnancy and the lack of access to PEP.
- We ran an advocacy workshop in **Keetmanshoop** with NID for 15 participants (10 women), who suggested a follow-up workshop for leaders in the south.
- We ran a workshop in **Keetmanshoop** on the Maintenance Act for 13 women and 7 men, who suggested a follow-up workshop for maintenance officers.
- We facilitated training in Oshiwambo on rape and domestic violence for 25 pastors and 4 paralegals in **Ongwediva**, organised in conjunction with the Council of Churches in Namibia.
- The **police in Swakopmund and Walvis Bay** requested training on the Domestic Violence Act to address implementation problems persisting despite magistrates and prosecutors having received some training. We responded with a two-day workshop, training the Walvis Bay WCPU Management Committee on the first day, and then a group (from both towns) comprising police officers, social workers, prosecutors and a clerk of court. The second session gave particular attention to problems with the inter-related roles of service providers, and the preparation of an action plan proposing solutions to overlapping roles for the Walvis Bay area.

“ I write to thank you for your kind consideration to have given Ms Anne Rimmer to come and conduct a training course for our magistrates Ms Rimmer's presentation was highly effective. Her in-depth knowledge of the subjects she presented was a source of inspiration to the candidates and resulted in the program being a resounding success. We strongly believe in continuous legal training and since we do not have adequate facilities and/or resources of our own to train our judicial officers, we will continue to knock at your door for your kind support. Please accept our sincere appreciation for your institution's continued support in our quest to improve standards in our courts.

– **NN Shivute**,
Deputy-Chief, Lower Courts,
letter dated 22 May 2006.

Naomi Kisting training personnel of Women's Action for Development.

Above and below:
GR&AP training on advocacy, Ongwediva.

- **Training videos** for service providers on rape and maintenance were finalised after feedback on the draft videos from members of professions. The videos are packaged with written training material. Distribution will continue in 2007.
- A Women's Action for Development representative in Rehoboth was asked to conduct a workshop on domestic violence in Rehoboth and wanted advice on what to include. We wrote a 3-day **workshop plan** for her. ■



Publications of 2006

Newspaper supplement

An 8-page tabloid supplement announcing GR&AP's most recent publications appeared in *The Namibian* on 1 March. *The Namibian* has a circulation of about 40 000, and estimates that each copy of the newspaper is read by at least 6 people on average. GR&AP also printed extra copies of this supplement for direct distribution. The supplement resulted in more requests for our publications – from new groups in rural locations, indicating the success of this substitute for the traditional Windhoek-based publication launches.

Book on gender and sexuality

This book is intended to make recent research and theory on gender and sexuality in Namibia accessible to the public. Visiting academic Dr Suzanne LaFont agreed to co-edit the book with Dianne Hubbard, and contacted authors to contributed essays. Also included is an extensive bibliography of works on gender and sexuality. The book will be published early in 2007 under the title *Unravelling Taboos: Gender and Sexuality in Namibia*.



Advocacy manual

Our manual *Advocacy in Action* is being used in community outreach workshops run by the Namibian Parliament. Copies distributed in future will include an update sheet reflecting current Ministries and Members of Parliament, and funds are being sourced for an updated re-print in 2007. The manual was praised in a recent e-newsletter on Parliaments of the South, distributed throughout the region. Portions of this publication are being used in a SADC Parliamentary Handbook to be published by the South African Institute of International Affairs in 2007.

“One side of the gap between parliaments and civil society is created by ignorance on how to engage with parliament. The Legal Assistance Centre in Windhoek, Namibia, has taken an important step in closing this gap through the production of a handbook entitled *Advocacy in Action – A guide to influencing decision-making in Namibia*. Although the second half of the handbook is written specifically for the Namibian context, the first eight chapters serve as an invaluable generic guide for civil society across the SADC region.”

– South African Institute of International Affairs, excerpt from *Parliaments of the South* e-newsletter, Issue 2, March 2006.

Braille materials on rape and domestic violence

We organised this project in consultation with Volunteer Services Overseas (VSO), the National Federation for People with Disabilities (NFPD) and the Association for the Visually Impaired. VSO provided funds for the Service Centre for the Visually Impaired to produce Braille documents. These are in production and will be made available to the target audience in early 2007.

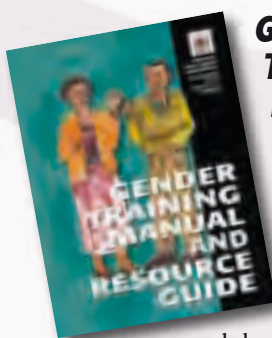
Educational materials

We translated our *Guide to the Combating of Domestic Violence Act* and accompanying *Summary* into Afrikaans, Oshiwambo, Otjiherero and Khoekhoegowab.

We translated the *Guide to the Maintenance Act* and accompanying *Summary* into Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab and Rukwangali.

We drafted a pamphlet on Namibia's inheritance laws, containing a discussion of the new Estates and Succession Act 15 of 2005. This could be a useful resource for future responses to proposals for law reform. It will be finalised in 2007 and translated into two indigenous languages.

We are receiving an increasing number of requests for our educational material from government service providers. This is very positive as one of our goals is to help service providers understand more clearly the laws they are implementing, since confusion about the laws is a root cause of many of the problems experienced by our clients.



Gender Training Manual and Resource Guide

Commissioned by the MGEWC, this publication contains training modules on gender-related

topics. Each module includes participatory exercises for use in training, and a list of additional resources, including key organisations, publications and videos. It also covers effective training techniques and a glossary of key terms. The print-ready document was presented to the MGEWC in July. It is expected to be printed by the Ministry in 2007. This manual should prove useful in training on gender issues provided by NGOs and the MGEWC. ■



Advising clients

Many individuals approach GR&AP for information about their legal rights or to request copies of our educational materials. We are also approached for advice directly, through LAC's formal screening and telephonically by people outside Windhoek. Some gender-related cases are dealt with by other LAC departments, as people's problems are often amalgams of several inter-related issues. There is a regular exchange of information between departments on individual cases.

In 2006 we advised clients on the following topics – listed roughly in order of the most to the least common:

- maintenance
- domestic violence
- divorce
- custody of children born outside marriage
- inheritance
- rape
- sexual harassment
- age of consent for sexual activity
- abortion
- cohabitation and procedures for obtaining disability grants.

