

MISSION STATEMENT

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.

LEGAL ASSISTANCE CENTRE

4 Körner Street PO Box 604 Windhoek, Namibia

Tel: +264 61 223 356 Fax: +264 61 234 953 Web: www.lac.org.na Email: info@lac.org.na

Editor: Mark Nonkes

Managing Editor: Johannes Berndalen

Contributors: Rachel Coomer, Zandra Balzer (communication intern), Jackson Hilifwa (communication intern),

Selma Ikela (communication intern), & Goderich Sikwana (communication intern)

Photographers: Charlie du Preez (cover), Mark Nonkes, Johannes Berndalen, Zeka Alberto, Goderich Sikwana About the cover photo: Silvanus Nepunda Jr. was the beneficiary of a 2009 court case taken on by the LAC. When Silvanus' father committed suicide with a police officer's gun while in police custody, Silvanus' uncle approached the LAC for assistance. Arguing that the police were partly responsible for the suicide and therefore must financially compensate Silvanus, who is a minor, the LAC took the case through the High Court and then to the Supreme Court of Namibia. In the Supreme Court judgment. The court agreed that the Namibian police were indeed 50% responsible for Silvanus' father's death and the police must provide financial support for the child. For more information about the case, see page 19. Silvanus and his family gave permission for this photo to be taken and his name to be published.

Proof Reader: Cindy Cho

Printer: Solitaire Press Pty (Ltd.)

Designer: Deep Design

ISBN: 978-99945-61-08-7

ABOUT THIS REPORT:

In producing this report, several young Namibians were recruited and guided by Mark Nonkes and Johannes Berndalen, an Africa Groups of Sweden Information Officer Intern at the LAC. The four Namibians, who all had a particular interest in journalism, were guided in reporting and writing for print media, with insight and tips on interviewing, researching and writing articles for magazines. The 3-month training sessions have resulted in this 2009 Annual Report. We hope you enjoy.

But what's more exciting, is the training offered has already proved fruitful in the lives of the young Namibians: one has gained full-time employment at a local newspaper; another has been accepted to study Communications at the Polytechnic of Namibia while a third has been recruited to work at LAC in a communications role for an additional six-month period. We look forward to watching these young people continue to grow professionally in the future.

TABLE OF CONTENTS

Founding Director's Message	02	Gender, Research and Advocacy Project (GR&AP)	31
Director's Message	03	The Right to Participate in the Conduct of Public Affairs	32
Staff	04	Right to Education	34
LAC Publication Distribution	06	Respect for Human Dignity	35 37
LAC Training in Namibia	07	Children's Right to Dignity Right to Freedom from Violence	38
		Messages in the Media	39
Human Rights and Constitutional Unit (HURICON)	08	Right to Protection of the Family in all its forms	42
Litigation: Right to Safety and Security	09		
Litigation: Defending the Right to Housing Litigation: Fighting for the Right to	11	Land, Environment and Development (LEAD) Project	42
Adequate Sanitation and Water	13	Investigating and Asserting Environmental Rights	43
Litigation: The Right to Housing	14	A Right to Water	45
Litigation: The Right to Justice	14	Environmental Rights	45
Litigation: The Right to Health	16	Protecting Land Rights for Communities	46
Defending the Right to Safety and Security	17	Preserving Land Rights	47
Right to Adequate Government Services	18	Celebrating the Right to Culture	48
Right to Dignity and Fair Treatment	19	Rights for a New Generation of Farmers	50
		Right to Communal Land	52
		Putting the Environment First	53
AIDS Law Unit (ALU)	21	The Right to Participate in Government Decisions	54
The Right to Family, Dignity and Liberty		Empowerment through Education	55
The Forced Sterilisation Cases	22		
Rights for Orphans and Vulnerable Children	23		
Protecting Children's Rights	25	LAC General	56
Right to Safety and Security	26	Right to Information	57
Asserting Rights in the Workplace	27	Fighting for Justice	58
The Right to Equality	28	Hearing about Your Rights	59
The Right to Health	29	A Tool for Transformation	60
Protecting Prisoners	30	Defending the Rights of Indigenous Peoples	61
			0.0

FOUNDING

DIRECTOR'S MESSAGE

The Legal Assistance Centre (LAC), Namibia's only public interest law firm, continues to strive for a society founded upon a human rights culture.

In the 21st year of the LAC's existence, human rights abuses remain an important part of the Centre's work. This past year has witnessed allegations of sterilisation without informed consent, police shootings without just cause, continued discrimination against people living with HIV/AIDS, routine abuse of children, destruction of family homes without adequate warning and escalating levels of gender-based violence.

The LAC remains committed to providing free legal services in human rights cases in representing vulnerable people. In this way it continues to provide some hope to people whose rights are violated. In addition to training, litigation and legal advice, the LAC uses advocacy, research and law reform to assist in the process of moving towards a human rights focused country.

The work of the LAC is reflected in several dynamic projects. These address women's and children's rights, the rights of people living with HIV/AIDS, the rights of indigenous people, the rights of indigent rural residents especially with respect to land, the rights of people living in informal settlements, the rights of prisoners and the rights of people who are arrested.

The LAC conducts training programmes by working directly with people entrusted to ensure that the rights guaranteed in the Namibian Constitution become a reality and that relevant Namibian laws are widely known and implemented. Through litigation, the LAC and its clients seek to hold those account-

able who violate basic human rights. LAC research explores and advocates human rights issues on various topics. Law reform affords the LAC (and its client community) a voice in the formulation of new laws and policies. Advocacy creates awareness of human rights issues and the need for action to further or protect them. Free legal advice allows people to be represented or pointed to relevant services or institutions so that their voices may be heard.

There remains much to be done. Poverty, wealth and income disparity need to be addressed. So too, the unequal position of women and inequality in the treatment of children. The question of principled and effective land distribution and reform also requires attention.

Fortunately, the LAC has been able to enjoy support from those who believe in the need for human rights responses to some of the issues facing Namibia and its people. The LAC is grateful to the donors who enable the continuing work of the LAC. Without their support the Centre would not be able to operate.

The trustees of the Legal Assistance Trust appreciate the tireless and sterling work of the entire LAC staff. Particular acknowledgement goes to LAC Director, Norman Tjombe for another year of leadership and achievement.

A word of thanks to my fellow trustees for their continued commitment to the Centre and its work.

Dave Smuts

DIRECTOR'S MESSAGE

Once again, we have the opportunity to report on the activities of the past year in the life of the Legal Assistance Centre (LAC). The LAC has, in the year under review, celebrated 21 years of its existence. During those years, we have achieved a number of success in challenging the Apartheid regime in the years before Namibia's Independence. The experience that the LAC gained in those dark years of Namibia's life equipped the organisation with the necessary skills to continue to work towards building a culture of human rights in Independent Namibia. Soon after Independence, the LAC worked tirelessly to ensure that the new Constitution with its justiciable Bill of Human Rights became a reality making a meaningful change for the better to the many people whose fate was the very reason for the LAC's existence.

I am happy to report that the LAC has remained unwavering in its steadfast commitment to human rights for all in Namibia for all of these years. The activities during this past year are testimony to that.

In Namibia, human rights violations throughout the country continue to pose a challenge. As the country's only public interest law firm, the LAC hears new tales of these alleged violations, ranging from forced evictions, forced sterilisation, family abuses, senseless police violence and many other reports, on an almost daily basis. Many poor people, women, children, rural residents and indigenous people continue to be marginalised and vulnerable.

LAC, firmly embedded in the human rights movement on a national and international level, uses the promotion of justice, dignity and equality for all to inspire change at a grassroots level. The organisation uses a proven combination of litigation, law reform, legal advice, advocacy, education and research, to empower people, communities and the country.

In 2009, the organisation provided legal representation to hundreds of people who would otherwise not have access to

the law. Thousands of people were empowered with further legal knowledge to protect their rights through training sessions about various human rights. The LAC partnered with government to help draft new laws that incorporate stronger human rights values. Groundbreaking research was conducted to help identify emerging human rights issues. Advocacy campaigns exposed people across Namibia raised awareness about rights and freedoms. (Dozens of examples of the kind of positive changes that occur with human rights are found within this annual report.)

As much as human rights can contribute to change, challenges still remain. Funding for this kind of work is increasingly difficult to obtain. The LAC continues to struggle with more demand for its services than it can deliver. Qualified staff is often difficult to retain as wages are not competitive to the commercial sector.

After being associated with this organisation for 19 years, I have decided to leave the full time employment of the LAC. I have been appointed to serve on the Board of Trustees, and will continue to serve the LAC in that capacity. It has been indeed a fruitful employment, where my sense of justice and respect for the rights of others has been shaped by the work of the LAC.

I am truly grateful to our donors who continue to believe in the human rights based change. Their generosity empowers and enables us to turn the ideals of human rights into reality. I am also thankful to the committed staff and dedicated Board of Trustees who remain committed to the cause.

Human rights can bring change that we can believe in.

Norman Tjombe

MANAGEMENT AND SENIOR STAFF

















(fltr) Norman Tjombe - Director (LAC) • Toni Hancox - Coordinator, Human Rights and Constitutional Unit (HURICON) • Dianne Hubbard - Coordinator, Gender, Research & Advocacy Project (GR&AP) • Amon Ngavetene - Coordinator, AIDS Law Unit (ALU) • Willem Odendaal - Coordinator, Land, Environment and Development (LEAD) Project • Linda Dumba-Chicalu - Project Lawyer (ALU) • Adv. Lynita Conradie, In-house Counsel and Editor of the Namibian Law Report, (Namibian Law Report) • Dortea Ithikwa - Finance Manager (ADMIN)



(fitr) Gabes Augustus - Legal Educator (ALU) • Joy Bartlett - Receptionist (ADMIN) • Rachel Coomer - Public Outreach Manager (GR&AP) • Ilda dos Santos - Legal Secretary (ADMIN) • Yolande Engelbrecht - Paralegal (GR&AP) • Rudolf Gabriel - Messenger (ADMIN) • Shorain Gaoses - Accounts Clerk (ADMIN) • Belinda Hamburee - Project Assistant (ALU) • Emmerentia Helu - Project Assistant (ALU) • Toini Hanhapo - M&E Officer - OVC Programme (ALU) Immanuel lita - Legal Educator - Oshakati Office (ALU) • Joseph Kahuika - Client Screener and Paralegal (LEAD) • Harmandine Kaisimuti - Project Assistant - Oshakati Office (ALU) • Grace Kapare - Project Assistant (GR&AP) • Aloysius Katzao - Legal Educator - Keetmanshoop Office (ALU) • Hira Katjepunda - Project Officer - OVC Programme (ALU) • Vasisee Kuvare - Accountant (ADMIN) • William Magenya - Child Protection Officer - OVC Programme (ALU) • Theodor Muduva - Public Outreach Officer (LEAD) • Basilia Ngairo - Assistant Trainer (ALU) • Romy Noeske - Librarian & IT Administrator (ADMIN) • Amalia Shipingana - Housekeeper (ADMIN) • Sophie Van Wyk - Project Assistant (LEAD)



(fltr) Tonderai Bhatasara - Project Officer - Human Rights and HIV Training (ALU) • Dr. Ute Dieckmann - Programme Manager - Xoms | Omis Project (LEAD) • John Hazam - Consultant (LEAD) • Lesle Jansen - Legal Consultant (LEAD) • Mark Nonkes - Communication Officer (ADMIN) • Peter Watson - Legal Consultant (LEAD), (Absent) Patricia Williams - Technical Coordinator - Child Protection Project (ALU)



(fltr) Zandra Balzer (ADMIN) • Johannes Berndalen (ADMIN) • Stefanie Braun (GR&AP) • Cindy Cho (ALU) • Ruth Chun (GR&AP) • Alison de Smet (GR&AP) • Jackson Hilifwa (ADMIN) • Selma Ikelwa (ADMIN) • Andy Joyce (ADMIN) • Anne Joyce (GR&AP) • Kaylan Lasky (GR&AP) • Goderich Sikwana (ADMIN)

(Absent) Lucia Aikali (ALU) • Brogin Keeton (GR&AP) • Amanda Morse (LEAD) • Maureen Quigley (GR&AP)



TRUSTEES LEGAL ASSISTANCE TRUST

Dave Smuts - Chairperson (photo) • Hosea Angula • Clement Daniels • Norman Tjombe • Nico Kaiyamo • Tangeni Amupadhi • Elize Angula • Bisey Uirab • Esi Schimming-Chase

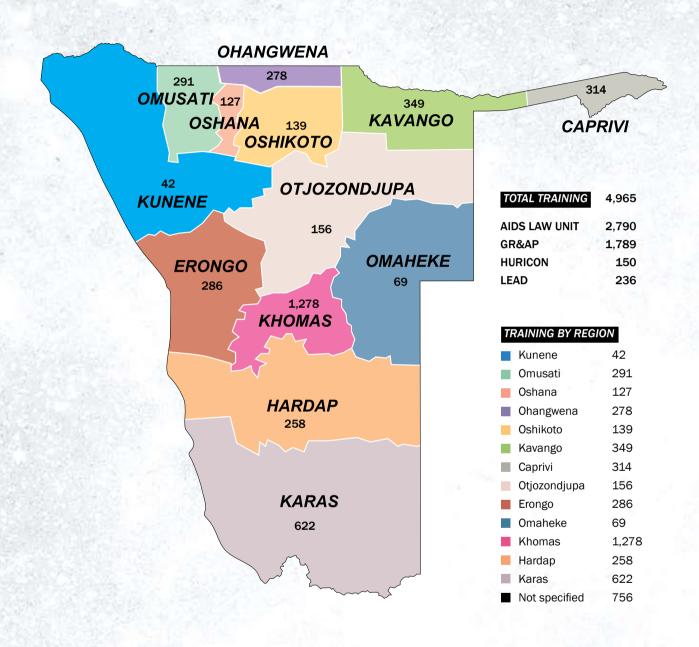
LAC PUBLICATION DISTRIBUTION

The LAC aims to ensure all Namibians are aware of their human rights. In 2009, the organisation distributed 192,450 copies of publications that focus on one of the many human rights issues.