A sampling of some of the cases addressed in 2006 appears below. ■

- A Namibian woman approached us for advice when her 8-month-old child was abducted by the child's German father. We assisted her to lay a charge of kidnapping. She eventually managed to involve Interpol and to retain a private lawyer who speaks German and can assist with German law.
- A single mother called from Walvis Bay to enquire whether it is a legal requirement for her to produce the birth certificate of her child's father to get a birth certificate for the child. The law contains no such requirement. She also asked if the LAC could carry out a sensitisation campaign on this, because she felt so many women go through unnecessary difficulties trying to acquire legal documents. Information on this issue was subsequently disseminated by radio.
- The Head Office of the Woman and Child Protection Unit (WCPU) requested legal advice on behalf of a divorced woman who had been married in community of property. Her husband sold the house that they owned jointly, but denied her any share of the money from the sale. We explained her entitlement to a half-share of the proceeds.
- In two domestic violence cases, clients complained that the WCPUs refused to help them on the grounds that they were married and the husbands were the abusers. We urged the head of the WCPU to attend to these cases. One client subsequently obtained a protection order requiring her husband to leave the common home.



Tracking implementation of laws

Extensive research on implementation of Combating of Rape Act

In 2000 Namibia passed the *Combating of Rape Act* which is one of the most progressive laws on rape in the world. The Namibian legislation has served as a model for new laws and bills on sexual offences in other African countries. For example, laws with similar attributes have more recently been passed in Kenya, Lesotho and Zimbabwe, and are currently under consideration in Swaziland and South Africa.

In 2006 the LAC completed an extensive assessment of how this new law is working in practice. Work on this project began in 2005, when GR&AP relied on the assistance of volunteers and visiting interns to collect information from police dockets, court records and key informants in regions throughout the country. By March 2006, the basic field research was complete and the data analysis was in progress. Supplementary questionnaires on PEP were sent to all district hospitals, and we obtained information about their coverage of PEP from a sampling of medical aid schemes.

The statistical analysis done with consultant Christa Schier was very time-consuming as complex issues like reasons for court postponements had to be analysed very carefully to ensure accuracy. Final interviews with senior personnel (such as the National Coordinator of the Woman and Child Protection Units and the Director of the National Forensic Science Institute) took place after completion of the first draft of the report, so that questions about the preliminary findings could be put to key stakeholders.

The report includes a section on the rape of persons with disabilities and explanations of issues such as the legal duties of service providers, the correct use of anatomically correct dolls in court, the legal requirements for identification parades, the language of police statements and the medical examination of minors following a rape.

Visiting academic Dr Suzanne LaFont contributed a section on “tournaments” (a form of group sex which is sometimes coercive). This involved analysing data from 395 questionnaires provided by Women’s Solidarity. Suzanne also prepared an article on this practice for the *OYO Magazine* published by Ombetja Yehinga Organisation and distributed in secondary schools.

The preliminary findings and recommendations were presented at a consultative workshop in November, attended by 33 people in key sectors in 6 regions. Input from the workshop was incorporated into the final report to be published in early 2007. If funding can be obtained, we hope to use it as the centrepiece for an international conference on combating sexual offences in Africa where delegates from countries with similar legislation can compare notes on best practices with an emphasis on (1) effective implementation of laws on sexual offences and (2) the intersection of sexual offences with HIV/AIDS.

Research on protection orders issued under the Combating of Domestic Violence Act

GR&AP began field research on protection orders in terms of the Combating of Domestic Violence Act. A questionnaire was drafted and piloted in consultation with data analyst Christa Schier, and data was collected in several locations. Focus group discussions on protection orders were held with regional counsellors in Kunene, traditional leaders in Oshakati and clerks of court in Gobabis and Oshakati.

Implementation of the Maintenance Act

We have collected information on problems with the implementation of the Maintenance Act, from individual clients and community workshops. However, anecdotal information on its own is not really a sufficient basis for policy recommendations. We are therefore seeking funding for a systematic study of the implementation of the Maintenance Act.

Witchcraft

Fears about witchcraft prevent many women from exercising their legal rights. Following on background desk research, we held a small consultative meeting to discuss strategies to address this problem, attended by social workers and a rehabilitation officer in the Ministry of Health and Social Services, the Dean of the Anglican Church in Namibia, NGO staff and LAC staff. The discussion was illuminating in that it highlighted the pervasiveness of the belief that witchcraft is a force to be feared in many communities. There was discussion about reported incidents, the Church’s approach and educational actions that could be effective. The insights gathered will be used to guide further discussion of this issue in community groups in 2007. ■



Litigating

GR&AP is sponsoring two court cases in partnership with the LAC’s Human Rights and Constitutional Unit (Huricon) – a **labour law** case which could end up as Namibia’s first challenge to incidents of sexual harassment, and a **customary divorce** case which could result in a constitutional challenge to the lack of equal rights and protection for women and children under customary law divorce procedures as compared to civil divorce procedures. Both clients are very brave and impressive women. ■



Media publicity

General

GR&AP’s work was the subject of numerous television and radio presentations and articles in the print media, and also featured in articles in *OYO* magazine, *Sister Namibia* magazine, and the *The Scout Yell* (local Scouts newsletter). Naomi Kisting was the featured personality on the cover of the May 2006 issue of *Sister Namibia*.

Radio and TV projects and events

We prepared **radio scripts on rape, domestic violence and maintenance for use by all the indigenous language services**. Where our language competency allowed, we also provided radio interviews on these topics.

We arranged for an interview on **Katutura Community Radio** on rape and domestic violence.

We did radio reporting on the “**16 Days of Activism against Gender-based Violence in Namibia**” campaign starting on 28 November, covering many topics.

We were interviewed on rape on the **TV programme Tupopyeni** (24 October), together with social worker Rachel Freeman.

Awards for combating gender-based violence

We organised awards for positive action against gender-based violence in four categories (see ‘WINNERS’ box on the right).

To solicit nominations, we ran a newspaper advert, contacted NGOs and the media, and appeared on the TV programme *Good Morning Namibia* to talk about domestic violence and the awards. We were also interviewed on the church-based radio Channel 7, and our recorded interview with Radio Kosmos was aired repeatedly.

The panel to select the winners was composed of LAC Director Norman Tjombe, UNICEF Special Representative Khin Sandi-Lwin and Dean of the Anglican Church Rev. Kathindi. The awards were funded by the US Embassy. Each prize-winner received a trophy at an awards ceremony. ■

WINNERS of the first-ever Human Rights Awards for Combating Gender-Based Violence in Namibia



The awards were presented in a ceremony at the LAC offices in Windhoek on 7 December 2006.

The judges decided that there should be two winners of the **Overall Human Rights Award for Combating Gender-Based Violence**:

ALISA KAULA, a founding member and active volunteer of the Tsumeb Women's and Children's Centre for almost 10 years; and

KORNELIA SHILUNGA of the Ministry of Gender Equality and Child Welfare in Oshikoto Region for her work around the clock to combat gender-based violence.