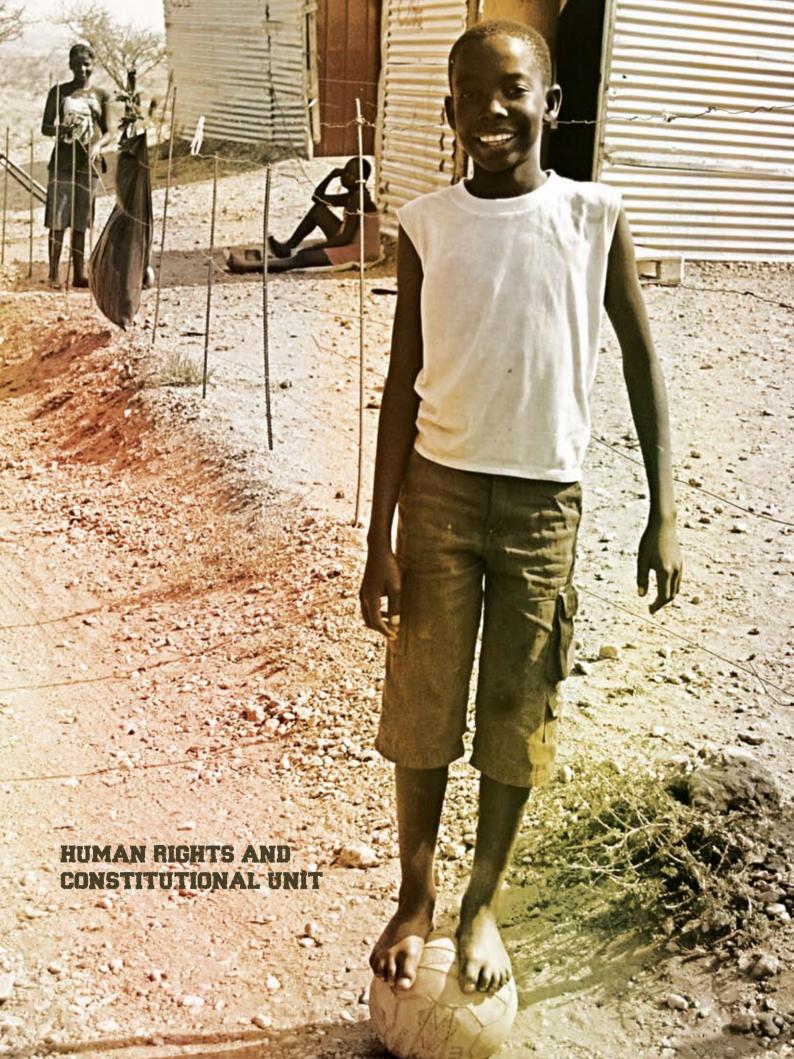
2009 PUBLICATION DISTRIBUTION

Project/Topic	Publication name	Number distributed in 2009
Total		192,450
AIDS Law Unit (ALU)		6,370
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	ALU Information booklets	835
	DVD: HIV/AIDS Rights Violation	672
	HIV/AIDS Charter of Rights	1,036
	How to write a valid will	989
	Other	85
	Posters: Workplace Rights	471
	Right to Health Understanding Prisoner's Rights	1,126 1,156
Condor Possarch and	Advocacy Project (GR&AP)	174,263
Gender, Research and		411
	Addressing Gender based Violence through Community Empowerment	
	Advocacy in Action	1,071
	Comic: How to Claim Child Maintenance	42,598
	Gender and the Law: Radio show scripts	65
	Guidelines for Service Providers of Rape	19
	Guide to Maintenance Act	2,430
	Guide to the Combatting of Rape Act	1,651
	Guide to the Domestic Violence Act	1,743
	Guide to the Married Person's Equality Act	1,867
	Key Gender Laws Training Manual	640
	Monograph: Alcohol and Youth: Suggestions for Law Reform	17
	Monograph: Baby dumping and infanticide	25
	Monograph: Help wanted: Sex Workers in Katutura, Namibia	9
	Other	26
	Pamphlet: Domestic Violence	1,591
	Pamphlet: Maintenance	1,495
	Pamphlet: Married Person's Equality Act	891
	Pamphlet: Rape	23,820
	Pamphlet: Withdrawing a Rape Case	310
	Poster: Rape	90
	Research Report: Rape in Namibia	32
	Research Report: School Policy on Learner Pregnancy, Backgrounder	45
	Research Report: School Policy on Learner Pregnancy, Summary	282
	Research report: Withdrawn: A Study of Rape Case Withdrawals	168
	Sexual Abuse Directory	2,137
	Short guide: Gender and the Labour Act	87,950
	Short guide: Preventing Under Age Drinking	1,508
	Summary of Maintenance Act	224
	Summary of the Combatting of Rape Act	806
	Summary of the Married Person's Equality Act	80
	· · · · · · · · · · · · · · · · · · ·	240
	The Meaning of Inheritance	
	Unravelling taboos	22
Land. Environment an	d Development (LEAD) Project	1,257
,	Born in Etosha	620
	Guide to the Communal Land Reform Act	250
	Kessl: A New Jurisprudence of Land Reform in Namibia?	69
	No Resettlement Available	45
	One day we will all be equal	66
	Our Land they took	114
	Protection for Women in Namibia's CLRA	41
	Other	52
LAC ADMIN		9,000
	2008 LAC Annual Report	800
	Human Rights for all - 20 Year Anniversary Publication	300
	What does LAC do?	1,500
	What are Children's Rights?	6,400
	what are official a rights:	0,400
Human Rights and Co	nstitutional Unit (HURICON)	1,560
naman nignts and CO	Namibian Constitution	
		1,560

LAC TRAINING IN NAMIBIA



7



RIGHT TO

Selma Ikela

SAFETY AND SECURITY

In 2009, the LAC reached a settlement agreement of N\$40,000 with Windhoek City Police after a stray bullet from a police gun struck a woman sleeping inside her shack. The LAC continues to work on three other cases against the Windhoek City Police.

In the nation's capital, a series of police shootings have caught innocent bystanders in the crossfire.

Lucia Mutileni

Lucia Mutileni was sleeping in her family's shack when a bullet ripped through the zinc walls and tore into her flesh. "I heard this big bang on the zinc, woke up and felt my left foot hurting," the 20 year-old remembers.



The bullet, which just missed Mutileni's cousin and aunt who were also sleeping in the shack at the time, tore a hole into the steel wall. When Mutileni and her family woke, they lit a candle and saw the bed was soaked in blood. "That's when realized I was shot," Mutileni says. The bullet, which was allegedly fired from a Windhoek City Police officer's gun, was found under the bed.

Upon approaching the police officers who were outside the shack, Lucia's aunt says she was told that the police officers were not aiming to shoot but that an officer tripped and the gun went off while chasing robbers.

Murray Shikongo

Murray Shikongo, a 20 year-old law student at the University of Namibia, underwent a similar experience. In August 2009, Shikongo was a passenger in a taxi with a few friends, on his way from Rocky Crest to Katutura. Unbeknown to Shikongo, the taxi driver allegedly had a record of outstanding traffic fines.

"When the taxi driver saw the City Police car blocking the road, the driver made a quick u-turn. While fleeing the scene the City Police started shooting without warning shots," Shikongo says.



In the process, Shikongo noticed his trousers were wet and heavy. Shikongo and his friends urged the driver to stop and let them out of the taxi.

"When I stepped out of the car, that is when I knew I had been shot because I pulled up the leg of my trouser and saw the blood," Shikongo remembers. "It happened like a scene in a movie."

Upon further inspection, Shikongo saw that the bullet cut a hole from the back of his calf muscle and to the front of his right leg.

"We don't have death penalty in Namibia, and for the police to shoot at a fleeing suspects, is to say that the police can arbitrarily impose the death penalty. They became the judge, jury and executioner - all in one," says Norman Tjombe, Director of LAC. Both Shikongo and Mutileni opened cases against the Windhoek City Police with the LAC. In 2009, Mutileni's case was settled out of court while Shikongo's matter is expected to proceed to court in 2010. Although both Shikongo and Mutileni were not permanently injured, for Fillimon Henguva

and Hofni Shooya the damage is much more permanent. *Fillimon Henguva*

A bullet that shattered Fillimon Henguva's jawbone and permanently altered his normal speech remains stuck somewhere in the 30 year-old man's neck. Damage from the shooting has led to Henguva losing his job and living with pain on a daily basis.



"I was the only person that was working at my father's house. I paid for the water and electricity, now it is cut off. My father is a taxi driver. We survive from the little money he makes," says Henguva. "I can't support myself. Next year my daughter is supposed to go to school and I don't know how we'll manage."

Henguva was shot in July 2008 outside a shebeen in Okuryangava during an incident involving a missing cell phone.

"I hadn't done anything wrong. I didn't have a weapon and I wasn't fighting," Henguva says.

It is alleged that a Windhoek City Police Officer fired his gun at Henguva while at close range.

"I don't know what happened after. It was as if I was dead. I was shot on 7 July and woke up two days later on 9 July in Central Hospital," Henguva says.

While at the hospital Henguva had a pipe inserted in his nostril through which he ate food and he had a hole made

in his neck, which he breathed through for two months. The bullet remained inside his body – in a dangerous spot close to his spine. Doctors reportedly told Henguva that if the bullet was removed, he risked becoming paralysed. Instead, he was advised to wait for the bullet to move from its current location. Realising the shooting was a violation of rights, Henguva's father arrived at LAC looking for assistance.

"People need to feel protected from the excessive use of force by the uniformed force," Tjombe says. "The Constitution is very clear when it says that there should be respect for human dignity, in particular that no person should be treated in a cruel, inhuman or degrading manner."

While Henguva was released from hospital in September 2008, he has received little medical attention despite his jaw being dislocated, not being able to eat solid food and not being able to perform physical work – leading to him losing his job. Henguva says that his doctor has returned to Cuba and that his family doesn't have enough money to assist him in seeking continued medical care.

LAC is suing the City Police for one million dollars on behalf of Henguva. The case is expected to go to court in 2010.

Hofni Shooya

Hofni Shooya was shot in his right leg in 2006. Doctors say his leg was damaged beyond recovery and that it had to be amputated.

Before the accident, Shooya often stood on the side of Windhoek's streets waiting for a passerby to stop and offer him a casual job for a day. However, standing on the side of the road made Shooya a target for police harassment. The 25 year-old had been arrested before for standing at this specific employment bureau and was locked up in jail for a week.

When Windhoek City Police tried to arrest Shooya for standing on the side of the road in March 2006, he fled. Two officers chased Shooya through a dry riverbed while a third officer drove a police car around the riverbed and blocked Shooya's way in front. Shooya alleges that the police then shot him, without warning.

"It was two hours before someone stopped to take me to the hospital," Shooya says.

The case is expected to go court in 2010.

DEFENDING THE RIGHT TO HOUSING

Mark Nonkes

Throughout the first part of 2009, Windhoek's City Police were sent to tear down quickly-constructed shacks located in the city's informal settlements using an apartheid-era law as justification. The LAC took court action to stop the demolition of these family homes.

Petrus Shaanika kicks the dirt. A faint line of rocks mark out the square plot he once called home. "This is the place," he says.

This is the place in which the construction worker wanted to start over. A few months ago, a few sheets of zinc were nailed onto wooden poles. His family of eight moved into what became a small 2-room shack. For a short time, they called it home sweet...well, you know the saying.



"Before that, my family and I were staying at a member of my extended family's residence in Katutura," the 45 year-old says.

"However, due to the escalating costs of paying rent and the fact that it became uncomfortable and intolerable to reside with another big family, I moved my family of eight to Havana 6."

An informal settlement on the outskirts of Windhoek, Havana Extension 6 is home to more than 2,000 people who live in small self-constructed shacks. The location is without water taps or electricity.

"Our place is just one bedroom and a kitchen/living room/ dining room," says Augusta Deitriks as she motions to her home constructed of plastic, particle board and zinc sheets.

"We just need N\$500 and we'll finally have a zinc roof. Right now, we're sleeping under this piece of collected cloth, plastic and canvas stitched together.'

Deitriks says that she's one of the lucky ones. Her home was never spray painted with the word 'Remove'. She was never visited by the City Police who tore down the shacks. Petrus Shaanika and his family were not so lucky.

"The members of the Windhoek City Police came to Havana 6 and demolished a number of shacks, ours included. They also warned the other residents to remove their shacks or risk demolition too."

Beginning in December 2008, the City of Windhoek and the City Police have increasingly targeted Havana Ext. six. This effort was part of the City's plans to remove squatters from once empty plots around Windhoek, including Havana, Otjomuise Sweend, 8ste and 7de Laan among others. With nowhere else to go, those whose shacks were demolished often moved in with other families in Havana.

"My family and I now reside with another family. We are 13 people staying together," Shaanika says. "They too are illegally on this piece of land and we all face eviction and demolition of the shack in which we now reside."

For more than six months, the municipality routinely destroyed homesteads without, allegedly, the authority of a court order or prior notice to the occupants.

On a larger scale, the problem of squatter occupation of municipal land highlights severe issues facing Namibia - lack of affordable housing, unemployment, wide scale poverty and failure of government to provide essential services. More than 20% of Windhoek's population live in informal settlements.

"These people are not at fault. They are simply desperate people looking for a place to stay," says Norman Tjombe, Director of the LAC.

Forced evictions and the failure of government to realise the right to housing is one of the most widely violated human rights around the world. Over one billion people are inadequately housed. The United Nations estimates that a further 100 million people worldwide are without a place to live. One third of all humanity, or more than two billion people, live without security of tenure, adequate legal safeguards against forced eviction and access to clean and affordable drinking water in the home.

"Imagine children who are evicted from their homes and forced to sleep under a bridge. Their right to education is likely affected, their dignity is affected," Tjombe remarks. "For families, their right to privacy and to security of person is violated. Their right to the peaceful enjoyment of possessions is violated as many of the forced evictions occurred without warning, forcing people to abandon their homes, lands and worldly possessions."

In Namibia, law enforcement officers used the Squatters Proclamation of 1985 – an apartheid-era law that allows the owner of land to remove illegally constructed buildings or structures without authority of a court order or prior notice to the occupants – as legal authority. In total, the municipality's employees destroyed an estimated 2,000 shacks.

The forced evictions sparked protests, outrage and fear among the thousands left homeless. In July 2009, a group of 14 squatters including Petrus Shaanika, representing various community organisations, approached the LAC to challenge the legality of the municipality's right to evict tenants living in Havana Ext. 6 without a court order.

"It is now winter and some of the residents whose houses

were demolished are sleeping outside, resulting in their exposure to harsh elements of nature and threats of crime to their person and property," says Shaanika, who is the chairperson of Mercy Group 6 – a community group set up to voice concerns for the people of Havana Ext. 6.

In an urgent application, the LAC's lawyers asked the court to declare the Squatters Proclamation of 1985 unconstitutional, as it did not take into consideration the circumstances of families with small children or the lack of available alternative housing. In his ruling, High Court Judge Petrus Damaseb granted the shack dwellers an interim interdict, declaring the Squatters Declaration of 1985 invalid and of no effect. The case returns to court in the near future, where the City of Windhoek and the Government will be given an opportunity to argue why the law should not declared unconstitutional. Meanwhile, in Havana Ext. 6. Shaanika and Augusta Deitriks survey the land in dispute. The rolling hills, dotted with shacks, are home to children playing in the dirt and grass; to grandmothers cooking on open fires; to young women carrying water to their places; and to young men cutting wood.

This is not the life they imagined. Deitriks and Shaanika quickly point out that they have no objection to paying for the land. In fact, Shaanika has been on a municipal waiting list for land since 2002. However, the escalating prices of property in Windhoek have made purchasing land financially impossible for people living on low incomes.

Instead, with neighbours, Shaanika and Deitriks have formed small self-help groups to pay for property should it come available. Already they are collecting monthly to put together a down payment. In a few months, they should be ready. In the meantime, they are calling on the Namibian government and the City of Windhoek, to provide affordable land on which they, who are earning meagre wages, can survive.

"The municipality doesn't know how we are suffering,"
Deitriks says. "This is a hard life."



FIGHTING FOR THE RIGHT TO ADEQUATE SANITATION AND WATER

Selma Ikela and Goderich Sikwana

The informal settlements in Otavi have been described as 'a worst case scenario' in terms of adequate sanitation. The LAC has investigated and plans to represent residents in upcoming court action.

The LAC announced plans to take legal action against the municipality of Otavi for failure provide adequate water and sanitation facilities to the community. During consultations throughout 2009, LAC staff found that the community toilets were in a deplorable state. The municipality had shut off water that serviced toilets for more than 4,000 area residents. Residents have used the entrance and vicinity around the toilets to relieve themselves, leaving pools of human waste in surrounding areas.

Previously, in November 2007, the Ombudsman carried out an investigation on the hazardous health conditions in and around the toilets. A report was then submitted to the Ministry of Regional, Local Government and Housing, the Regional Health Directorate in Otjiwarongo and the Otavi Village Council. In 2008, a reassessment was done by a team from the Ombudsman's office, finding that the obligation of the Village Council was not fulfilled.

Martha Lukas, a resident of Otavi's informal settlement, says the sanitation situation gets worse during the rainy season. "The rubbish flows with the water in our yards." Lukas says. "As a result we get diseases like diarrhoea, malaria and cholera."

She adds that those affected are mostly elderly people and children. Cornelia Ubu-gaes, a resident of the Blikkies Dorp settlement for 14 years, reports that the sanitation situation became unbearable about five years ago, with frequent maintenance problems regarding the toilets. She further stresses that, "Some water points were built too close to the toilets, therefore contaminating the drinking water."

There are only six water points for the community, creating a demand for water that exceeds the supply, and thus making access to water an economic issue. Ubu-gaes points out that many people in Otavi's informal settlement are impoverished and unable to afford the price of water; the municipality has created no provision for such people to access the water system. During an LAC collaborative documentation project with Stanford Law School, researchers learned of children in Otavi's informal settlement, as young as six or seven, who regularly beg for water from other settlement residents. The children do not go to school but instead spend each day at the rubbish dump site looking for food.

The LAC is amongst a growing number of organisations around the world who are urging the international community to recognize that access to better sanitation is a fundamental human need and, therefore, a basic human right. Norman Tjombe, Director of the LAC, says that all Namibians should have access to fair public services, along with the rights to proper housing and safe living conditions.

"This is really about fundamental freedoms - the right to dignity, the right to safety and security and the right to non-discrimination, based on socio-economic status,' Tiombe states.