MANFRED JACOBS, a Community Legal Educator in Omaheke who conducts workshops and meetings among rural communities received the **Award for Combating Gender-Based Violence in the Rural Areas**.

RACHEL FREEMAN, a social worker with Namibian Voices for Development, received the **Award for Combating Gender-Based Violence in the Media**, for her constant TV and radio appearances raising the issue of violence against women and children.

KARIBIB YOUTH GROUP, comprising 15 unemployed young people who have reached over 7000 people through performances of their play raising awareness of abuse, were judged the winner of the **Youth Award for Combating Gender-Based Violence**.

"These Awards celebrate the achievements of all the women, men and youth who are standing up against gender-based violence. We congratulate the individual winners for their astounding achievements and commitment. Their work is an inspiration for many. Although the recipients of the Awards do what they do because it's the right thing to do, we feel it is appropriate to acknowledge their work."

– Norman Tjombe, LAC Director.



Networking

Cooperating with the Ministry of Gender Equality & Child Welfare

- We attended a meeting on **gender mainstreaming** convened by the MGEWC.
- We attended a meeting organised by the MGEWC to assess the progress of the six working groups it has established under the "**Gender Mainstreaming Task Force**".
- We attended a meeting with the MGEWC on the **implementation of the protocols on human rights and people's rights**.
- We attended a meeting convened by the MGEWC to discuss the process for revising the **National Gender Policy**.
- We attended the launch of the **National Gender Database** of the MGEWC.
- We attended a workshop on the **African Protocol on the Rights of Women in Africa** organised by the MGEWC.

"... the report 2005 is **VERY** interesting, it shows so well what can concretely be done to change behaviours on gender and how women and men from rural areas can be implied in law reform. Congratulations!"

– Sabine Hahn-Fornet,
North-South Institute, Austria.

GR&AP training
for people with
disabilities.

Networking with other groups

- The **Social Marketing Association (SMA)** is compiling a region-specific service directory to serve regional referral networks it is establishing to be co-ordinated by its Voluntary Testing and Counselling Centres. The SMA was impressed with the detail of our *Domestic Violence and Sexual Abuse Service Directory*, and asked for an electronic version to amalgamate with their data. In return they promised to acknowledge the LAC in the final product.
- We advised **Sister Namibia** on questions donors raised about their trust document and helped them to revise their draft Deed of Trust accordingly.
- We briefed a visiting team from three **shelters in Namibia and related organisations in South Africa** on our activities and on domestic violence, rape and maintenance laws.
- We attended the launch of the **Knowledge, Attitude, Practice and Behaviour Study** on the risks and perceptions of young people around HIV/AIDS, commissioned by UNICEF.
- Our Training Coordinator was a panellist on legislation in a World Bank/UNDP-funded panel discussion on **365 Days of Action on Gender-Based Violence**.
- We ran an organisational development workshop for **Sister Namibia**.
- We attended the launch of a report on causes of violence, based on research commissioned by **Women's Action for Development**.
- We assisted the women's shelter **Friendly Haven** with advice regarding their legal status as an NGO and the drafting and revision of their Constitution.
- The GR&AP Coordinator attended the **launch of the Law Reform and Development Commission website** on behalf of the LAC (www.lawreform.gov.na). The LRDC requested a link to the LAC website.

Regional and international workshops attended by staff

- Dianne Hubbard attended a workshop on **family law** in Cape Town organised by the law firm Miller du Toit, and gave a presentation on Namibia's Children's Status Bill which was well received.
- Dianne also attended a workshop in Johannesburg entitled "**Putting Feminism on the Agenda**", involving a diverse group of some 70 women's rights activists, scholars, advocates and lawyers.



Staff 2006

Dianne Hubbard – Co-ordinator
Naomi Kisting – Project Assistant
Mercedes Ovis – Legal Researcher
Anne Rimmer – Training Co-ordinator
Wairimu Munyinyi – VSO Volunteer

Dr Suzanne LaFont – Visiting Academic
Alison Reid – Visiting Professional
Sonja Gierse-Arsten – Graduate Student
Amanda Dodge – Canadian Intern
Sonia Eggerman – Canadian Intern
Nermeen Saba Arastu – Intern
Elizabeth Fischer – Intern
Susan Jay – Volunteer





Making rights REAL

Huricon plays a leading role in human rights litigation in Namibia. The unit's main task is to litigate in the public interest where constitutional or common law rights are infringed, or where a case would test existing law and possibly set a precedent for law reform. Huricon screens LAC clients to determine whether litigation is warranted, and provides legal advice to those whose cases do not warrant litigation, or where litigation is unlikely to succeed. The unit supports other LAC departments as well as other organisations in need of legal services, and trains candidate legal practitioners at the LAC. Despite difficult staff and funding circumstances in 2006, Huricon continued to make a strong impact in simultaneously serving individual clients and the broader Namibian public. With each client served, the LAC's goal of a culture of human rights and democracy is also served.

Staff and funding

Huricon's personnel base diminished markedly in 2006 when Beatrix Greyvenstein, the Senior Legal Practitioner, left at the end of March to pursue a career in private practice. Since then the unit has been staffed solely by Toni Hancox, who attends to all the litigation and coordination of the unit's other activities. These activities now centre mainly around litigation: once current litigation files are at a manageable level, the way in which Huricon 'does business' will be restructured to obtain maximum impact from limited resources. Huricon's funding situation remains dire, with a small donation received from Namibia Breweries for a research paper and the International Commission of Jurists still funding a few cases. Obviously the personnel situation in Huricon is not conducive to taking on regular consultancy work to bridge the funding gap, nor does it allow for spending a lot of time sourcing funds, since the time limits involved in litigious work must be respected.

Litigating in the public interest

The case of a mentally challenged girl being **raped** while in the care of hostel supervisors of the Ministry of Basic Education was argued in the High Court in February. It was argued that the Ministry is vicariously liable for their officials' breach of the duty of care. Judgement in this matter is still awaited.

A *mandamus* application forcing the Ministry of Home Affairs and Immigration to make a decision on a pending **application for citizenship** filed by a family of refugees was finalised and served. Government initially opposed the application but then decided to refuse the citizenship applications, thus nullifying the reason for the court application. The reasons for the Ministry's decision were all found to be easy to deal with, but the Ministry has not reversed its decision, which means that a review application will follow. The clients have been living in Namibia for over 10 years, their child has commenced with schooling here, and both are employed to provide specific services sorely lacking in Namibia. There seems to be no valid reason for refusing them citizenship and this will be challenged.

With the assistance of funding from the Gender Research and Advocacy Project (GR&AP), Huricon was able to solicit the services of external Counsel to deal with a case of **sexual harassment**. This is a fairly new field of law, and the LAC has never before entered into legal proceedings in such a matter. The pleadings have been finalised, and we expect that the matter will proceed to trial in 2007. This case could have important ramifications for employers in Namibia as it would indicate the level of care expected from them in cases of sexual harassment.

Regarding the cases of detainee **torture** which flowed from the alleged secessionist attempt in the Caprivi in 1999, Huricon made extensive preparations in respect of five matters that were to go to trial in June and July 2006. This included attending to numerous court notices, requests for additional particulars, supplementary discovery, bundles, indexing, and tracing the doctor who initially treated clients and was "somewhere in Botswana". In the latter instance, Huricon has the Internet and its search engines to thank. After weeks of preparation, these matters were settled by government shortly before the commencement of trial. A provision of the settlement was that the terms remain confidential.

Similar preparations were attended to in conjunction with the LAC's in-house Counsel, Lynita Conradie, in the matter of a client who alleged that he had been viciously tortured while legitimately crossing a border point in northern Namibia. This matter went to trial in October 2006, but despite our client having witnesses to corroborate some of his allegations, the court found his testimony unsatisfactory, thus he was unsuccessful in his damages claim. We decided not to appeal the judgement.

“ There is no doubt that this unit performs tremendously important work in the Namibian society, as does LAC as a whole. ... We are eager that you will be able to continue your work! ”

– Eva Aberg, Country Representative,
Africa Groups of Sweden,
letter to Toni Hancox dated 18 August 2006.

Huricon was instructed to draft papers putting the Office of the Prosecutor-General on terms to criminally charge the alleged perpetrators of widespread torture following the secession attempt. The lengthy papers were finalised but our clients wanted to wait until their claims for damages were settled before proceeding with the application. Unfortunately, despite their matters subsequently being settled, Huricon was unable to obtain the clients' signatures on the affidavits needed to launch the application against the Prosecutor-General. We did manage to obtain permission from the Ministry of Safety and Security to enter Windhoek Central Prison to photograph those of our clients who still have scars from the torture they experienced some eight years ago.

Huricon is still assisting a number of Caprivi detainees with claiming their **pensions and other benefits** from the Government of Namibia, and with numerous other small issues affecting trial-awaiting detainees. Huricon took on this facilitation role because the detainees have no funds to pay legal practitioners to guide them in this process. Without guidance their ability to access their rights would be severely impaired.

The court papers in a matter concerning the Namibian Broadcasting Corporation's TV documentary entitled *Youth in Prison* and the **right to privacy** have been finalised and the matter should proceed to trial in May 2007. Our client was in prison when he agreed to be filmed for this documentary, but he specifically requested that his face not be shown. When the film was aired at prime time, his face was not obscured. He felt that his right to privacy had been violated and instructed Huricon to institute action on his behalf. The situation was exacerbated by the airing of the film a further three times.

We issued summons on behalf of a woman who was held in the Forensic Psychiatry section of the Mental Health Unit after being declared a **State President's Patient**. She felt ready to be released, and the Hospital Board confirmed that she was, but 18 months passed before she was released. Huricon contends that this was an **unreasonable administrative delay** and claimed a substantial sum of damages. Government defended, stating that the extended incarceration was lawful as it was still under order of a court of law. Huricon disagrees with this contention and is awaiting Counsel's opinion before proceeding with the matter. In addition, Huricon is in constant contact with the Head of the Mental Health Unit in an attempt to find ways to expedite the release of patients who are ready to re-enter society. This involves giving legal advice, attending meetings of the task force assigned to review legislation, and liaising with the Office of the Prosecutor-General who acts as the official *curator-ad-litem* for State President's Patients.

Pleadings were finalised in the case of an inmate in a correctional institution being **assaulted** while out on work duty. Our contention is that the Ministry of Safety and Security has a heightened duty of care towards inmates since the latter are not at liberty to remove themselves from the situation in which a correctional institution has placed them. The Ministry must take responsibility for the safety of inmates in circumstances where they leave the prison enclosure. Since the assault was perpetrated by a private person (the Second Defendant), the Ministry is denying liability. This matter will probably proceed to trial in 2007.

In another matter involving the same Ministry, Huricon has instituted action on behalf of a client who was afforded six months' **pardon** by the then President of Namibia during the country's independence celebrations, but this was subsequently revoked. Our client contends that this was done without just cause. The matter is ongoing.

In a matter referred to Huricon by the GR&AP, relating to the rights of women in a **customary divorce**, much time was spent consulting with our client, the legal practitioner of the other party and Counsel. An application for interim maintenance in the customary divorce action was also drafted, but then our client's husband divorced her in the traditional manner by returning her to her parents over the holiday season, and it is presently unclear whether our client wishes to pursue her options.

In a matter involving our client being **shot** unlawfully by government officials, a satisfactory offer was made in settlement. This was the opinion of the official *curator ad litem* appointed pursuant to the Huricon application, due to the client having since become mentally challenged. Payment is awaited. Another application for the appointment of a *curator bonis* will have to be brought as our client is unable to manage his own financial affairs.

The file of a client who was **raped** while in the care of the Ministry of Health and Social Services had to be closed after she passed away from an unrelated illness.

Three more matters were settled favourably, two relating to **medical negligence** and one relating to **corporal punishment** inflicted on a pupil by a school teacher. In the latter case, the damages received were used to enrol the child in a technical school better suited to his needs and thus more likely to secure a better future for the child.

Some work was also done for the **LAC's Land, Environment and Development (LEAD) Project** to assist with a staff shortage at critical times. This entailed research, assisting in client meetings and giving advice. ■

Non-litigious matters

These matters related in the main to issues of **citizenship and immigration**. After the Coordinator wrote an article on citizenship for publication in a local newspaper and subsequently appeared on national television discussing the issue, Huricon received a flood of queries. Arising from these queries, many letters were written for clients merely setting out the correct status of foreigners married to Namibian citizens from a legal point of view. While resources were not available for opening a file in each case, it was hoped that these letters would assist in that they confirmed that clients do not require work or residence permits in Namibia if married to Namibian citizens.

Furthermore, we assisted a number of clients who were treated unfairly by immigration officials at border posts. These cases were brought to the attention of the Chief of Immigration who indicated that he appreciated being informed of problems experienced.

Huricon assisted two clients in obtaining work permits while still attempting to successfully appeal a decision to refuse clients permanent residence permits despite the clients having lived here for over 10 years and in fact contributing considerably to the Namibian economy. Another client received her Certificate of Registration as a Namibian Citizen thanks to Huricon's intervention.

In August 2006 a further two immigration files were finalised with the clients' status in Namibia being positively confirmed.