The LAC's application will be finalised and filed in 2010.



THE RIGHT

TO HOUSING

Selma Ikela

Alleged corruption leads to a woman's house being stolen.

LAC is helping her fight to get her home back.

A former Police Officer, Aletta /Goagoses failed to pay a bank overdraft which resulted in her Gobabis house being sold for N\$15,000, while its value is over N\$100,000.

/Goagoses had a N\$1,000 overdraft at Standard Bank. The debt increased to N\$15,000 when lawyers' fees and interest were included. It is alleged the Gobabis Messenger of the Court sold /Goagoses' house to his son who was then working as the Assistant Messenger of the Court.

"There was also evidence that the former messenger proceeded with the eviction proceedings even after company lawyers agreed to hold the matter in suspension," says /Goagoses.

/Goagoses said the process through which the Messenger bought the house was "fraught with irregularities, and the Messenger should have never obtained judgment in the first place."

/Goagoses says that she offered to pay N\$6,000 towards the debt on 4 December, 2008, but the lawyer refused to take the money. /Goagoses refused to move out of the house even though she was instructed by the lawyer to do so. The issue attracted national attention in the media.

"We argued the case in Gobabis Magistrate Court. We are waiting for judgment. We applied for cancellation of judgment against /Goagoses so that she gets her house back," says LAC Director, Norman Tjombe.

Meanwhile, /Goagoses later moved out of the house following the eviction order by the court. She waits for the court judgment.

RIGHT TO JUSTICE

Werner Menges

LAC is taking on the Stock Theft Act, a law that currently has more serious penalties than murder.

Repeatedly convicted cattle thief Willem Peter, who received a 30-year jail term in the High Court in 2009 for stealing one cow, has filed a case questioning the constitutionality of the severe sentences prescribed by the Stock Theft Act. Peter, who is represented by the LAC, wants the High Court to strike down the section of the Stock Theft Act that sent him to prison for 30 years – and he is using an affidavit by acting Attorney General Albert Kawana to back up his claim on this score.

In the affidavit, which was made on November 24, Kawana admits that the Stock Theft Act's minimum prison sentence of 20 years for first-time offenders convicted of stealing livestock valued at more than N\$500 is in conflict with the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

The Attorney General, the Prosecutor General and Government are cited by convicted goat thief Protasius Daniel as the respondents in a case in which Daniel is challenging the law under which he was sentenced to 20 years in jail for the theft of nine goats.

As a second offender, Peter was sentenced under a different section of the Stock Theft Act than Daniel. Peter was convicted of stock theft for the first time in 1997, when he was found guilty on a charge that he had stolen eight head of cattle.

Having again been convicted of stock theft – this time for the theft of a cow that was shot during a poaching excursion between Outjo and Kamanjab on the evening of 6 December 2006 – Peter fell under the Stock Theft Act's section that prescribes a minimum jail term of 30 years for someone convicted of stock theft for a second or subsequent time. The Stock Theft Act allows a court to impose a sentence that is less than the prescribed prison term if the court finds "substantial and compelling circumstances" that would warrant such a deviation from the prescribed sentence. The courts that sentenced Daniel and Peter both did not find such circumstances to be present in their respective cases.

In the case he filed with the High Court on 15 December, Peter argues that the same opinion that Kawana expressed in his affidavit on Daniel's constitutional challenge should apply to the section of the Stock Theft Act under which he was sentenced.

In almost identical affidavits filed with the High Court, Peter and Daniel are both charging that stock thieves face severe minimum prescribed jail sentences, while murderers do not, indicates that Parliament has "considered the crime of taking another's life

less serious than taking another's livestock."

They state: "This, unfortunately, has the risk of perpetuating an impression with the public that crimes against property are more serious than crimes against persons and their dignity. Quite frankly, the message is: rather commit murder than steal a goat."

A date for the hearing of the constitutional challenges to the Stock Theft Act is expected to be allocated by the Registrar of the High Court on 3 February 2010. LAC Director Norman Tjombe is representing both Daniel and Peter in the two cases.

*edited version of a Namibian article which appeared in the daily newspaper on 7 January 2010. Article reprinted with permission from the author.



legal assistance centre

THE RIGHT TO Selma Ikela

After a boy's hand is amputated in a hospital, the family turns to the LAC for assistance.

The family of a three-year old who was admitted to the Okakarara State Hospital in 2006 is now seeking financial compensation for an act of alleged negligence.

It is alleged that lack of proper care towards the boy led to his right hand swelling and darkening in colour. According to the boy's mother, Mutare Priska Kaura, the condition was brought to the attention of medical personnel on duty.

However, the hospital staff allegedly failed to adequately address the condition of the boy. The identities of the nurses who were in charge of looking after the boy are unknown.

"The boy was then referred to the Katutura State Hospital in Windhoek for further treatment. Despite the treatment, his right hand was finally amputated on August 2006. He was hospitalized until the end of October 2006," says Kaura.

Kaura is now taking legal action against the Ministry of Health and Social Services.

"When the boy was admitted to the Okakarara State Hospital, it was the responsibility of the nurses to fulfil their duties without negligence and to see to it that the drip was inserted in a manner that wouldn't endanger the boy's life, health and physical well being," says Legal Assistance Centre, Director Norman Tjombe.

"We expect the court to find in our favour; that the Ministry of Health and Social Services were negligent, and that our client is owed damages," says Tjombe.

It is imperative, states Tjombe, that we provide Namibian children with proper medical attention and respect for their dignity. According to the summons of the High Court, as a result of the nurses' negligence, the boy has become handicapped. The boy will in future suffer and experience extremely limited employment opportunities, resulting in loss of income for the rest of his life.



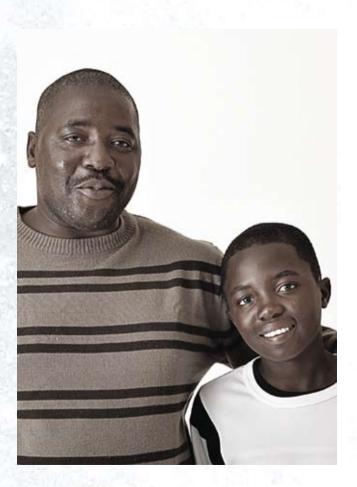
DEFENDING THE RIGHT TO SAFETY AND SECURITY

Selma Ikela

When a suspect shot himself while in police custody, the family of the deceased wanted answers. The LAC assisted the family by taking the legal route. In July 2009, the Supreme Court of Namibia handed down judgment.

Sylvanus Nepunda wanted justice. His brother recently shot himself while in police custody. And his nephew – his brother's child – was now fatherless and without financial support.

"I know where my rights start and where they end," Sylvanus says. "I know the Legal Assistance Centre (LAC) is a public law firm and this is a human right case. That is why I brought the case to them."



On 27 January 2004 the Police found the body of Matilda Agnes Immanuel, with two bullet wounds in the chest. A cellphone lay next to her body. Further investigation revealed that Immanuel had a relationship with Sem Nepunda and that he had on occasion threatened to kill her.

Detective Inspector Booysen took the cellphone to MTC, who provided him with a printout of calls received to the phone. Armed with this information, Inspector Booysen traced the two people who had called Immanuel on the 24th of January. These people admitted that they were with the victim on the day of her death but denied killing her. The two suspects were detained. Sem Nepunda was the third suspect brought in for questioning. He, too, denied having killed the woman but was detained. On further questioning he admitted to possessing a 9mm pistol.

Inspector Booysen obtained the pistol, along with two live cartridges contained within, from Sem Nepunda's uncle and went to the forensic laboratory, where it was established that two spent cartridges found at the scene of the crime matched the two live cartridges and were fired from Sem Nepunda's pistol. When confronted with the results of the forensic report, Sem Nepunda still denied having shot Immanuel.

At that point, Inspector Booysen tried to contact his senior officer but could not get hold of him. He then ordered Sem Nepunda to wait outside the office in the corridor. Inspector Booysen left his office, which contained the pistol and cartridges in an unlocked wardrobe, and suddenly heard a shot fired. When he entered his office he saw Sem Nepunda lying dead on the floor with the pistol in his hand.

When asked why Sem Nepunda had shot himself Inspector Booysen says that the deceased was cornered and that he may have realized that he would have to go to prison for a long time.

Sylvanus Nepunda wasn't convinced. Despite the fact that his brother was a suspect in the Immanuel murder case, Sylvanus believed that Sem Nepunda's rights had been violated. "Everyone has the right to life," Sylvanus says.

"The police should have been careful guarding my brother."

Sylvanus Nepunda says his nephew's rights were violated because he has the right to be supported and taken care of by his father. He turned to LAC to assist him. "The police were negligent and they have to be responsible for their actions," Sylvanus says.

In a High Court case, LAC Advocate Lynita Conradie proved that negligence of the police partly contributed to the death of Sem Nepunda. The High Court ruled that the Police were 20% responsible for the death of Sem Nepunda and that damages were owed to Sylvanus's nephew.

"The importance of this case is the legal principle carried out, that legal issues are clarified and that the Police are held accountable," Conradie says.

Not satisfied with the 20% High Court ruling, the mother of Sem Nepunda's son made an appeal to the Supreme Court. There, the High Court decision was reversed. Part of Conradie's argument was that the evidence against Nepunda was not sufficient at the time Nepunda killed himself, since the case was still at a very early stage. In addition, his detention was partly based on hearsay evidence and it was uncertain that a conviction would follow.

Accepting Conradie's argument, the Supreme Court's judgment on 23 July 2009 found that the Ministry was in fact 50% responsible for Sam Nepunda's death. According to the applicable law, no other person is responsible for the other 50% because Sem Nepunda shot himself. The judge said there was a 50/50 chance that Nepunda could have gone to jail and therefore a 50/50 chance he would have been able to support his child.

"I am happy with the outcome of 50%," says Sylvanus Nepunda, the legal guardian of his nephew, describing his nephew as a quiet and good mannered student. "He plays soccer and he is more technically minded. You will find him fixing things at home," says Sylvanus of his nephew.

"The money is going to his nephew's mother. I have spoken to her and we have decided on how we are going to use the money to benefit my nephew. It will be spent on his education and to assist him in the future."

RIGHTTO

ADEQUATE GOVERNMENT SERVICES

By: Goderich Sikwana

Like any good mother, Aina* took her one-year-old son for a polio vaccination. However, the day that started like any other ended with tragedy.

Upon Aina's arrival at the vaccination point in Okuryangava, Katutura, she joined the queue and waited. According to Aina, she held on to the child when her turn came. As the nurse administered the vaccine, the tip of the vaccine dropper fell into the child's mouth, causing the child to choke. Aina's reaction was to attempt first aid by pressing on her son's chest. Her attempts to get the boy to cough up the tip were to no avail. The nurse also tried, but could not succeed in resuscitating the infant. The child started losing consciousness. According to the medical report the child was quickly rushed to the nearest medical clinic but when they got there, there was no doctor on duty. The child was then taken to the Katutura State Hospital and within a few hours he was pronounced dead.

Due to this untimely death, Aina suffered greatly. Her husband decided to send her to the north because he feared that she could harm herself. When the husband came to the LAC he was made aware of his rights and chose to institute legal action against the Ministry of Health and Social Services for the emotional shock his wife was suffering. The LAC took up the case and ultimately settled the matter outside of court.

"It is becoming more and more apparent that civil and political rights – such as the right to vote – mean very little when one's economic, cultural and social rights are not met. Access to healthcare is a basic human right and does not just mean building hospitals; it also means equipping them with the necessary infrastructure and staff to properly serve the community. There was no need for Aina's baby to die. Ultimately, no compensation can make up for this," says Toni Hancox, coordinator of the Human Rights and Constitutional Unit of the LAC.

*name changed to protect client's identity

RIGHT TO Goderich Sikwana DIGNITY AND FAIR TREATMENT

Brutal arrests and detention of suspects were reported following the 1999 attack in Katima Mulilo. LAC has been pursuing these Caprivi human rights violations from the very beginning.

Early morning shots were fired. Once a peaceful town, Katima Mulilo had turned into a battle field. On that date, 2 August 1999, fear ruled. Locals remained in their homes, ducking under their beds. A few unlucky ones rushed to town and were caught by gun fire.

More than 100 people were arrested, charged and detained in relation to the 1999 attacks in the Caprivi region, and the LAC is working to ensure that the detainees' rights were not violated.

"It is important to show that no matter what an individual has done or is even suspected of having done, human rights abuse will not be tolerated," says Toni Hancox, Coordinator of the Human Rights and Constitutional Unit.

"It must be made clear that government is equally responsible for upholding human rights no matter what the challenges are." LAC lawyers, who travelled to Katima Mulilo shortly after the initial attack, were shocked. Immediately, they began



taking statements and hearing reports of torture tactics used on the people arrested to garner confessions.

In court testimonies, several LAC clients have claimed they were, among other things, systematically punched, kicked, and beaten with batons upon their arrest and denied medical treatment. In some cases, there is photographic evidence of the injuries sustained at the time of the arrests. The men arrested in the Caprivi uprising are claiming civil compensation from the Ministries of Home Affairs and Defence.

In 2009, the first trials on the alleged assaults were heard in the High Court. In total, nine individual cases were heard and concluded, two were partially heard but will continue into 2010 and judgment was given in George Litseho and Kisco Sakusheka's cases.

In his ruling, Judge Muller did not award the men the compensation they were seeking. The judge said that he could not find the evidence of either Litseho or Sakusheka credible.

"Technically the judge did not dismiss the claims but granted absolution from the instance which means, basically, that he could not decide either way but since the onus is on the person alleging things to prove those things, our clients lost," Hancox explains.

"It is interesting to note that in Sakusheka's case, the judge mentioned that he had a suspicion that assaults had been perpetrated but he could not rely on suspicion alone," said LAC In-house Advocate, Lynita Conradie who argued the cases.

"Ultimately, a court can only adjudicate upon a particular matter on the evidence which is before it." Both Conradie and Hancox point out that taking these cases to court, 10 years after the events, has presented several issues.

"Due to the very nature of the alleged abuse, the priority would not have been to get clients to doctors to document

14)

abuse or to take photos of clients," Hancox says. "The clients have also been incarcerated since that time making it very difficult for them to trace witnesses, document physical evidence etc."

In some instances, key witnesses have died.

"It is a well known fact that when a person reflects on past events, he or she will often gain a completely different perspective and see the event differently from what was the case originally," Conradie points out. Additionally, Hancox admits that accessing certain government records has been problematic.

"In one case, where medical records were requested, the client noted that his medical file was twice the size of the one handed in to the court. We simply do not know if all the documents are there." Conradie emphasizes that the medical treatment the men received was also questionable.

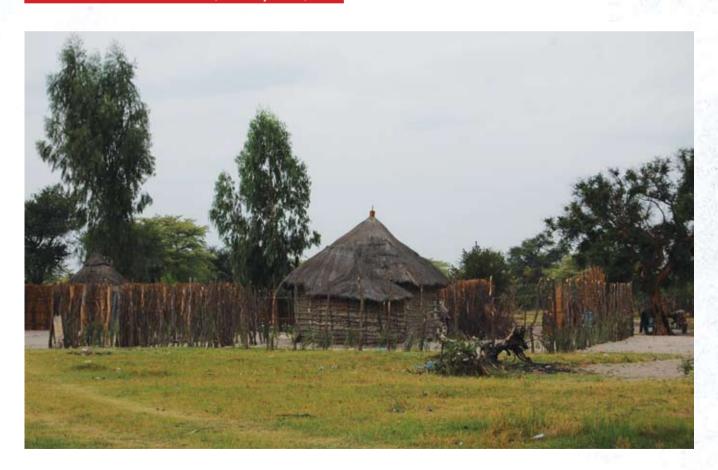
"The plaintiffs also did not have access to private medical treatment; they had to rely on treatment by nursing staff who visited the prison. The treatment was often given a few weeks after the incident. Moreover, in many cases, fellow

prisoners had to act as interpreters for patients, as most of the nursing staff do not speak the languages spoken in Caprivi. This is hardly a satisfactory state of affairs."

Despite the challenges of prosecuting such cases, the LAC remains committed to representing the remaining 88 individuals who have cases pending. In that respect, the LAC continues to fulfil its mandate and act as a voice for those who would otherwise be voiceless.