A widow was assisted in that Huricon successfully negotiated payment to her from her husband's previous employer in respect of the employer's portion of the pension fund, notwithstanding that this had previously been refused. ■

Training candidates

Due to funding shortages, Huricon could not recruit and train a candidate legal practitioner in 2006. ■

Screening clients

Huricon assists with screening new clients and giving advice and referrals when appropriate. Clients are screened personally and by telephone. In addition, queries by mail are received on a daily basis and are dealt with almost exclusively by the Huricon Coordinator. This service is a small attempt **to provide some free advice to indigent clients and at least steer them in the right direction** even if the matter does not fall within the LAC's mandate or cannot be taken on due to a lack of funds. The situation is far from ideal, however, because in many cases the clients cannot take their issues further without some form of legal assistance. ■

Supporting other entities

The Huricon Coordinator is a trustee of the **Hoofbeats Trust, Archillen Gawanab Trust and Maria Geelbooi Trust**, all of which benefit previously disadvantaged children. It is hoped that the resources will assist the children to prepare themselves adequately for entering the job market. In 2006 the trusts were administered according to the needs of the children, and the various requirements regarding inland revenue and the Master of the High Court were addressed.

The Coordinator resigned as Secretary to the **Professional Arbitration and Mediation Association of Namibia (PAMAN)** due to increased responsibilities at the LAC, but remains a member of the Executive Committee. One of PAMAN's objectives is to promote socio-economic development in Namibia. ■





Workshops, lectures and ancillary matters

In January 2006 the Coordinator and Senior Legal Practitioner attended the **LAC Strategic Planning Workshop** facilitated by the GR&AP. The workshop proved extremely helpful.

We published two **articles in *The Namibian*** newspaper early in 2006, the first relating to the rights of foreigners married to Namibian citizens (March) and the second discussing the prohibition of corporal punishment in schools (April). Both articles elicited much interest, with queries about citizenship rights still being received 12 months later. The second article alerted parents to the rights of their children and resulted in our assisting two more clients in this regard. Following this article *The Namibian* received many letters calling for the reinstatement of corporal punishment, which indicates that the Namibian public is still in need of human rights sensitisation.

In February the Coordinator undertook both the research for and compilation of a document on the **duties of trustees** for the benefit of LAC staff, and also attended an LAC session on **funding**.

In March, both Huricon staff members spent a week at the **LAC's Ongwediva office** to facilitate the office's reopening and to consult with clients in the north. The Coordinator was also a member of an internal LAC team tasked to establish a revised appraisal process for LAC personnel.

Also in March Huricon attended a meeting with a representative of the Kenyan section of the **Konrad Adenauer Foundation**, which has taken upon itself the task of strengthening the rule of law in Sub-Saharan Africa.

In April the **Namibian Broadcasting Corporation** invited the Coordinator to speak on its TV programme *Tupopyeni* on the rights of foreigners married to Namibian citizens. Also present was an official of the Ministry of Home Affairs and Immigration, who admitted on the programme that foreigners married to Namibians can apply for a domicile certificate and do not need any other form of permit to live and work in Namibia. He also confirmed that applicants for citizenship by marriage do not have to renounce their existing citizenship. This was very helpful in that the latter in particular has been a contentious issue with the Ministry's staff for a long time.

In May, on behalf of the LAC Director, the Coordinator attended the **European Community (EU)** function celebrating Europe Day.

Also in May the Coordinator attended a one-day workshop on **corruption** hosted by the **Namibia Institute for Democracy**, which was extremely informative. It emphasised that most people, if not all, have practised some form of corruption at some point in life, and that this adds force to the nation's desensitisation to corruption.

In June **Namibian Breweries** asked the Coordinator to draft a short research paper on new liquor legislation, specifically relating to the shebeen issue. The paper referred to the constitutionality or not of certain provisions, and included a list of recommendations, some of which government has taken up.

In July the Coordinator attended a **Law Society of Namibia** training session on the Financial Intelligence Bill, following which she gave a short presentation on the services of the Professional Arbitration and Mediation Association of Namibia (PAMAN).

In August the Coordinator attended a workshop on "The Right to Health" organised by the **International Commission of Jurists**, in which she presented a paper discussing whether or not this right is respected in Namibia.

One week of October was spent at a workshop on the Rule of Law organised by the **Konrad Adenauer Stiftung** in Mombasa, Kenya, which was well attended by stakeholders, including Members of Parliament, judges, advocates and human rights lawyers. A basis for a regional network was established.

Also in October the Coordinator participated in the Anti-Poverty prayer meeting organised by the **Council of Churches in Namibia** in the Parliament Gardens in Windhoek.

In November the Coordinator attended a conference organised by the **Law Society of Namibia** with the theme "Integrity of the law/legal profession - reality or myth in our time?" In the Annual General Meeting held directly after the conference, the Coordinator was elected to the Council of the Law Society, an important platform for making legal practitioners aware of human rights issues and encouraging them to take action against abuse. ■



Toni Hancox with Judge Louis Muller of the High Court of Namibia (left) and a delegate from South Africa at the Konrad Adenauer Stiftung workshop in Mombasa.



The Council of the Law Society of Namibia, to which Toni Hancox was elected in 2006.



Participants in the Council of Churches in Namibia (CCN) Right to Health Workshop.

COMMUNITY PARALEGAL VOLUNTEERS TRAINING PROJECT (CPVTP)

Taking legal services to the regions

This LAC project invests in human resource development to give poor and marginalised people easier access to justice. Working hand in hand with the National Paralegal Association (NPA), it provides legal training, an information service and logistical support to community volunteers who offer legal advice services from service points in their communities. It also train government officials, NGOs and CBOs.

“The training is really good as it help us make the distinction between traditional law and common law, of which the majority of our people are not aware. We need more trained people on law who will extend legal assistance and information to remote villages and settlements in Kaokoland.”

– Ben Kapi, Secretary to the Vita Royal House, Opuwo.



Status and staffing of the paralegal training project

The CPVTP commenced in 2001 as part of the LAC Legal Education Unit. The first phase of the project ended in December 2004, with over 280 people across Namibia trained as paralegals. The trainees are selected by their communities.

The second phase commenced in January 2005, with more focus on establishing permanent advice offices or service points where communities and individuals can access legal advice from paralegals. The project will enter the third phase in 2007, with the focus on enhancing logistical support to the paralegals and further building their capacity to render effective services. The other focus will be institutional development for the NPA to make it an independent and sustainable organisation.

In 2006 the CPVTP was coordinated by **Zeka Alberto** based at the LAC office in Windhoek. All of the paralegals in the project, based at the NPA Regional Advice Offices, are members of the NPA, and the CPVTP works closely with the NPA secretariat in Windhoek to facilitate the paralegals' activities across the country.