"This was one of the biggest stains on the human rights record of Namibia's short history and should be finalised one way or the other," Hancox concludes.

"Even if clients are not successful in court for various reasons, they are still given the chance to speak out about what happened to them. This is also a way of healing. It must also be remembered that there is still much animosity regarding these issues, specifically in the Caprivi Region and to now merely dismiss the human rights abuses that occurred could contribute to further ill feeling."





THE PIGHT TO FAMILY. DIGNITY AND LIBERTY Zandra Balzer

The LAC is currently taking court action on behalf of 15 women living with HIV who were sterilised in state hospitals.

Fifteen HIV-positive women with poor English language skills and disadvantaged backgrounds were allegedly sterilised at a state hospital, without their knowledge or consent. The LAC is taking legal action against the Namibian government (Ministry of Health and Social Services) on behalf of the women.

"The women, are determined to hold the government accountable and are claiming monetary compensation for the damages that they suffered," says Linda Dumba Chicalu, Project Lawyer of the AIDS Law Unit at LAC.

Sterilisation without a woman's informed consent is believed to be a violation of rights guaranteed and protected under the Namibian Constitution including an intrusion of their rights to liberty (Article 7) human dignity (Article 8) and to start a family (Article 14).

The impact of sterilisation without a woman's consent can be devastating, affecting a woman's mental and physical health. It destroys her relationship with her partner, family and society at large.

"For many women, pregnancy and child birth is central to self-esteem and personal satisfaction. In a patriarchal society, such as our own, a woman's value is often determined by her ability to bear children," says Rosa Namises of the Women Solidarity Namibia.

"In early 2008, the International Community of Women Living with HIV/AIDS (ICW) identified several women who were allegedly sterilised without their informed consent at the Katutura State Hospital, Central State Hospital, and Oshakati State Hospital," says Jennifer Gatsi Mallett, Program Co-ordinator of International Community of Woman Living with HIV/AIDS (ICW).

After the initial reports broke in the media, ICW and LAC formed a partnership to further investigate the scale of the situation and to offer legal advice to the women.



The cases were scheduled to be heard by a judge in the High Court of Namibia in 2009. However, the lawyers for the Ministry of Health made a legal challenge on a technical point, which led to the postponement of the cases. The government attorneys argued that the women's cases did not comply with the Public Service Act of 1995, which requires that a person wishing to take legal action against the Government must do so within 12 months from the date of the incident with one month written notice given to the Government.

Appearing on behalf of the LAC, Advocate Dave Smuts argued that the Public Service Act did not apply to the sterilisation cases as the law only regulates the employment affairs of the public servants, and not to non-public servants. As a result, Smuts said that no such notice was given, and in some of the cases, the legal action was only instituted after 12 months after the sterilisation was performed.

The High Court ultimately ruled in LAC's favour. This will allow the cases to be heard on the merits on whether or not the women were unlawfully sterilised without their consent. The women are each suing the Government for over N\$1 million in damages. Following the judgment, the LAC applied for hearing dates and, once those are obtained, court action will continue in 2010.

Meanwhile, a group of like-minded Namibian NGOs formed an advocacy partnership and launched a campaign that was aimed at creating awareness about sterilisation and calling for the end of sterilisation without a women's consent.

As part of this initiative, information workshops in Namibia and South Africa were presented. A petition was launched to demand that the government put an immediate stop to the practice of sterilisation of HIV positive women without their consent. In October, an *End Forced Sterilisation* march took to the streets and attracted more than 400 demonstrators.

"[This] issue does not only affect the women who are sterilised, or those living with HIV," says Namises. "It is a gross violation against all women, our communities and our constitutional rights."

In addition to LAC, ICW and Women's Solidarity, campaign partners include Namibia Women's Health Network, Aids and Rights Alliance for Southern Africa, Women's Leadership Centre, Sister Namibia and Southern Africa Litigation Centre. Further advocacy events are planned for 2010.

RIGHTS FOR ORPHANS AND VULNERABLE CHILDREN

To ensure children receive the best possible care and protection, the Orphans and Vulnerable Children (OVC) Programme focuses on educating people about children's rights.

"This school has more orphans than most others," says
Timothy Kativa, a children's rights activist in Rundu. "And that's
not including the children who are vulnerable."

With an average class size of 56, Sauyemwa Combined School is one of the largest in the Kavango Region, encompassing more than 1.200 learners in Grades five to ten.

At Sauyemwa, about one in every five children has lost one or both of their parents. The school's principal points out that many children, even those with parents, face extreme hardships. Some are hungry. Others, as young as nine years old, are left at home without caregivers.

"Many Namibian children face obstacles in the full realisation of their rights – as those rights are outlined in the internationally binding agreement, the Convention on the Rights of the Child," says Hira Katjepunda, the OVC Project Officer in the AIDS Law Unit.

To help ensure children have better protection and that child rights violations are reported, the LAC implemented the OVC Project in 2008. The OVC Project works in areas with the highest percentage of OVC per capita - Caprivi, Karas, Khomas, Kavango and Omusati - and in three other key communities – Rehoboth, Okahandja and Otjiwarongo.

"OVC are among the most vulnerable groups in society," Katjepunda says. "Their rights are violated on a daily basis."

The programme utilizes children's rights activists who are trained in detecting signs of abuse and reporting to appropriate authorities. In 2009, the 25 OVC community rights watch monitors learned to assist families in obtaining access to various government services. Also in 2009, the

monitors provided assistance to 171 children. According to the 2008 LAC report, 'I Just Want a Good Life' which examines OVC and human rights in five regions of Namibia, OVCs face discrimination at home, school and in their communities.

"At school, OVCs are often barred from attending because they cannot afford the school fees or are financially unable to purchase the required uniforms. In the home environment, they face rejection by their family, friends and supposed caretakers," states an AIDS Law Unit report.

"Due to this discrimination in their early years, OVCs are left without resources for education, healthcare, love and support, making them increasingly vulnerable to HIV infection."

To ensure further community awareness about children's rights, OVC monitors were tasked with leading community information sessions with 1,032 learners and their families in 60 different schools in 2009 alone. At Sauyemwa Combined School, children who participated in the information sessions quickly report that they know about their rights now – in particular their right to education.

In Bukalo, a village in Caprivi Region, the OVC monitor worked with four schools to provide support in identifying children at risk, find solutions to challenges families face and report children's rights violations to relevant authorities.

"The interventions we make with children are valuable," says James Lifalaza, the OVC monitor in Bukalo. "It's been a good opportunity to sensitize children, schools and churches to the special needs and the rights of OVC."

The programme also trains school teachers and counsellors about detecting, reporting and monitoring violations to various children's rights. In 2009, 49 school educators participated in such sessions.

"Promoting and protecting children's rights is a way of addressing the underlying legal, social, cultural and economic conditions that make people vulnerable to HIV infection," Katjepunda says.

"The ultimate goal is to reduce the vulnerability of children in the HIV pandemic, end discrimination and promote a human rights-based approach to HIV/AIDS."

Training provided by the OVC Programme Number of Target Group Participants Life Skills or Teacher Counsellors 49 OVC Community Monitors 25

Families and Children



PROTECTING

CHILDREN S RIGHTS Mark Nonkes

Children in need of legal protection are getting support from the Orphans and Vulnerable Children (OVC) Programme of the AIDS Law Unit.

The beating lasted all night, with the child's cries permeating the whole village.

"I got a SMS at 3 a.m. from the OVC Monitor requesting that I call her as soon as possible," says William Magenya, the Legal Assistance Centre's Orphans and Vulnerable Children Protection Officer.

"In the morning I went to the Women and Child Protection Unit and requested that a social worker accompany me. When we arrived at the village, we came across a severely beaten 15 year-old boy."

Accused of stealing, the 15 year-old boy had been strangled with a shoestring tied around his neck. The attacker, a family member, hit the child with a car pump pipe and a fan belt for several hours. After tiring of this, he punched and kicked the boy in his genitals. And as a final act, the man took a sword and threatened to stab the child.

This is not the first time the child has been beaten. In 2008, the child's arm was broken to teach the boy a lesson.

According to a 2009 report by the Ministry of Gender Equality and Child Welfare, more than 35% of children in Namibia experience excessive "physical violence," or in other words, are beaten. Physical violence was classified as hitting a child on the bottom or elsewhere on the body with something like a belt, hairbrush, stick or other hard object; hitting or slapping a child on the face, head or ears; hitting or slapping a child on the hand, arm or leg; or repeatedly beating a child with an implement. The OVC programme also deals with numerous child welfare issues that do not involve violence. In 2009, OVC community monitors reported 171 cases. These cases dealt with a wide array of issues: neglect and child abuse, accessing social grants, obtaining identity documents, stigma and discrimination and realizing the right to education. The LAC worked with relevant government ministries, service providers and community members to find solutions and assist these children.

"One of the aims of the OVC programme is to ensure that violations of children's rights are reported so that children can be better protected," Magenya says.

In the case of the boy who was severely beaten, the LAC met with the mother of the boy and helped her report the assault to the police. The attacker was then held in custody and later released on health reasons (the attacker alleges that he is an epileptic).

"Although this incident was deplorable, there is one positive aspect," Magenya says. "Now everyone knows that there are steps that can be taken if a child is abused or neglected."

Nature of Service provided/cases	Male Female		Total
Birth certificates	4	5	9
Advice on grants	7	7	14
Social grants application	6	9	15
Social grants approved	1	2	3
Child abuse/neglect	6	12	18
Inheritance and property grabbing	4	3	7
School reports	1	1	2
School/exam fee exemption	15	6	21
Referrals (MGECW)	36	44	80
Stigma and discrimination	1	1	2
TOTAL	81	90	171

SAFETY AND SECURITY

After LAC litigation, a handicapped boy who was raped in jail was sent to a safer institution.

The Mental Health Act is supposed to provide for the detention and treatment of mentally ill people, but in the case of Erasmus*, a mentally handicapped boy who was raped in prison, the Act failed him.

In 19 September 2007, 15 year-old Erasmus was arrested for allegedly raping a one year and six month old baby. As a result of the allegations, Erasmus was taken into custody at Omaruru police station since his arrest. Erasmus was born mentally handicapped and has been receiving treatment for his condition, severe epilepsy, as well as other health problems.

"He has been in and out of hospitals ever since I can remember." his mother, Frieda* states.

In February 2008, a Magistrate at Omaruru ordered that Erasmus be detained in a prison as a President's patient – a status that authorises a person's detention, until the President decides to order his release. A person is regarded as a President's patient if that person is unable to understand the implications of his or her actions either at the time the crime was committed or at the trial.

"Erasmus is not fit to stand trial or follow any court proceeding due to his mental illness," says Ndahamebela Mthhoko, a doctor at Windhoek Central Hospital, where Erasmus underwent a month long observation at the Psychiatric Unit in mid-November. In mid-April 2008, Erasmus' mother was informed that her son would be transferred to Windhoek Central Prison.

Being in prison with so many men, many at 30 to 40 years of age, was hard for Erasmus. Scared and defenceless, he was forced to have sex. When he refused his clothes were torn. Day and night Erasmus was raped; he screamed

for help but no one heard him, LAC lawyer Linda Dumba-Chicalu was told.

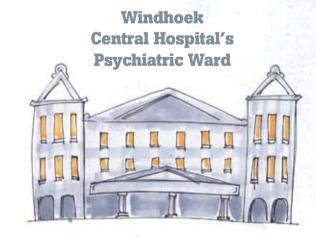
"At 5 o'clock the prison officials usually knocked off. By that time prisoners are playing soccer and so it's time for a rape perpetrator to take advantage, according to an inmate at prison," Dumba-Chicalu says.

Dumba-Chicalu helped Frieda to fight for her son's right to safety and security and the right to be kept separate from adult prisoners.

On 21 January 2009, Dumba-Chicalu's urgent application was heard by acting Judge Johan Swanepoel, who ordered the Ministry of Safety and Security transfer Erasmus to the Windhoek Central Hospital's Psychiatric Ward. The Ministry of Health and Social Services was ordered to accommodate him at the Psychiatric Unit and to monitor his progress.

Erasmus's case is an immense victory for the LAC. It surely educated other families in similar situations and helped those at risk of having their rights being violated.

*names have been changed to protect their identity



ASSERTING PIGHTS IN THE WORKPLACE Zandra Balzer

22 employees who were tested for HIV without their consent took the issue to court in 2009.

Testing for HIV should require a person's full consent. Results of the test are meant to be confidential. If testing occurs without consent or test results are released to the public, one can take legal action.

This is precisely what 22 employees of a lodge in Oshakati did after they were allegedly tested for HIV without their knowledge or informed consent. The employees claimed that the results of the HIV tests were later publicly revealed.

"The employees claimed that their workers' rights to dignity and privacy were allegedly violated by the employer and the medical doctor," said Linda Dumba-Chicalu, the project lawyer of the AIDS Law Unit at LAC.

In February 2000, the lodge owners allegedly hired a medical doctor to conduct HIV tests on all its employees. The employees said they were unaware that they were being tested for HIV due to the fact that they did not even receive pre- or post-test counselling.

The LAC enlisted the services of Advocate Sacky Akweenda in its extensive preparation for the case. The case was billed as the first in which Namibian courts would review the issue of testing for HIV without informed consent

However, in July 2009, an 11^{th} hour settlement offer was accepted and the case withdrawn. All the clients, who were in town as the court case was scheduled to kick off the following day, agreed to the terms of the settlement.

"The settlement reached is to the satisfaction of the parties involved in the case," Akweenda told New Era newspaper. Details of the settlement could not be revealed due to a settlement agreement.

"Although the case was settled out of court it sent a strong message to the public about non-discrimination, the right

to privacy, confidentiality and testing without a person's consent." Dumba-Chicalu said.

The case drew significant media attention, resulting in nine newspaper articles, four radio broadcasts and two Television broadcasts.

"I believe that Namibians, particularly those living with HIV, are now aware of their rights and know that they can approach the LAC if they are discriminated against at the workplace," Dumba-Chicalu reflected.



RIGHT TO EQUALITY

Goderich Sikwana

Support groups for people living with HIV/AIDS are getting trained about their rights. The initiative is helping end stigma and discrimination and leading to individual empowerment.

In the past, people living with HIV/AIDS felt socially isolated and neglected.

"People did not have the strength and a will to live" said Lucia Mokomeli, a Coordinator for Tusuno project in the Khomas Region.

Now, with the help of the LAC's AIDS Law Unit, human rights based training has been provided to community support groups, especially those empowering individuals affected or infected with HIV/AIDS around the country. According to Mokomeli, participants gained a better understanding of the stigma and discrimination that the HIV/AIDS population faces, along with the rights that they are afforded.

"It was a success because it created a platform to help give confidence to people living with HIV to come out and speak out against the troubles they face within their communities," Mokomeli said.

The Tusuno project also gives information and training to community groups on income generation projects for people living with HIV/AIDS. According to Gabes Augustus, a Legal Educator at the AIDS Law Unit, the programme was launched to build capacity and support people living with HIV/AIDS in five regions: Kavango, Caprivi, Oshana, Erongo and Ohangwena. The post-test club addresses behavioural change, psychosocial support, gardening, nutrition and human rights based programmes.

Furthermore, Augustus noted that the AIDS Law Unit has been working with state hospitals in Oshakati, Katima Mulilo and Rundu to encourage hospital workers to espouse a positive attitude towards HIV/AIDS. As an example, the unit took up problems experienced by some members who were

turned away from the hospital for non-payment of consultation fees when accessing antiretroviral-treatment.

According to the Ministry of Health and Social Services' 2008 National HIV Sentinel Survey, 17.8% of Namibian population is living with HIV/AIDS. It is also critical to note that 27% of 30-34 year-olds are infected, 14% of 20-24 year-olds and 23% of 25-29 year-olds.

The AIDS Law Unit also conducts onsite visits to various support groups among the respective five regions. On this basis, the unit takes up cases and provides legal advice.

"The objective of the training was to build capacity and ultimately empower these people to fight stigma and discrimination," Augustus says.

"Approximately 300 Tusuno members were trained. This year, more men participated than in the past. We're very pleased with the results."

LAC has developed an in-depth manual about HIV and the law. It is being distributed countrywide.

HIV/AIDS and the Law in Namibia was written in response to the lack of familiarity with the human rights afforded to people living with HIV or AIDS. According to Amon Ngavetene. the easy-to-read manual is designed to educate people about policies on HIV and AIDS, like the Guidelines for Clinical Management of HIV and AIDS, Guidelines on Prevention and Control and the Namibian Constitution.



THE RIGHT TO HEALTH

Zandra Balzer and Cindy Cho

The AIDS Law Unit successfully defended a woman's right to access to ARV treatment.

With only one dose of her Anti-Retroviral (ARV) treatment left, Katrina* found out that she was taken off her family's Medical Aid scheme and could not access her lifesaving drugs.

Katrina needed treatment urgently in order to avoid building up resistance that would necessitate the use of a different and more expensive treatment regime unavailable in the public health care sector.

In need of help, Katrina came to LAC seeking help after her husband had taken her off Medical Aid without informing her. AIDS Law Unit lawyer Linda Dumba-Chicalu was assigned to take charge of her case. Her case was taken as an urgent application on the fact that her rights to health and life were immediately affected. "I was very much traumatized by what happened to me," says Katrina.

According to evidence given in court, Katrina's husband informed Medical Aid that she was his child while, in fact, she was his spouse. "It was a life threatening situation for the wife," says Dumba-Chicalu.

The judge ruled in favour of the client, demanding that she be placed back on her family's Medical Aid immediately. Katrina's case is a human rights victory for the LAC because the client was able to obtain her proper status with Medical Aid and receive necessary medication in order to survive and stay healthy.

LAC takes other court action in some of the injustices that people with HIV/AIDS suffer.

A doctor tested Maria* for HIV/AIDS without her consent or knowledge. Her HIV-positive results were then communicated to her husband, rather than her. Feeling outraged, she brought her case to the AIDS Law Unit of the LAC.

Conducting an HIV test on a patient without her consent or knowledge is not only a violation of rights to dignity and privacy, but an assault. Simply revealing a person's HIV/AIDS status can also have both legal and social consequences.

Ellen's* employer revealed her HIV results to her co-workers. The LAC is proceeding against the employer for violating her right to privacy.

Nangula's* employer suggested that she go see a doctor when she reported sick for work one day. The doctor informed her employer that she was HIV-positive and Nangula was fired shortly after. The LAC is proceeding against the doctor for breaching his duty of confidentiality to a medical patient, and against the employer for violating the anti-discrimination provision of the Labour Act of 2007.

These cases illustrate some of the injustices that people with HIV/AIDS suffer; the injustices strike at the heart of human dignity because they involve the ability to procreate and the ability to support oneself and make a living. By pursuing litigation against employers and health care workers when they violate privacy, dignity, and workplace rights, the LAC hopes to raise public awareness surrounding HIV/AIDS.

(*Names have been changed to protect her identity)



PROTECTING PRISONERS Zandra Balzer

An LAC training programme addresses prison conditions, HIV inside jails and other inmate human rights issues.

Like any other Namibian citizens, prison inmates enjoy fundamental rights under the Namibian Constitution. They have the right to human dignity, life, equality, freedom from discrimination, medical treatment, education and the right not to be tortured or treated in a cruel or degrading manner.

The LAC conducted research and issued reports showing that 12% of the prison population is infected with HIV/AIDS. Pre-trial detentions, violence, gang activity, overcrowding, malnutrition, inadequate health care, rape, consensual unprotected sex and inadequate staffing all contribute to the spread of the HIV virus in prison facilities. Another relevant issue is the unavailability of condoms in prisons.

"The criminalisation of sodomy has resulted in a prohibition on the distribution of condoms in prison," says a prison warden at Keetmanshoop.

"Prisoners are vulnerable when it comes to HIV/AIDS and human rights violations" says Amon Ngavetene from the AIDS Law Unit at the LAC.

Tonderai Bhatasara from the AIDS Law Unit is conducting training workshops for prison officials and inmates at various prisons in Namibia. The trainings concern human rights, especially for people living with HIV-AIDS, and took place throughout 2009. The focus is on training prison officials and inmates on their rights, empowering them to respond effectively to violations – especially those involving people who are HIV positive.

Many different issues are discussed in the prison workshops: sodomy, government refusal to distribute condoms in prisons, how the criminal justice system affects overcrowding, confidentiality, disclosure of HIV status and privacy.

Stigma and discrimination were issues raised throughout the workshops by the inmates themselves, specifically in

relation to the possibility of compulsory HIV testing for all inmates upon admission. Many inmates thought that it is not in anyone's best interest to have such a system, and that this system would violate the fundamental right to privacy.

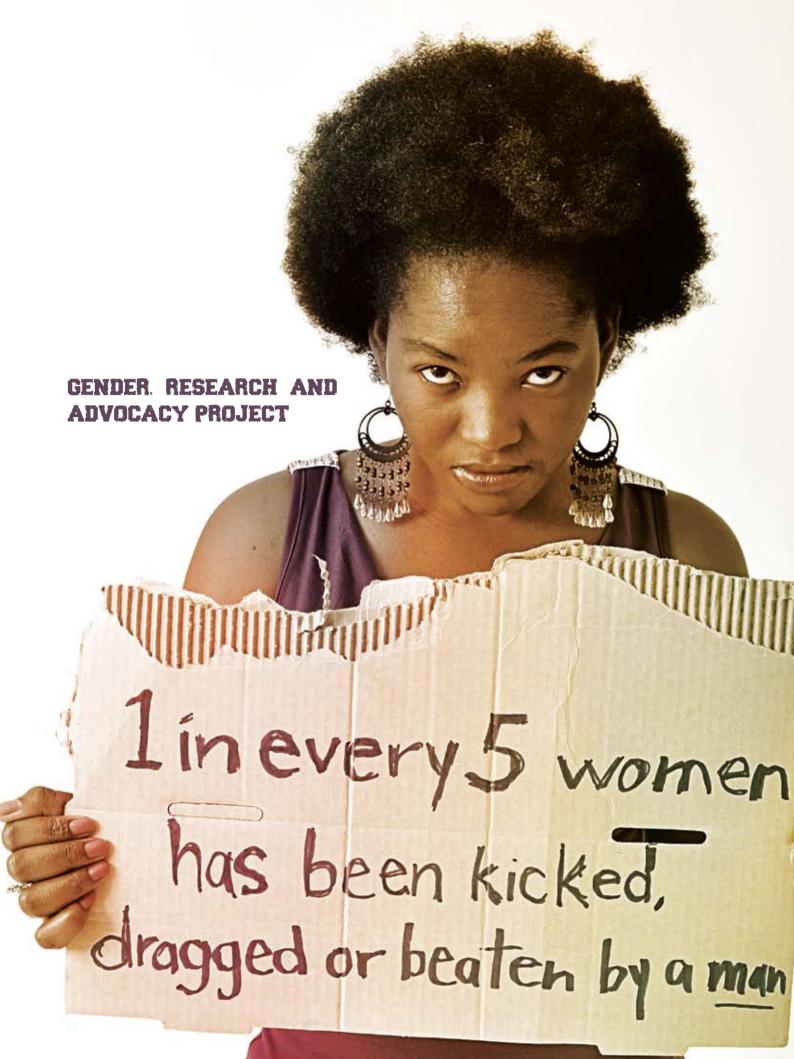
Though there have been recent efforts to increase HIV/AIDS training for new prison wardens, significant problems still exist. Newly hired staff members are put through seven-month intensive military-style training. During the training the staff members receive limited HIV/AIDS education.

Namibia currently ranks among the five African counties with the highest rates of imprisonment, with 267 per 100,000 people currently serving sentences or in pre-trial detention. Overcrowding and shortage of staff results in limited oversight of inmates.

Sex, violence, tattooing and drug use occur undetected and contribute to the transmission of HIV/AIDS. Transmission by exposure to infected blood is lower than the risk of exposure through unprotected sex or intravenous drug use, yet it still serves as a possible means of infection in prison.

Although testing is not accessible in prison, it is available to prisoners at hospitals or through NGOs. However, the prisoners must then rely on the willingness of the wardens and availability of transport. Reports have been received of prison officials refusing to take inmates to the hospital for HIV testing, wherein the wardens make comments such as: "So you have been having sex with other men here – otherwise why do you want to be tested?" 'Some wardens are indifferent to HIV positive inmates and others are hostile; either way, it is discrimination against such inmates, in essence prohibiting them from going for testing or the doctors'," says a former inmate in Windhoek prison.

The Namibian government is obligated to ensure that prisoners are not subjected to torture, cruel inhuman or degrading treatment or punishment. Looking at the present situation in Namibian prisons, a lot must change before inmates can enjoy the same rights that should be afforded to all Namibian citizens.



THE PIGHT TO PARTICIPATE IN THE CONDUCT OF PUBLIC AFFAIRS Rachel Coomer

In 2009, the Ministry of Gender Equality and Child Welfare embarked on an extensive consultation process to guide the revision of the Child Care and Protection Bill. The Gender Research and Advocacy Project (GR&AP) provided technical assistance and the process was supported by UNICEF. The bill, first drafted in 1994 and revised several times since then, is a vital piece of legislation intended to replace the outdated Children's Act 33 of 1960. Law reform in this area is essential if children in Namibia are to receive the care and protection they so desperately need.



All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and; subject to such qualifications prescribed by law as are necessary in a democratic society to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

Namibian Constitution, Article 17 (1)

The 2009 consultation process was the largest ever to have been undertaken in Namibia, and the process was designed to serve as a model of best practice for future law reform in Namibia and across the region. Information on the consultation techniques employed has already been discussed and presented at international conferences in Africa and Europe, and sample materials from the process have been widely distributed to key partners across the world.

The consultation process consisted of four main steps:

- (1) research and development of accessible materials;
- (2) media outreach and requests for stakeholder and community feedback;
- (3) regional, national and international meetings and
- (4) the collation of input and corresponding revision of the draft bill.

The Child Care and Protection Bill is a 200-page document that covers 21 key topics such as procedures for protecting children who are at risk of harm, the age at which children can give independent consent to medical treatment, foster care and adoption and child trafficking.

To make the information accessible to the general public, the Ministry needed to convert the Bill into user-friendly materials for adults and children. To this end, LAC assisted the Ministry to produce one-page "factsheets" on all 21 topics in the Bill and a summary of the entire draft Bill, with commentary on some of the key issues to encourage discussion.

The factsheets were central to the various outreach efforts. Each factsheet was designed to contain the key information required for readers to discuss, debate or comment on the issues. Most of the factsheets summarised the current law, the proposed law and the approach taken in a few other countries. Many used examples or charts to make issues clearer. All were designed in a colourful and easy-to-read format. Although English is the official language of Namibia, many people continue to be more comfortable communicating in one of the many indigenous languages. To ensure that the information about the Bill was effectively communicated, the factsheets were translated into four other languages: Afrikaans, Oshiwambo, Nama/Damara and Rukwangali. Individual factsheets on different topics were distributed directly and at

workshops to government, stakeholders, non-governmental organisations, community members and journalists. Electronic versions were posted on the LAC website for universal access. The process of revising the draft Child Care and Protection Bill was designed to be as comprehensive and as inclusive as possible and included a series of regional and national workshops with adult stake holders.

Another prong of the outreach process targeted children, with workshops and contests employed as channels to stimulate discussion on the bill amongst young people and a special child-friendly packet of explanatory materials. This process was guided by a group of enthusiastic teens who met regularly to provide ideas on how best to involve children within the available time and budget constraints.

"The experience was extraordinary, encouraging and made me very determined to attend all meetings." says a member of the children's reference group.

The diverse forms of outreach employed during the ten-month consultation process included:

- placement of colourful information booklets about the bill in national-newspapers in a range of languages;
- · 38 radio slots in a range of languages;
- 25 articles, opinion pieces, letters and text messages on the bill in national newspapers;
- · nine television slots;
- eight articles relating to the bill and the consultation process in Namibian magazines and an internet discussion group which canvassed seven different topics.

A total of 1,421 stakeholders attended one or more of the 39 workshops, conferences, consultations, focus group discussions or other meetings held to discuss the revision of the Child Care and Protection Bill.

Although the revised Child Care and Protection Bill has not yet gone through Cabinet to Parliament, the consultation process has been one of the most successful such projects to date in Namibia. Involving such a large number of people in the reform process at an early stage, while the law under discussion is still being formulated, helps the public take ownership of laws that are intended for their benefit. The consultation process has resulted in an overall advancement of awareness and understanding of children's rights in Namibia.

"....by launching a multifaceted consultation process, deliberating with stakeholders, inviting public participation, seeking technical and legal support from the Legal Assistance Centre and other practitioners and academics, and conducting a comparative study of similar legislation elsewhere in the region, I dare say that the Ministry and its partner organisations have set high standards in consultative and transparent legislative process preceding the tabling of legislation which will hopefully be emulated in future."

Hon. Justice Peter Shivute, Chief Justice of Namibia, Address at the Closing Session of the Specialist Workshop on the Child Care and Protection Bill.



RIGHT TO EDUCATION

Rachel Coomer

Every year, approximately 1,500 Namibian learners are forced to drop out of school due to pregnancy. In 2009, Cabinet approved a new policy by the Ministry of Education for the prevention and management of learner pregnancy. This policy will make a significant difference in the lives of learners in Namibia.

At 18, Utjiua Karuaihe was about to finish her final year at Windhoek High School. When she became pregnant, Karuaihe wanted to continue with her schooling throughout her pregnancy and after her baby's birth. Instead, due to government guidelines, she was forced to leave school when her pregnancy was visible and required to stay out of school for one year after the birth of her child. Even so, she was one of the lucky ones. She had a supportive family and she did return to school the following year. Many other learners who are forced to leave school because of pregnancy never return.

Karuaihe's mother, who said she was willing to look after the child during school hours, launched a court action to keep her daughter in school. Due to a number of delays in the legal process, almost a year had passed before there was a final outcome in the case alleging that Karuaihe's constitutional right to education was being violated by the current policy. The case essentially fell away since Karuaihe would be free to return to school before any final court ruling could be made. Despite its inconclusive outcome, Karuaihe's case focussed public attention on the difficult issue of responding to learner pregnancy.

Fortunately Utjiua Karuaihe's dilemma should never happen again. In 2009, Cabinet approved a policy on the prevention and management of learner pregnancy. The new policy is a vast improvement on the old guidelines because it focuses on decreasing the number of learner pregnancies and increasing the number of learner-parents who complete their education.

GR&AP assisted the Ministry of Education with the development of the new policy. In 2008 GR&AP conducted

detailed research about the issue, drafted proposals for a possible new policy and ran regional consultations on behalf of the Ministry of Education to obtain opinions from key stakeholders. To promote the passage of the policy, GR&AP worked hard to maintain media focus on the issue. This effort was successful, with articles appearing in New Era, The Namibian, Sister Namibia, Real magazine and OYO Young, Latest and Cool. GR&AP also drafted a chapter motivating the new policy for a book entitled Children's Rights in Namibia published in 2009 by the Konrad Adenauer Foundation in association with the Human Rights and Documentation Centre of the University of Namibia.

GR&AP also supported the Ministry of Education in its efforts to move the draft policy forward, assisting with presentations to key decision-making bodies and helping draft motivations for the proposed policy.

The implementation of this policy will be a major change for Namibia. Put simply, the new policy will mean that learner-mothers will receive support from their schools for the first time - something that wasn't available to Karuaihe when she became pregnant in her final year of secondary school in 2005.

Many girls like Karuaihe have battled to continue their education in the past. GR&AP has worked to highlight the fact that right to education applies to all, including learners who become pregnant. Change has been a long time coming. The LAC worked on Karuaihe's lawsuit, assisted with the development of the policy and lobbied for its acceptance. In the future, the LAC will work on ensuring that the policy is implemented effectively. Education is a human right and a means of realising other human rights. In 2009, this central right took a step forward in Namibia.

As Utjiua Karuaihe says, "the policy is much better than the one in the past."

RESPECT FOR HUMAN DIGNITY

Rachel Coomer

More than one-third of complainants in rape cases seek to withdraw the charge after their initial report to the police. In 2009, GR&AP launched a research report which tried to find out why.

More than a year in the making, the groundbreaking study Withdrawn: Why complainants withdraw rape cases in Namibia, uncovered 78 different reasons for rape cases withdrawal.