LAC Director Norman Tjombe assisted in 2006 with paralegal training and litigation on behalf of clients referred to the LAC through the project. Other LAC legal practitioners also helped with giving advice and litigating for project clients.

Capacity-building training continued in 2006, but only in some regions due to a continuous assessment of project activities throughout 2005 and 2006 which took up a lot of staff time. The regions not covered in 2006 (Omaheke, Khomas, Otjozondjupa, Karas, Hardap, Kavango and Caprivi) will be covered in 2007.

The capacity levels of the service points presently vary. Some are fully functional advice offices with all the requisite office equipment, while others provide only a rudimentary personal advice service. Despite the willingness of the communities to support the volunteer paralegals by providing resources, most if not all have been unable to do so due to a lack of funds. The fully functional offices are in Tsumkwe, Ongwediva, Gobabis, Okakarara, Omaruru, Rehoboth, Opuwo and Omega. The other service points established to date are in Eenhana, Gobabis, Katima Mulilo, Keetmanshoop, Ombalantu,

Omungwelume, Omuthiya Gwiipund, Ongwediva, Opuwo, Otavi, Outjo, Ruacana, Rundu and Tsumkwe.

The presence of paralegal service points in virtually all parts of the country is proof that the project is living up to its mandate to ensure that legal services can be accessed by people who would otherwise not have means to access them. But the sheer number of service points and paralegals places a high demand on the LAC and NPA which have to ensure that high standards are maintained. This calls for constant **monitoring** of the project, but no formal monitoring system exists as yet, which has made the task even more difficult. The development of a proper monitoring and evaluation system will be a priority in 2007.

Problems in the past due to the NPA not having sufficient **communications** capability have been solved by moving the NPA office to the LAC's head office. Likewise, the NPA in the north now shares the LAC's Ongwediva office space. This close physical proximity of the two organisations has had a dramatically positive effect on their joint project; among other things it has significantly speeded up the litigation work. □



Giving advice and litigating

The CPVTP is greatly strengthened by the strong relationship between the LAC and the NPA. The NPA has extensive representation in the regions while the LAC has the skills and resources to litigate or advise in cases referred from the regions. The LAC will not take up a case with poor merits; it will only litigate if the chances of winning are very high. Numerous cases with a potentially wide impact were referred to the LAC in 2006, some of which were litigated.

Most cases reported or referred to the LAC by paralegals were **land** disputes, and most of these involved **inheritance** under customary law. Constantly, women and children around the country, especially female children, suffer discrimination and loss of property left to them by a deceased husband or father. Traditional authorities and individual traditional leaders, particularly in the northern regions, appear to be the biggest culprits in land disputes, and the project has identified this group for further training and information on inheritance laws.



Traditional leaders in Okongo

A number of **labour** cases were referred by paralegals or the LAC to District Labour Inspectors. These mainly involved unfair dismissal, sexual harassment, refusal of employers to pay employees and unreasonable working hours. Most clients do not know their workplace rights and report problems to the police who either can't assist them or refer them to relevant institutions for assistance.

Child maintenance complaints have been on the increase and these are referred by paralegals to local public prosecutors. This is a valuable service to communities as public prosecutors tend to be burdened with criminal cases and have little time to assist the public by listening to complaints and giving proper legal advice in civil matters.

The paralegals dealt with a number of **assault** cases in 2006, some perpetrated by police on suspects, but most involving **domestic violence**. This unfortunate widespread reality of domestic violence in Namibia is constantly addressed in the educational activities and research of the LAC. □



Traditional leaders in Opuwo



Training paralegals and others

The training received by **paralegals** covers many legal issues, but mainly those of child maintenance, inheritance, HIV/AIDS and human rights, communal land rights, labour law, laws on traditional authority, and communal area conservancies. The paralegal training programme has benefited immensely from the experience and skills of the ALU, LEAD and GR&AP educators.

We focused extensively on HIV/AIDS and human rights training for paralegals, but also for Regional AIDS Coordinating Committees and school teachers. In the workshops for the latter, the participants were mostly women, with an average of 30 participants for each of 7 workshops – in Okongo, Opuwo, Rundu, Katima Mulilo, Otjiwarongo, Grootfontein and Swakopmund. Some of these workshops also focused on the Communal Land Reform Act, the Traditional Authorities Act and testate and intestate succession. The Opuwo workshop also benefited the Oukwanyama Traditional Authority, Otjikao Traditional Authority and Vita Royal House.

With assistance from the LEAD Project, we conducted eight workshops on communal land rights – in Opuwo, Okongo, Okakarara, Okahao, Tsandi, Ruacana, Gobabis and Keetmanshoop. Volunteer paralegals were present in all of these, but the focus was on training the traditional authorities, communal conservancy members and government staff. While the Communal Land Reform Act was the main focus, inheritance and women's rights to property under customary law was the issue discussed most in each workshop. The significance of this issue for Namibian communities was also reflected in the increase of cases taken up for litigation. There were 25-30 participants in each of these workshops, with a virtually balanced gender representation.

Of the initial ±280 people trained as community volunteer paralegals, about 200 are actively serving as such. Rather than train new candidates, the CPTVP will focus in 2007 on strengthening the capacity of the existing paralegals. □

CASE EXAMPLES 2006

In one case of **assault**, referred to the LAC by paralegals in Tsumkwe, the LAC secured a victory when the High Court awarded substantial damages in our client's favour. Our client had been brutally assaulted and his artificial leg was broken in the assault. The paralegals assisted him in lodging a criminal complaint with the Namibian Police, but the latter were reluctant to investigate or arrest the suspect. The LAC threatened the police with a court interdict, which led to an arrest. It then came to light that the same accused had committed several acts of assault against members of the San communities in and around Tsumkwe. When the suspect applied for bail, the LAC and the paralegals ensured that our client and all the other victims were present in court, which resulted in the Court refusing to grant bail. The suspect remains in custody, and the numerous cases against him, including a suspected rape case, are proceeding through the criminal courts, with the NPA and the paralegals ensuring that his victims are represented at all times.

Land disputes were brought to paralegals by the Kamho children and Lotta Frans. In both cases the children are unable to inherit from their respective fathers' estates due to a very old legal principle that children born out of wedlock ('illegitimate children') cannot inherit from their fathers. The constitutionality of this law is presently being challenged in the High Court and these cases will be heard in February 2007.

Another land dispute is that between the community of Omafo village on the border of Namibia and Angola and the Helao Nafidi Town Council. The latter arbitrarily awarded a large tract of land to a private company for the construction of a casino and shopping centre, said to be the biggest such complex in Namibia. This would displace at least 27 families from land on which they have lived for several generations, and would impact negatively on many more families living on land immediately adjacent to the complex. The community approached the local NPA/CPTVP paralegals, who enlisted the services of the LAC to challenge the legality of the entire project, on various grounds, such as that the Town Council's own tender procedures were not followed; the land actually belongs to the community, meaning that it would have to be expropriated; the impact on the environment had not been considered; and the whole process had been marked by corruption. This promises to be a most interesting court case, and one likely to set a precedent for the proper conduct of affairs by elected public officials. □



Providing a vital tool of the law trade

A carpenter cannot do his or her work without certain basic tools, such as hammer, chisel and saw. A doctor cannot examine a patient properly without a stethoscope, thermometer and other basic equipment. One of the most important tools of a lawyer's trade is his or her books. If one does not know the answer, it is very important to know where to find it, and more often than not, the answer lies in a judgement given in the High Court or Supreme Court. But someone has to collect and make the judgements easily accessible. Judgements should be accessible because our legal system is based on 'judicial precedent', meaning that previous judgements help lawyers to determine whether or not a client has a good case, and serve as legal authority in a particular case.

One of the LAC's projects is to make judgements easily accessible in the form of *The Namibian Law Report*. The Law Report is compiled and edited by Adv. Lynita Conradie (pictured left) at the LAC, and printed and distributed by Juta & Co. in Cape Town.

The Law Report contains the most important judgements given by Namibia's Labour Court, High Court and Supreme Court. While many South African cases are still referred to in Namibia, we are slowly building up our own collection of judgements.

The Law Report is published in annual volumes dating back to 1990, with the first volume launched in 1995. We have slowly but surely caught up with the backlog, and it is expected that volumes for 2005 and a first volume for 2006 will come off the press shortly.

The Law Report is important not only because it contains important judgements, but also because each volume contains an index published in cumulative form every 10 or 15 years. This index contains a table of cases, a subject index and case annotations. This is a system of cross-referencing that enables a lawyer to find out which previous cases have been referred to in a particular judgement. The subject index is compiled from a summary which appears at the beginning of each judgement. This summary indicates what the case is about, for example, a case on contract, a criminal case dealing with sentencing or a case dealing with damages awarded in a motor vehicle case. A cumulative index was published in 2001 covering 1990-2000. It is envisaged that a cumulative index covering 1990-2005 will be published in 2007. If the Reports were only collections of judgements without the indexing and cross-referencing system, they would be of little use to anyone.

The Law Report is a vital service to the whole legal community, including judges. However, there is a real danger that this service will soon cease as funding for the project has run out. As the Report serves a relatively small market, its publication is not financially profitable. It is well known that the more books printed, the cheaper the printing costs. Moreover, the editing of the Report requires a high level of skill in both language and law, and it is a trite principle that 'you get what you pay for'. It is a

time-consuming exercise, as each reference

in a judgement must be checked, and the editor has to

have a clear understanding of a judgement to be able to write the summaries that form part of a case report.

While Law Reports are not books that members of the public would read, cessation of the service will directly affect the administration of justice in Namibia. Our system of judicial precedent requires that lawyers have access to previous judgements, which are in a systematic format to enable a quick and efficient reference system. If a doctor does not have a stethoscope, he or she will not know whether a patient's heart is in order; if a lawyer or judge does not have Law Reports, he or she cannot perform his or her function efficiently and effectively. ■

— Adv. Lynita Conradie,
article prepared for publication in LAC News in 2007.

“The Namibian Law Report provides the most comprehensive reference for Namibian case law and jurisprudence.”

— Michael Bollig and Ruth Hall,
“External Evaluation of the LEAD
Project at the LAC”, 2006.



Donors make it possible



Our donors are listed in the **Income** table on the next page.

CONSOLIDATED BALANCE SHEET as at December 2006

ASSETS	2006 (N\$)	2005 (N\$)
NON-CURRENT ASSETS		
Property, motor vehicles and equipment	2 059 911	2 238 444
CURRENT ASSETS		
Donations receivable	–	148 069
Trade and other receivables	325 256	176 006
Cash and cash equivalents	1 429 469	764 224
		1 088 299
TOTAL ASSETS	3 814 636	3 326 743
FUNDS AND LIABILITIES		
FUNDS AND RESERVES		
Accumulated funds	1 981 256	1 612 757
CURRENT LIABILITIES		
Bank overdraft	114 390	563 897
Trade and other payables	1 121 480	1 150 089
Donations received in advance	597 510	–
	1 833 380	1 713 986
TOTAL FUNDS AND LIABILITIES	3 814 636	3 326 743

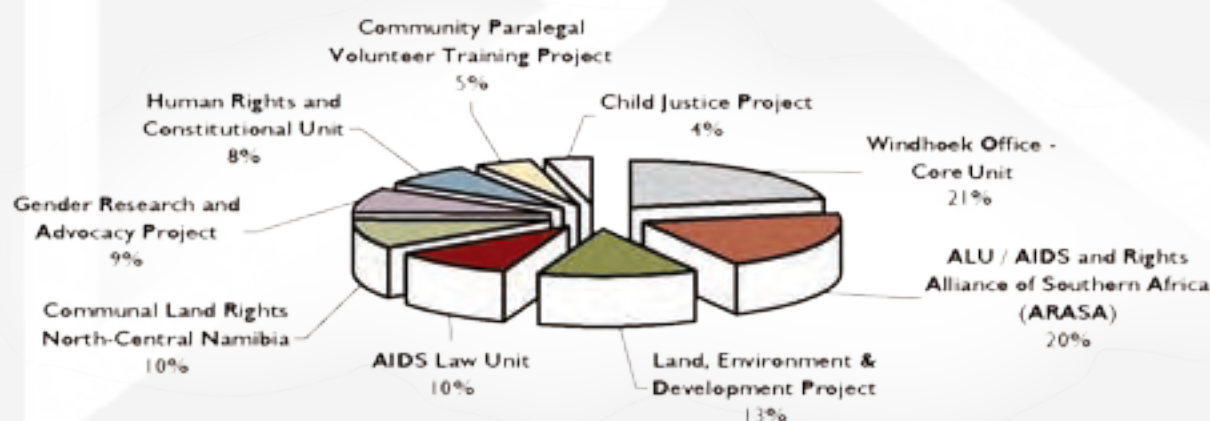
CONSOLIDATED INCOME STATEMENT for the year ending 31 December 2005

INCOME	2006 (N\$)	2005 (N\$)
Windhoek Office – core unit	4 275 239	2 578 815
EXPENDITURE		
Windhoek Office – core unit	(3 190 768)	(4 658 083)
DEFICIT FOR THE YEAR	1 084 471	(2 079 268)
ACCUMULATED FUNDS AT BEGINNING OF YEAR	(1 370 225)	709 043
ACCUMULATED (DEFICIT)/FUNDS AT END OF YEAR	(285 754)	(1 370 225)
ACCUMULATED SURPLUS – PROJECTS	2 267 010	2 982 982
CONSOLIDATED ACCUMULATED SURPLUS AT END OF YEAR	1 981 256	1 612 757

“I am extremely pleased that the Women's Legal Rights Initiative (WLR) was able to support the finalization and printing of copies of the *Advocacy in Action* manual. It has been very well received by USAID and our partners. I also appreciate that you took time out of your schedule to share it with groups in Botswana under the auspices of the WLR. Since that time, we decided to support Muleide in Mozambique and WLSA-Swaziland with adapting the manual to their local contexts ...”