The most common reason offered was compensation. While some people see compensation as a respected and legitimate method for resolving a criminal matter, others perceive the acceptance of compensation for a rape as devaluing the seriousness of the crime and even the woman herself. Some viewed it as "buying" the victim's right to prosecute her case, or even buying the right to rape her.

The criminal justice system in Namibia currently offers the victim very little in the way of support or compensation, aside from the satisfaction of seeing a criminal put behind bars. Unlike a criminal case which can drag on for years, compensation is speedy and private, and it can give the rape complainant a sense that concrete reparation has been made as well as providing welcome financial assistance to the person who has suffered the wrong. However, the problem remains that rape complainants are sometimes pressured into this choice rather than making an independent decision, or not even consulted about it. Most importantly, choosing compensation means that nothing is done to prevent repeat rapes since it allows the rapist to walk free.

The second most common reason for rape case withdrawal was family pressure and shame – a sure sign that families and communities are not giving rape victims the support they need and deserve.

"I have heard... of women who have withdrawn cases because of briberies. Or a woman has withdrawn a case because of the family; they are related to one another and they are afraid of destroying this relationship. Sometimes the victim is afraid of the rapist if he has an expensive lawyer who can defend him in court.", said a man who was interviewed in Oshakati.

A woman in Keetmanshoop said, "These perpetrators are not brought to justice, because there is always a way for them to get what they want."

The research report made a number of recommendations for action by stakeholders, centering around four primary goals:

- creating new programmes that provide more direct assistance to victims of rape;
- strengthening the services already in place, and eliminating insensitive conduct and institutional inefficiencies that have inspired some women to withdraw their cases;
- educating communities to overcome the prejudice and the stigma associated with rape; and
- 4. providing rape complainants with more information about the criminal justice process, including information about the pros and cons of withdrawing their cases.

GR&AP took direct action on its own research findings by producing an easy-to-read pamphlet in simple language to inform and assist rape complainants who are considering withdrawing their complaints. This booklet, which canvasses the pros and cons of case withdrawal and provides informa-



tion which may allay some rape complainants' concerns, is being made available in various languages nationwide at the Woman and Child Protection Units where rapes are reported. Additional booklets which can help guide rape complainants through the criminal justice process are in production. In 2009, GR&AP distributed nearly 27,000 publications about rape throughout the country.

The issues associated with rape case withdrawal are broad and complex, and can only be resolved through coordinated long-term efforts by communities, government, NGOs and other stakeholders. But understanding the problem better is a good beginning.

The 10 most common reasons for the withdrawal of rape complaints:

- 1. compensation
- 2. family pressure
- 3. shame
- 4. threats of physical harm
- 5. prosecution of the rape case takes too long
- **6.** fear that there is insufficient evidence to convict the rapist
- 7. lack of information
- 8. status of the rapist
- 9. bribery to withdraw the case
- 10. financial distress.



CHILDREN'S RIGHT TO DIGNITY

Rachel Coomer

The use of corporal punishment as a form of child discipline is common in Namibia. GR&AP has been trying to change this by promoting alternatives.

According to a recent research study, it is estimated that 40% of people spank, hit or slap their children with a bare hand and 30% spank, hit or slap children with something such as a belt, hairbrush, stick or other hard object. Whilst many people argue that corporal punishment is the only effective means of discipline in the country, there have been cases in Namibia where excessive physical force has been used against children in the home. There are cases where children have been seriously injured or burned by means of such "discipline", and some children have even been beaten to death.

"One day when I got beaten I cried for 3 full days. I couldn't even eat because I was hurt.", says a Namibian child. To address this issue, GR&AP launched a series of activities to educate community members.

Film

The film centres on a likable rogue called Paulus. Set in a rural community school, Paulus and his friends are subjected to almost daily beatings at school and beatings at home. Learning by chance that there are other methods to discipline children, Paulus attempts to change the attitude of his teachers and family. Depicting a battle to change the opinions of a whole community, the film is not only an educational tool but also a compelling story to watch. Will Paulus' plan to change the attitudes of his community work, or will he just get one more beating for his troubles?

The film script was drafted and rehearsed in 2009, with the release of the film on national television scheduled for early 2010. The film will also be used in workshops and distributed to schools and to other non-governmental organisations.

Comics

GR&AP produced two comics about alternatives to corporal

punishment in 2009. The first cartoon deals with discipline of young children (focusing on their mothers), while the second addresses discipline of teenagers (focusing on their fathers). Designed in a colourful and easy-to-read format, and translated into three indigenous languages, the comics are intended to be accessible and interesting teaching materials.

Both comics were pre-tested in sample communities and will be disseminated in national newspapers at the start of 2010, to reach the broadest possible audience.

Workshops

GR&AP facilitated a series of workshops in 2009 to discuss the issue of corporal punishment with both children and adults. All of the input received from these workshops has been collected and recorded, to serve as input for the revision of the Child Care and Protection Bill. Children's opinions on corporal punishment are currently being analysed in more detail and will be reported on more extensively in a monograph on corporal punishment that GR&AP will publish in 2010.



RIGHTTO

FREEDOM FROM VIOLENCE

Rachel Coomer

According to a 2009 study, approximately one in three Namibian women have experienced gender-based violence. There is a strong new law in place to help such women and GR&AP has been taking steps to make this law more effective.

If I were a girl

I would be sure to do all my domestic work to avoid being beaten up. Women are not powerful enough. If they fail to do some work at home, they must not ignore their husbands. They should correct their mistakes and not repeat them.

Comment from a male learner, published in OYO Young, Latest and Cool

If I were a boy....

I would hit girls on their buttocks and kiss them by force. If they resisted, I would beat them. I would go to the club and drink, and then drive. I would sleep around the corner and rape girls.

Comment from a female learner, published in OYO Young, Latest and Cool

The Combating of Domestic Violence Act 4 of 2003 is an excellent piece of legislation designed to protect the most vulnerable. Because victims of domestic violence often do not want to lay criminal charges against loved ones (who may also be the family breadwinners), the law provides a simple procedure for obtaining a protection order - which is a court order directing the abuser to stop the violent actions. Such an order can also include ancillary orders such as an order for the abuser to leave a shared residence, or temporary orders for maintenance or child custody.

Unfortunately, the GR&AP has received reports that applicants for protection orders are sometimes turned away, or delayed in urgent cases. In many cases no assistance is given in filling out the forms – which can lead to incomplete information and a refusal by the magistrate to grant a protection order. Other clients say that the terms of protection orders do not always suit the situation at hand.

In order to assess the situation more comprehensively, GR&AP commenced a study in 2006 to examine the implementation of the provisions on protection orders in the Act. During 2007 and 2008, information on some 1000 protection orders was collected from 18 locations. Interviews with service providers were also conducted in most of these locations. During 2009, the data was processed and analysed. The data analysis took longer than originally anticipated because of the complexity of extracting useful data from the protection order applications - already pointing to a recommendation for revision of the application forms, which are obviously difficult for victims of violence to understand and negotiate. The findings of this extensive study will be published during 2010, including recommendations on how to make this law that looks so good on paper work more effectively to protect women against violence in practice.

In 2009 GR&AP also produced a comic explaining how to get a protection order. This comic tells the short story of Mary and her son. With the help from her friends, Mary gathers courage to apply for a protection order. We hope that this story may inspire women who are struggling to stand up and speak out about the violence they are suffering.

Throughout 2009 GR&AP also conducted workshops on domestic violence. These training sessions included an overview of the law and an explanation of how to get a protection order. Participants were given information pamphlets and guides that they could take back to their communities.

The work GR&AP conducted in 2009 on domestic violence illustrates our usual pattern of work. GR&AP often advocates for laws to improve the situation of women, based on local and comparative research about the issue in question. The second step is to educate the public about those laws so that they can access them, and to support government in preparing service providers to implement the new laws. The third step is to assess the operation of the new laws to see if they are serving their intended purposes. GR&AP believes that this three-step process is the best way to improve women's access to justice.

MESSAGES IN THE MEDIA Rachel Coomer

In 2009, GR&AP featured in 63 articles in print media, and facilitated 55 radio shows about issues relating to gender and law.

Such a constant presence in the media helps to ensure that gender issues receive visibility in Namibia.

For almost every article published we received some form of response, whether by email, telephone or client contact. The radio shows also received a good level of response, including call-ins to the shows and text messages sent afterwards. Here are examples of some of the key issues publicised by GR&AP in the media in 2009.

In the newspapers: The 2009 Presidential and Party Elections

In 2009 Namibia held its fifth presidential and party elections. To assist voters interested in gender issues, GR&AP compiled a comparison of gender issues in the manifestoes of the various political parties. The analysis was intended to be a fair and unbiased summary of all statements about gender in the party manifestoes, combined with a count of women on the various party lists to enable voters to make comparisons on gender commitment at a glance.

Overall GR&AP found that the manifestoes generally failed to integrate gender analysis throughout their policy discussions. Where women did feature, it was primarily as victims of gender-based violence and in discussions of increased representation of women in decision-making bodies. Gender issues were not generally integrated into discussions of broad issues such as health, land ownership, agricultural production, environmental issues or economic and development policies.

The article was circulated in a Friday edition of *The Namibian*, which has an estimated circulation of 42,000 and an estimated readership of 420,000. No other civil society organizations published a gender analysis of the political parties.



GENDER: ARE THE PARTIES SERIOUS?



On the radio: Speakers Corner

The LAC in association with Base FM hosted Speakers Corner events for the Day of the African Child in June and Human Rights Day in December. Participants spoke live on air for a period of 1-2 minutes about any issue they thought was relevant. Some people even sang songs or read poems. LAC staff interspersed the community participation with prepared speeches on issues such as gender equality and gender and the labour law. This allowed the public to receive information about important topics in a fun and friendly manner.



Excerpt from Speakers Corner speech by GR&AP staff member Grace Kapere

As a society we are still discriminating against women. Let me focus for a moment on sex role stereotyping. Take for example the way we bring up boys as opposed to girls. Girls are taught from a young age what their role is in the home, we buy boys cars, garden tools, doctor's equipment, but we buy girls dolls, kitchen utensils, make-up and jewellery.....

.... Gender roles are defined through social institutions including the family, churches and schools. But the laws are changing to reflect the rights that are in our Constitution. One example is the Married Person's Equality Act. This Act states very clearly that in a marriage a woman is equal to a man. Men and women can have different roles in a relationship, but in the eyes of the law, a man is not automatically the head of the household. The challenge faced with regards to the laws and policies to advance women's rights is putting such laws and policies into practice. The challenge will only be met through promoting gender equality and empowerment of women through increased awareness and capacity building for protecting the rights of women. And as Namibians we should not leave it to the Government alone, let us play our part in creating awareness in our own homes and in our societies.

Articles in print media by or about GR&AP in 2009: 63

Average of 5 pieces of coverage/month

- 35 articles on the revision of the Child Care and Protection Bill
- 6 articles on teenage pregnancy
- 5 articles on rape case withdrawals
- 1 opinion piece on domestic violence
- 1 opinion piece on citizenship and marriage
- 1 gender analysis of political party manifestoes
- · 1 article on stalking
- 1 article on abortion
- Poem and a story about gender equality
- . 6 interviews with GR&AP staff
- 1 full-page advertisement on the law on rape

Radio shows by or about GR&AP in 2009: 55

- 5 shows on NBC "Your Rights Right Now"
- 5 shows on Base FM
- coverage about cohabitation and the need for law reform on 3 different radio stations
- coverage about rape case withdrawals on 2 different radio stations
- 38 shows about the revision of the Child Care and Protection Bill on a range of radio stations



RIGHT TO PROTECTION OF THE FAMILY IN ALL ITS FORMS Rachel Coomer

More and more people in Namibia are living together as husband and wife without being formally married to one another. Indeed the latest health and demographic report data shows that there are similar numbers of married (18.1%) and cohabiting (12.7%) couples. However, aside from protection against domestic violence, there are no legal protections for cohabiting couples, regardless of how long they live together. As a result, cohabiting couples can experience vulnerabilities that married couples do not face — with women, who are usually the economically-weaker partners, most often bearing the brunt.



When a cohabiting couple breaks up or when one partner dies, women often suffer because of the absence of any legal mechanisms for matters such as property distribution, maintenance, pension benefits or inheritance. In some areas, practices like "property grabbing" also contribute to the problems suffered by cohabiting women.

Reasons for cohabitation are numerous. Some couples do not marry for personal reasons: for example the couple may want to spend more time together before making a firmer commitment. Other reasons are practical, such as the sharing of expenses or the birth of a child. Other people cohabit because of barriers – promises of marriage that do not materialise, or the inability to afford bride price or a wedding ceremony.

Both the LAC and the Law Reform and Development Commission have identified law reform on cohabitation as a priority. In 2009, GR&AP in association with the Law Reform and Development Commission, launched a two-year national study to obtain information and public opinion about the issue. During the first year, focus group discussions and interviews were held in six locations. In 2010, report on the research will be finalized. The report will include information about legal approaches in other countries and recommendations for law reform on cohabitation in Namibia.

Quotes from the focus group discussions and interviews.

- I wanted to get married, but my partner only kept on promising to marry me but it never happened.
- When the relationship ended my partner kept the house and all the furniture. I left the house with nothing.
- It is too expensive to get married. In our culture before
 you can get married, you need to pay lobola to the
 woman's family, usually in the form of cattle. I want to
 marry my partner, but I first need to get together the lobola
 and the money to pay for a wedding.
- I am in this type of relationship by choice. I feel I can control my finances better this way.
- Initially, we decided to live together because I got pregnant and we were planning to marry.





INVESTIGATING AND ASSERTING RIGHTS ENVIRONMENTAL RIGHTS

Johannes Berndalen

During 2009, the exploding uranium mining industry became a focal point for the LAC. Two research studies were conducted and court action was taken against a uranium mining company.

The Land Environment and Development (LEAD) Project explored the issues of mining in protected areas and the effect of mining on scarce water supply through two research projects in 2009.

Additionally the LAC took a landmark right-to-water case to the Supreme Court, where farmers Marieta Engelbrecht and Ulla von Holz opposed water permits that the government awarded to Valencia Uranium for the construction of a uranium mine next to their game farm.

The case dates back to 2007. A Canadian-owned mining company announced plans to construct a uranium mine on a farm in the Erongo Region of Namibia – one of the driest regions in the world. Engelbrecht and neighbouring farmers had been invited to a meeting with the mining company.



"At the first meeting they said they would not extract water from the ground. They said they would use desalinated water from the sea," Engelbrecht remembers.

But soon the plans changed. In 2008, Valencia Uranium announced that they intended to use the groundwater in the area – at the rate of 300 cubic metres per day – to construct the mine.

The nearby farmers protested, claiming that there is hardly any groundwater in the area to begin with.

"It is one of the driest places in the world. Some years it rains 100 millimeters. Some years the rainfall is zero. I keep game on my farm. They are drinking from natural wells. If the groundwater disappears, all life will die out," Engelbrecht explains.

On the same day Valencia Uranium announced their plan to extract groundwater rather than desalinate saltwater, the Ministry of Agriculture, Water and Forestry granted them two permits, allowing the company to extract a total of 1,000 cubic meters of water per day.

With help from the LAC, Engelbrecht and Von Holz took the matter to court. The court declared the water permits null and void, because the permits were given for an area declared as a "subterranean water controlled area". However, the area around the Valencia farm has never been declared as such an area, so the permits were cancelled. Questions about the costs of the case remained after the High Court decision and in 2009, these questions were taken to the Supreme Court. A decision is still pending.

In November 2008, Valencia again applied for new permits, and the Ministry of Agriculture, Water and Forestry approved them despite the protests of the local farmers. The farmers again challenged the permits and the court again ruled in the farmers' favour.

"Since then we have not heard anything. We heard rumours that the mine will build a town on the farm, for the workers. This area is far too vulnerable for such an amount of people," Engelbrecht says.

LEAD Coordinator Willem Odendaal explains why the LAC opposed the approval for water permits: "One thousand cubic meters of water; that is a million liters of water per day from one of the driest areas in the world. Our concern is that no proper scientific study has been made in the area to see how the mining activities will impact

on the biodiversity."

While LAC is adamant that it is not opposed to uranium mining, it is in favour of ensuring that the Environmental Management Act is strengthened to effectively minimize the negative impact that mining has on the environment.

To paint a better picture of uranium mining in Namibia, and the possible effect on the environment, Earthlife Namibia was contacted. The environmental organisation believes that uranium mining in Namibia is ultimately not beneficial.