– David M. Vaughn, Esq., Chief of Party, USAID Women's Legal Rights Initiative, in an e-mail to the Coordinator of the LAC Gender Research & Advocacy Project.

EXPENDITURE 2006 – as proportion of total LAC funds spent by each unit/project



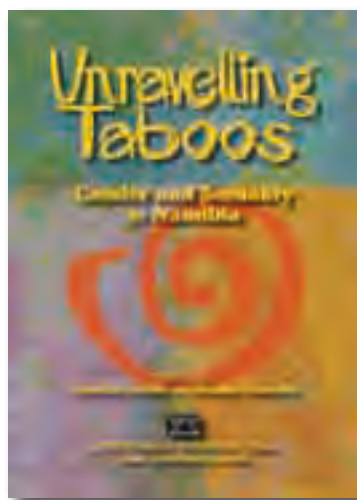
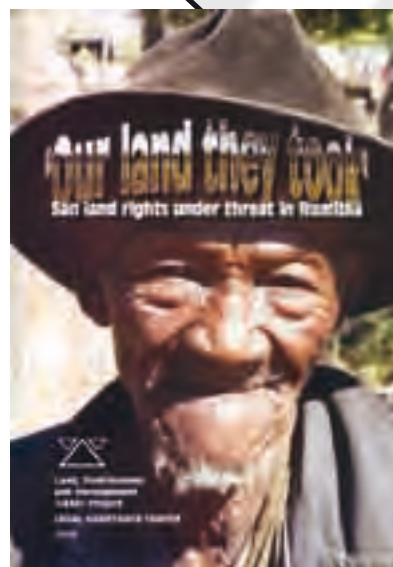
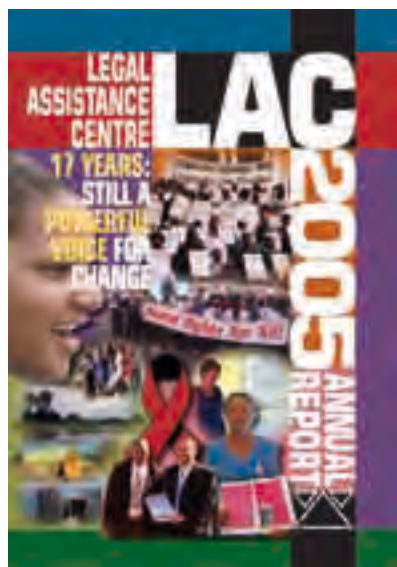
INCOME – DONATIONS AND OTHER SOURCES		
DONATIONS	2006 (N\$)	2005 (N\$)
Africa Group of Sweden	236 220	–
Embassy of Finland	1 128 000	770 000
Embassy of Sweden / Swedish International Development Agency (SIDA)	1 756 089	6 546 992
Evangelischer Entwicklungsdienst	917 286	894 800
Family Health International	120 199	466 169
Ford Foundation	528 556	465 980
Futures Group International	–	88 412
Gesellschaft für Technische Zusammenarbeit (GTZ)	226 400	–
HIVOS	1 720 841	2 244
HORIZONT3000	1 317 017	1 020 406
International Commission of Jurists	27 844	12 248
Legal Assistance Trust (of the LAC)	1 024 083	1 443 091
Ministry of Environment and Tourism	38 680	–
Ministry of Health and Social Services	–	70 875
Namibia Aids Prevention Trust	41 460	–
Namibia Association of Norway (NAMAS)	52 483	–
Namibia Breweries Ltd	15 000	–
Namibia Economic Policy Research Unit (NEPRU)	25 000	–
Namibia Nature Foundation	97 661	52 953
Namibian Catholic Development Commission (NACADEC) Women's Desk	–	600
North/South Institute for Development (Child Justice Project)	460 502	320 000
PACT Agencies Collaborating	403 560	–
Population Service	–	78 313
Pupkewitz Holdings	1 000	500
Royal Danish Embassy	–	481 982
Royal Netherlands Embassy	250 910	324 493
SAFAIDS	55 461	–
Social Marketing Association	82 589	–
Southern Africa Legal Services	792 787	–
Telecom Namibia	–	2 000
United Nations Children's Fund (UNICEF)	–	148 600
United Nations Development Programme (UNDP)	–	48 240
Working Group of Indigenous Minorities in Southern Africa (WIMSA)	155 165	–
Other donations	2 054 703	772 101
Sub-total donations	12 344 180	14 010 999
OTHER INCOME – bookkeeping and management fees; publication sales; insurance claims; interest received; booklets and manuals; legal fees recovered; presentation fees; profit on sale of vehicles and equipment; rent received and sundry income.	2 480 041	401 298
TOTAL INCOME	14 824 221	14 412 297

SOME PAST PUBLICATIONS



Giving the nation information

LAC PUBLICATIONS 2006



Details of these publications are given in the relevant sections of this report.

Most LAC publications are available both in print and as pdf files on the LAC website: www.lac.org.na.

A fee is charged for some LAC research reports, manuals and larger publications such as the *Index to the Laws of Namibia (NAMLEX)*.





The LAC works to enforce and protect the rights afforded to the Namibian people by constitutional law, such as the rights to: **life** • **freedom and security** • **protection of human dignity** • **freedom of choice** • **freedom of conscience, religion, thought, belief and opinion** • **personal privacy** • the use of a language of choice • **a pollution-free environment** • **freedom of association** • **freedom of movement** • **protection from discrimination** • **equality before the law** • **an independent and impartial judiciary** • **a fair trial** • **vote** • **democratic representation** • **peaceful assembly and demonstration** • **freedom of speech and expression** • **access to all information held by the State** • **freely engage in economic activity** • **acquire property** • **fair labour practices** • **join and form trade unions** • **organise and bargain collectively** • **strike** • **an equal basic education** • **equal access to educational institutions** • **academic freedom**. The LAC's ultimate aim is to create and maintain a culture of human rights in Namibia.

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