"Uranium mining gives income for a few for a limited period of time. At the same time uranium mining affects the nature and a large number of people in a negative way," says Earthlife Namibia Director Bertchen Kohrs.

Southern African Institute for Environmental Assessment (SAIEA) is currently doing an assessment of the Namibian "uranium rush". On behalf of the Ministry of Mines and Energy,

the organization, in cooperation with LEAD is evaluating how uranium mining activities will affect Namibia environmentally, economically and socially.

"We will propose some "no-go" mining areas, or, areas of particular biodiversity or archeological interest," says Morgan Hauptfleisch, Principal Scientist at SAIEA.

Hauptfleisch does not think it is likely that Namibia will stop mining for environmental or other reasons, as the country is developing and needs jobs and income.

"The mining sector has to make sacrifices on behalf of tourism, for example when it comes to infrastructure. Mining operations cannot extract water from the ground; we simply are not going to recommend that. They have to get seawater from desalination plants," Hauptfleisch says.

For more information about the two reports on uranium mining in Namibia see articles on page 45.



A RIGHT TO WATER Stephanus N. Frans

A 2009 joint report illustrates the potential damage the rapidly growing mining industry could have on Namibia's water resources.

Namibia may be at risk of the over-utilization of its scarce water resources, according to the 2009 report. Not Coming Up Dry: Regulating the Use of Namibia's Scarce Water Resources by Mining Operations, by the LEAD Project of the LAC written in collaboration with students from the International Human Rights Clinic (IHRC) at Stanford Law School.

The report, which looks at the effect of the growing mining industry on water resources, states that with climate change conditions and Namibia's small, irregular and slow-to-recover water resources, analysts have predicted, "severely deleterious effects on Namibia's water supply."

"The fundamental truth about water in Namibia is that it is a scarce, fragile resource," the authors of Not Coming Up Dry state. "Overexploitation can easily lead to depletion, termination or destruction of the groundwater resource," the authors add.

The report examines the various water resource management laws in Namibia and points out strengths and weaknesses within these existing laws. The 42-page report also presents a case study from the LAC's legal challenge to water permits issued to the Valentia Uranium Mine and makes recommendations to policy makers.





ENVIRONMENTAL RIGHTS

Goderich Sikwana

LAC and its partners are keeping a close eye on the impact Namibia's mining company has on the environment.

Namibia is the fifth largest mining country in Africa, and it is the fifth largest uranium producer in the world. After government services, the industry contributes the most to the GDP. Mining accounts for about 50% of foreign exchange earnings, and is the largest private-sector area of employment. It is likely that this figure will rise, given many countries' increased interest in the Namibian economy, and the fact that Namibia is undergoing a uranium rush. However, there have been fears that inadequate regulatory structure, agency conflicts, uneven enforcement and mining operation practices are threatening the integrity and stability of Namibia's fragile protected lands.

A joint report by Stanford Law School and LEAD points out that Namibia's laws and policies provide for a number of environmental safeguards when prospecting and mining within protected lands. However, Striking a Better Balance: an investigation of mining practices in Namibia's protected areas, warns of the adverse impact resulting from mining activities.

These include:

- landscape alteration,
- · soil and water contamination,
- human and wildlife exposures to toxic materials,
- water depletion and loss of sensitive plants and animal species.

"This report seeks to advance the discussion of the problems, opportunities and possible solutions to the competing interests of mineral extraction, environmental and wildlife conservation and eco-tourism," the authors of the study state. In a series of key findings, Striking a Better Balance identifies gaps in current Namibian mining laws and compliance with the existing legislation. It also makes recommendations to enhance current laws, increase enforcement and develop an improved national policy on mining.

PROTECTING LAND

RIGHTS FOR COMMUNITIES

LAC provides legal advice, training and representation to people living in Namibia's community-based conservancies.

The Community Based Natural Resource Management (CBNRM) programme has enjoyed undisputed success. The programme, which has set up 60 community based conservancies to date, has created hundreds of jobs in rural communities across the country, strengthened and stabilized wildlife populations and generated thousands of dollars in tourism revenue. Of course, there are hitches. The development of these community-based structures requires adherence to various laws.

LAC, through its LEAD Project, provides training and legal advice, along with legal representation, to conservancies in all corners of Namibia. In the Caprivi Region's Salambala Conservancy, for instance, the LAC is seeking legal counsel to try and settle a decade-old dispute between farmers and the traditional authority who is trying to evict the farmers. The conservancy management committee says the farmer's cattle are destroying an area earmarked for tourism activities. According to Salambala Conservancy Manager Phagon Sakutuka, the more than 600 cattle are disturbing wildlife populations, destroying structures the Conservancy is trying to build to attract more tourists and opening the area up for illegal activity.

"If there were no people, it could be possible to block these side roads and better prevent poaching," Sakutuka says. "Right now, we're powerless to control the situation."

Under Namibian law, conservancies are given rights to the game in their areas. With these rights, conservancies are positioned to benefit from tourism through camp sites, trophy hunting, handicraft sales, and lodges operated in joint venture with the private sector. In these joint venture agreements, LAC is often contacted by conservancies to give legal advice and to review contracts. In 2009, LAC staff assisted King Nehale Conservancy in the Oshikoto

Region to negotiate an agreement with a five-star lodge that was established within the Conservancy boundaries. LAC also provided legal advice to Torra Conservancy and Ananbeb Conservancy on joint venture agreements with private tourism operators in 2009.

Currently, LEAD is assisting a conservancy in the northwest of the country with a matter concerning a disagreement between the conservancy and a lodge developer. The developer failed to conduct an environmental impact assessment before commencing with the lodge. LEAD was instrumental in bringing all parties together and as a result advised that no construction should continue until a proper environmental impact assessment has been conducted.

"Environmental impact assessments are not only an essential part of sustainable development and sound environmental practice. They are also in the best interests of Namibia's growing industry, securing that all present and future tourists continue to visit some of Namibia's true and last wilderness areas," says Willem Odendaal, Coordinator of LEAD.

According to the law, conservancies are also able to sell live game to other tourist attractions and distribute game meat from culled herds to supplement the diets of conservancy members.

Each conservancy is guided by a constitution that is written by the community itself. LAC has provided several existing and emerging conservancies with advice and training on drafting, altering and adhering to conservancy constitutions. Once conservancies are up and running, LAC is often called in to arbitrate disputes. Additionally, the LAC addresses various cross-cutting issues affecting numerous conservancies, such as illegal fencing in communal areas or the possible allocation of farms in various conservancy areas. Despite the legal challenges, the community-based conservancy programme is consistently applauded and the LEAD Project is proud to be involved in it.

PRESERVING LAND RIGHTS

Jackson Hilifilwa

An illegal invasion of cattle in a communal area has the LAC filing for civil compensation on behalf of the Nyae Nyae community.

When the people living in Nyae Nyae Conservancy woke up on 28 April 2009, they were shocked. Suddenly, the communal land upon which they have resided for hundreds of years had new residents - farmers from the Gam area who came with their cattle, donkeys, goats, sheep and horses. Quickly, the Gam farmers built makeshift camps and refused to leave.

"We did not hear anything about them coming into Tsumkwe, we just came to see them settled in already," says Goao Kashe, a resident in Tsumkwe. "They were asked if they got permission to stay but we did not get answers."

In the week that followed, more than 1,300 cattle were pushed into Nyae Nyae Conservancy, an area primarily inhabited by Ju/hoansi-speaking people. When LAC went to investigate in May, holes in the veterinary fence – which was set up to prevent the spread of foot and mouth disease were evident - where the Gam farmers had illegally pushed their cattle through. The cattle were using large amounts of water and grazing in a wide expanse of the communal area. LAC announced plans to claim civil compensation on behalf of the Ju/hoansi Traditional Authority, in accordance with provisions of the Traditional Authorities Act No. 25 of 2000.

"As a result of this action, the Gam farmers diminished the Ju/hoansi people's use rights in respect to grazing. They refused to pay compensation for their use of the Ju/hoansi people's natural resources whilst in the area, such as wood and water for both themselves and their livestock," says Lesle Jansen, a legal consultant at LAC. "As a result, the Ju/hoansi people suffered a loss."

Members of the Nyae Nyae community are represented by its traditional authority – which have use rights to natural resources. Tsamkxao #oma, better known as Chief Bobo, is the traditional leader of Ju/hoansi and leading the civil claim.

"It is a big problem because we depend on nature. These people came in with their livestock that means they don't care about others," says Chief Bobo. "We have planned to survive on nature from generation to generation and teach our kids about our tradition."

Nyae Nyae Conservancy is located in the northeast of Namibia. With an administrative centre of Tsumkwe, Nyae Nyae is made up a series of small settlements where people continue to live traditionally in small handmade shift huts. Part of the San population of Namibia, the Ju/hoansi-speaking people are among the most marginalised in the country: poverty is widespread, unemployment is high and economic development opportunities are low.

Gam farmers say they moved their cattle into Nyae Nyae because a poisonous plant in Gam area was killing their cattle. The LAC was joined by government officials, police and other concerned NGOs in condemning the land invasion.

"There was a meeting held with government officials from the Ministry of Land and Resettlement, veterinary officers and officials from the Ministry of Information and Technology," says Detective Inspector Samuel Gariseb who works in Tsumkwe.

"The first meeting was held in Gam where they were told that what they had done is not right."

In June 2009, Tsumkwe local authorities opened cases against the Gam farmers and placed several under arrest for damaging the fence and entering the Nyae Nyae Conservancy without a livestock permit for their cattle. Additionally, 1,210 cattle were confiscated and are being held at a government farm in Kavango region.

Despite the loss of their cattle, the Gam farmers have remained in Nyae Nyae, settling 20 km from Tsumkwe.

Meanwhile, the Traditional Authority has authorised of LAC to act on their behalf. Lawyers working on the case are expected to apply for trial dates in 2010.

CELEBRATING THE RIGHT TO CULTURE

Mark Nonkes and Jackson Hiliwifa

A new book produced by LEAD recounts the personal stories of the people who once lived in Etosha.

The wrinkles on the man's face crack with laughter.

"Remember the snake?" he says to his friend. "The snake that kept coming to granny's house? The one that she kept quiet about for so long until she could no longer take it?"

Quickly, the years shed and the old men transform into teenage storytellers. These men, who were born in Etosha National Park, remember moments of their childhood with animated tones, large gestures and giddy smiles. Encounters with lions, more snakes and other wild cats captivate their audience who cling to each word – frightened with the storyteller at moments of impending danger, laughing at the solution and, later, reflecting on the tales and the change that has occurred during these men's lifetimes.

Moments like these, where the personal stories of the people who once lived in Etosha come alive again, are few and far between. For the Hai||om - who lived in Etosha until the 1950's - the past is disappearing.

"We used to sit around the fire, but now the tradition has died out," says Kadisen | | Khumub, a Hai | | om elder who once lived freely in the Etosha National Park.

The thorough knowledge of plants and their medicinal value is no longer discussed. Tracking and hunting are no longer part of their lives and their skills are not being passed down to younger generations.

"The kids are going to school and when they're at home they just want to sleep and they don't listen to their elders anymore," laments Jan Tsumeb, another Hai||om elder. "They don't want to hear those stories anymore."

The Hai||om belong to the people classified as Bushmen or San, recently distinguished as the oldest humans on earth. Traditionally known as hunter-gatherers, the Khoe-San

people were nomadic, moving location depending on the season and the available food resources.

When Etosha was established as a park in 1907, the German colonial administration tolerated – and indeed welcomed – the presence of the Hai||om, much of whose traditional territory outside the park had been colonized by white settlers. At any given time, between a few hundred and a thousand Hai||om who maintained a traditional lifestyle lived in the park.

The Hai||om remained residents of Etosha until 1954 when they were evicted by the South African administration. As a result, they joined the legions of landless farm-labourers who, from one generation to the next, eked out a living on the farms at Etosha's borders. Today, the San (Hai||om included) are Namibia's most marginalised people, with the lowest per capita income among all language groups in Namibia. Many have no direct cash income and rely on pensions, food aid and other forms of welfare for survival. Education and literacy levels are low and the average life expectancy of the San is 22% lower than Namibia's national average.

On a societal level, today's generation continues to deal with high levels of alcohol abuse, domestic violence, crime, apathy, depression and boredom.

Thirty-year-old, Abel Bandu Khomob, who lives in Okaukuyo, offers some insight into the reason why his generation suffers.

"I'm lucky, I have a job. But still my heart is crying. At the end of the day, I'm still nothing because I don't have a culture. I don't know where I'm coming from because I lost it, I lost everything."

The sentiments and trends in the community concerned the elders of the Hai||om community. Worried their cultural history may die with them, the group partnered with international researchers to establish the Xoms |Omis Project (translated: Etosha Heritage Project). Supported by international donors and administered by the LAC, the

aim of the project is to capture and document the Hai||om cultural heritage and deliver a unique body of cultural, historical and environmental knowledge.

Ultimately, Dr. Ute Dieckmann says, the project aims to build capacity among the Hai||om people and to provide a sustainable means of income generation. Dieckmann, an anthropologist who has worked with the Hai||om for the past 10 years, explains that the project has already produced maps and postcards paying homage to the forgotten history of the people of Etosha National Park. In 2009, the German Embassy offered financial support to help publish *Born in Etosha, Homage to the Cultural Heritage of the Hai||om*, the first popular publication to tell the story of the Hai||om who lived in Etosha.

Designed to accompany the reader on a journey through Etosha, Born in Etosha reincorporates the culture and history of the area into the natural landscape. The history of selected waterholes and other culturally relevant locations accessible to visitors on the main tourist routes serve to portray the life of the Hai||om who once lived there and to highlight the history of the park. Available for tourists and locals alike, the Hai||om elders believe it's one way

to pass on their tradition.

"Today's children don't know how to make a bow and arrow, they don't know how to stalk animals, they don't know how to hunt. But the stories stay, they're still around,"

Jan Tsumeb says.

Through images, personal reminiscences, character sketches and depictions of some of the more important waterholes, *Born in Etosha* provides an insightful tribute to the former residents. The book, Tsumeb says, will be a permanent record of how the ancestors once lived. It will protect their stories, their history and their culture. Abel Bandu Khomob agrees.

"I don't really have a stable background of our culture. And that would be a problem one day if they are gone. And, until now, nothing has been put up for us on a paper, in writing. So it's very important to have a history which is in black and white."

Born in Etosha, Homage to the Cultural Heritage of the Hai| om, written by Dr. Ute Dieckmann, is available at Etosha's tourism shop, Namibia Wildlife Resorts (NWR) outlets and the Legal Assistance Centre. All proceeds from book sales go directly to the Hai||om community.



RIGHTS FOR A NEW

GENERATION OF FARMERS

Jackson Hilifilwa

Legal Assistance Centre, through its LEAD project, is investigating land reform through the efforts of resettlement farmers successfully cultivating their newly-acquired land.

Alfons Jors proudly stands in front of a paddock of cattle. These 17 beasts, along with a garden ripe with tomatoes, maize and onions are the result of a long struggle to 'make good' on a government resettlement farm.

Jors is one of Namibia's earliest resettlement farmers, moving to a farm specifically delegated to the San people of Omaheke Region shortly after Namibia's independence. Jors and his family, along with 800 other San people who live at Skoonheid, share 7,120 hectares of land and live at subsistence levels. They are among 40% of Namibians who live at or near subsistence level, without formal employment, often hungry and lacking opportunity. Land reform and land resettlement have been a priority for the Namibian government since 1990.

According to a 2007 LAC publication, *No Resettlement Available*, "land reform is necessary to redress the great inequalities that developed in all spheres of Namibian life which are still particularly obvious in both the occupation of land and the activity of farming."

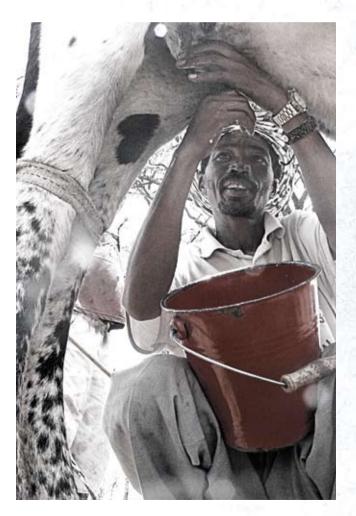
As a former farm labourer on a commercial farm, Jors moved with his wife and five children to the Skoonheid in 1993. While he is proud of what he has accomplished, Jors points out that there has been numerous challenges.

"In the olden days we used to use tractors for ploughing the fields. But here I had to learn how to use cattle to plough my field," Jors says. "When we came here, not everyone knew how to grow crops, look after sick cattle or to fence a farm. It was not easy."

Jors adds that overgrazing, the unequal division of labour, varying work ethics, poor communication skills, a lack of reliable transport and neighbourhood spats have also

hindered growth in Skoonheid. As this is not a challenge unique to Skoonheid, but to resettlement farms across southern Africa, a multi-country study was conducted in Namibia. South Africa and Zimbabwe.

In Namibia, the LEAD Project of the LAC together with Dr. Wolfgang Werner, conducted research. A pivotal issue at the centre of the land reform debate is the issue of the 'viability' of new land-based livelihoods. The *Livelihoods after Land Reform* research project collected empirical data from resettlement farms in the three countries, compared the information across sites in three national settings, and synthesised findings.



The project provided insights into livelihood impacts and wider patterns of agrarian change in post-land reform settings in southern Africa. It also sought to understand the conditions that result in poverty reduction following land redistribution, advance conceptual thinking about post-settlement livelihood options, and develop replicable methodological approaches for assessing impacts at different scales.

To date the debate about viability has largely focused on the scale and profitability of production, based on conventional farm management planning/business models. Questioning the notion of viability and exploring methodologies for livelihood impact assessment goes to the core of the land reform debate in the region, exposing deeply contested notions

of what constitute appropriate resettlement models, production types and routes to sustainability.

Ultimately, the project aims to develop a replicable methodology for livelihood impact assessment, monitoring and evaluation; provide inputs into the design of support programmes in post-land reform settings; facilitate exchanges between researchers, government officials, service providers and land reform beneficiaries; and feed research findings into policy discussions on land reform in southern Africa. Research findings will be disseminated during 2010. The project was hosted and coordinated by the Programme for Land and Agrarian Studies of the University of the Western Cape, South Africa, and implemented in close collaboration with partners in Zimbabwe, Namibia and at IDS, UK.



LEGAL ASSISTANCE CENTRE 51

RIGHT TO COMMUNAL LAND

LAC is encouraging Traditional Authorities and police to understand and implement the Communal Land Reform Act without fear or favour.

In 2009, LAC worked with police and traditional authorities to address issues around illegal fencing in communal areas.

According to Section 44 of the Communal Land Reform Act, fences are prohibited unless proper authorization is obtained. The Act empowers the traditional authority to remove illegal fences in communal areas. However, when traditional authorities tried to enforce this provision and called for police to remove the barrier, the police refused.

"In the past, the police thought it wasn't their responsibility," says Theodor Muduva, a Paralegal and Public Outreach Officer in the LEAD Project.

To address this issue, LEAD conducted training with traditional authorities and police in Otjozondjupa and Omaheke Regions.

According to Muduva, the purpose of the training was to bring together the traditional authority and police, to train them on the Communal Land Reform Act and to ensure that the traditional authorities and police understand their roles and responsibilities as outlined in the Act.

"There are people even the traditional authorities are afraid of. If you touch their fence, they'll threaten to shoot you," Muduva says. "Due to this training, the police now realize they must assist in removing illegal fences."

Muduva emphasized that the training encouraged the Traditional Authority to seek police help to remove illegal fences after all legal procedures have been exhausted. This is also applicable to any other non-compliance acts where police assistance is needed.

The training for the two regions was conducted by Zeka Alberto, a Project Lawyer for LEAD and Muduva. The training, offered at the request of the Ministry of Lands and Resettlement, was conducted during August and September of 2009.

Location	Number of participants	Participant's background
Otjiwarongo	17	Police, Traditional Authority, Ministry of Lands and Resettlement
Gobabis	27	Police, Traditional Authority, Ministry of Lands and Resettlement



PUTTING THE ENVIRONMENT FIRST

Goderich Sikwana/Jackson Hilifwa

Communal Land Board (CLBs) members are considering using environmental and sustainability factors in their decision about development.

Is it sustainable? How can you make sure natural resources are not over utilized? How do you evaluate the land use in your area?

These are some of the questions participants pondered during a countrywide training in 2009. The aim was to ensure that people in charge of communal land allocation, Communal Land Boards (CLBs), considered environmental and sustainability features before agreeing to distribute land.

The project follows the passage of the 2007 Environmental Management Act (EMA), which the Land, Environment and Development (LEAD) Project of the LAC helped to draft. The act aims to make sure that:

- people consider the impact of activities on the environment, carefully and in good time;
- **2.** all interested or affected people have a chance to participate in environmental assessments and
- findings of environmental assessments are considered before any decisions are made about activities which might affect the environment.

"While these three goals are those of Namibia's EMA, all countries should have legislation achieving those same goals," says John Hazam, a consultant with the LEAD Project and a facilitator of the CLBs trainings.

"In Namibia's particular case, its constitution (unlike most in the world) requires that the State should adopt policies which are aimed at 'maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for all Namibians, both present and future'."

The LEAD Project delivered trainings to 12 CLBs countrywide through a partnership with other like-minded organisations – the South African Institute for Environmental Assessment, Integrated Rural Development and Nature Conservation (IRDNC) and NACSO with financial assistance from GTZ. In total, 112 people took part in the trainings.

"What we are trying to teach CLBs is how to consider the environmental aspects, meaning they have to see if the kind of project they are about to approve is environmentally friendly and if it is sustainable," says Theodor Muduva, a public outreach officer and paralegal with the LEAD Project.

"In the past they were just approving any proposed project not realizing that sometimes the project might cause pollution or total exploitation of the local resources."

The EMA, No 7 of 2007, requires that new developers obtain an Environmental Clearance Certificate or an exemption from the Ministry of Environment and Tourism. Developers may then be required to undergo an Environmental Impact Assessment. LEAD developed a checklist to help CLB's make sure all the necessary steps are followed and that all environmental issues are considered.

"By taking environmental factors into account, CLBs will contribute to sustainable development of their own livelihoods and of the Republic of Namibia," Muduva concludes.

Venue	CLB Districts	Attendance
Rundu	Caprivi/Kavango	18
Ondangwa	Ohangwena/Oshikoto	15
Gobabis	Otjozondjupa/Omaheke	16
Oshakati	Oshana/Omusati	26
Keetmanshoop	Karas/Hardap	17
Opuwo	Kunene	12
Swakopmund	Erongo	8
TOTAL		112

THE RIGHT TO PARTICIPATE IN GOVERNMENT DECISIONS

Mark Nonkes

LAC has acted as the legal representatives for the Himba community in the Epupa area since suggestions of a dam were raised in the 1990s. In 2009, community meetings about a possible dam, at a new location, were held. The Himba people are again fighting to have their voice heard in the decision-making process.

Both the Angolan and Namibian governments are considering damming the Kunene River in the Baynes area, thanks to renewed investment and government interest.

Ten years ago, suggestions of damming the Kunene River at the Epupa Falls drew heavy criticism and opposition. Due to several factors, including strong resistance from the Himba and Herero communities of that region, the project failed.

Nearly a decade later, a Brazilian consortium of companies has financed a feasibility study that is investigating the possibility of constructing a dam in the Orokawe area, nearly 40 kilometres downriver from the Epupa site. However, the Himba community feel excluded from the process.

"People are going up and down this road to Orokawe. They are driving trucks that have pipes and wooden electric poles. Before there was no road, now they're building one. They haven't talked to anyone. We don't know what they're busy with," says Karitira Kapika, a son of the area's chief.

With the feasibility study already underway, a series of meetings were organised to listen to the concerns of people on a national, regional and local level in both Namibia and Angola. At a community meeting the LAC attended in Epupa, the feasibility team outlined a proposed dam that would be a power generating site for all of Namibia.

It would, however, flood thousands of hectares, create a power station and village at the dam site and employ up to 3,000 people. The Himba and Herero community of northern Kunene Region were not impressed.

"From our tradition, we are not educated, we are from disadvantaged families. We would love to know exactly what the dam would bring for us in terms of development," says Mutjinduika Mutambo, a member of the traditional authority in the Epupa area. "We are living there, we are farming there. We are there with our animals. And with 3,000 new people living there, what will happen to us?"

Since 1995, LEAD has assisted the Himba community to negotiate with the government about the proposed dam on the Kunene River. Throughout the process, the LAC has maintained a neutral position regarding the building of the dam. The LAC's involvement is due to its mandate that it is a human rights organisation with a focus on marginalised communities. Therefore the LAC has a responsibility to the Himba people to advise them on their rights and to assist them in their negotiations with the government. The LAC continues to receive legal counsel on the matter from former LAC Director, Advocate Andrew Corbett, on the matter. It will remain a focal point of the LEAD Project's work in 2010.



EMPOWERMENT

THROUGH EDUCATION

Mark Nonkes and Goderich Sikwana

Indigenous Peoples Rights Training is empowering San communities in Caprivi and Omaheke with knowledge about their rights and the laws of Namibia.

"Police used violence against the community and the community did nothing; they were just quiet. But since the training it's getting better." David Mushavanga, Khwe Community, West Caprivi.

The people of Omega, a village in Western Caprivi, have long been an Indigenous community at risk. Government does not acknowledge their traditional authority. San people - who, in spite of being the first residents of Namibia, are the most disadvantaged - report numerous violations to their rights in everyday life.

"People don't know the different laws of the land, they don't know their rights. For instance, they don't know what's in the Labour Act and they might get paid N\$10 for a few months of work," says David Mushavanga, a Working Group of Indigenous Minorities in Southern Africa (WIMSA) employee who lives in Omega.

Police violence, land issues and a lack of government accountability are other issues the San people of Western Caprivi encounter. To address the issues, the LAC conducted training workshops in Western Caprivi. The training covered Indigenous people's rights in international law, labour rights and domestic violence. Police, youth and community leaders from West Caprivi villages attended the workshops.

"Their role is to take responsibility for the implementation of the community priorities as identified in the first workshop attended by representatives of the Khwe people," says Leslé Jansen, a legal consultant who conducts the training sessions for the LAC's LEAD Project. Further, the workshop participants were trained to act as community mobilisers.

"They essentially serve as information points for human rights violations as they occur, since most violations go unreported,



resulting in access to justice being denied," Jansen explains.

The results of the workshop were immediate. Police violence eased in western Caprivi.

Overall, the project aims to:

- · raise awareness around where to report human rights
- support the role of community mobilisers as information points for human rights violations;
- · help participants identify community priority issues to be addressed;
- help appoint a human rights committee to work on community priority areas;
- · agree on a follow up session to work on the community priority areas and
- · report human rights violations as they occur to the relevant authorities.

The training was also conducted in the Omaheke Region with San traditional authorities, community mobilisers, and government officials from the social welfare ministry, police department and education department. John Nakuta, a law professor from the University of Namibia, also co-facilitates training sessions.

Community	First Session Attendance	Second Session Attendance
West Caprivi	22	5
Omaheke	25	27



RIGHT TO INFORMATION

Lynita Conradie and Mark Nonkes

The Namibian Law Reports are an essential tool for legal practitioners. In a country that has law reports, lawyers can get vital help and information preparing for cases by reading the reports. Accessible case law makes the judicial system of a country stronger.

In June 1994, after several months of negotiation and planning, the LAC, in collaboration with Juta & Co Ltd, embarked upon a project to publish law reports for Namibia.

Most countries that rely on judicial precedent have law reports, which contain the most important judgments. These judgments serve as a reference tool for legal practitioners and academics.

Producing law reports involves a high level of skill. Not only is it essential that an editor possesses good language skills, the editor must also have qualifications in law in order to understand what the judgment is about.

Editing law reports involves a number of aspects. It is necessary that all materials to which a judge refers should be checked for accuracy. In addition, the editor must determine whether cases to which a judge refers are approved, applied, not approved or applied, compared or simply just referred to. This information serves as the basis for the system of case annotations, which involves a system of cross references. For example, if a legal practitioner is preparing for a case and come across a case reference, the person can go to the cross-reference section of the law reports, to see whether the case has been referred to in subsequent cases.

In addition to reference checking, the editor also writes a summary of the judgment, known as the "headnote". This gives a short resumé of the facts of the case and the law.

When the project started, it was decided that all judgments passed after the date of independence, ie 21 March 1990, would be considered for the law reports. This meant that there was a back log of almost 4 years which has now been brought to date.

Namibia has a relatively small population and due to the fact that the law reports serve is a specialised publication, the market is small and production costs are high. With the efforts of the LAC, lawyers in Namibia now have the possibility to check references and read summaries of judgments. This vital tool makes the work of lawyers easier, and helps legal practitioners and judicial officers in Namibia to take the right decisions. The LAC hopes to keep receiving funds to publish this essential tool for justice.

A new publication about children's rights uses cartoons and simplified language to educate Namibian youth about their rights under the Convention on the Rights of the Child.

The UN Convention on the Rights of the Child (CRC), adopted on 20 November 1989, celebrates its 20th anniversary this week. To mark this milestone, the Legal Assistance Centre, with support from UNICEF, launched a children's booklet explaining these rights in child-friendly language. What Are Children's Rights? is illustrated by 15-year-old Christine Shikuma, a secondary school student who has creatively interpreted the various CRC articles in a Namibian context.

"Through creating these drawings, I began to learn my rights," says Shikuma, who won a contest to illustrate the publication.
"My hope is that other young people who read this also get to know about their rights."



FIGHTING FOR JUSTICE

Selma Ikela

LAC became a founding member of the Coalition for Transitional Justice in 2009. This collaborative group of NGOs and concerned individuals is dedicated to addressing past injustices.

In 2009 LAC helped pave the way for a new coalition of like-minded Namibian NGOs and individuals who are concerned with overcoming the aftermath of past conflicts.

The Coalition for Transitional Justice was set up after a 2008 report by the International Coalition for Transitional Justice stated that past gross human rights violations in Namibia seem to re-surface continually, as they were never dealt with properly in the first instance.

The Southern African Regional Assessment Mission Report points towards three main issues arising from the past that have not been resolved: the massacres of the Nama and Herero in 1904-07; crimes of the South African apartheid regime; and the atrocities in the Swapo camps.

"We cannot move on and build a nation without looking at the past critically," said Samson Ndeikwila, the executive director of Forum for the Future, a founding member of the coalition.

The establishers and members of the Namibia Coalition for Transitional Justice have made several recommendations. These include initiating research to document the past and identifying critical issues needing a nationwide response.

"The coalition must work wide with all Namibians, society, churches and people, especially spiritual leaders," says llona ya Nangolo, a founding member of the organization.

"There is a gap in our Namibian history that needs to be filled." The organization hopes to explore the options of a constitutional challenge to the new veterans' bill, as it clearly does not cater to victims' redress, and entrenches the discriminatory treatment of former combatants.

The Coalition for Transitional Justice also hopes to assist in establishing a resource centre that can serve as a repository for documents collected, while allowing victims to network and support each other. Additionally, the new group hopes to collaboratively plan actions aimed at healing the wounds of the past, and to seek legal assistance on issues regarding enforced disappearance as well as to establish national avenues for complaints.

"There are issues that need to be dealt with in an honest and transparent manner to help resolve these issues," adds Norman Tjombe, Director of LAC. "There are past conflicts that are not known. The Coalition for Transitional Justice can establish a platform where the truth will be told."



HEARING ABOUT YOUR RIGHTS

LAC uses radio as a tool to educate people about various human rights issues.

LAC is harnessing the power of the radio. Found in more homes than any other kind of media, the radio is a key communication tool in informing, entertaining and educating people.

According to a 2008 survey from the Ministry of Information and Broadcasting, 94% of the population have access to radio. The same report also points out that 70% of people have access to mobile phones, 48% have access to television and 9% to the Internet.

LAC partners with the two most popular stations in Namibia, NBC Oshiwambo Service and NBC National Radio, to produce regular radio broadcasts on various human rights issues.

"There is a need for the general public out there to be educated about their rights," says Martha Olga Eleaser, a producer for NBC National Radio.

Eleaser hosts the weekly broadcast of *Your Rights, Right Now*, a half-hour radio programme that kicked off in 2009 in partnership with LAC and explored various contemporary human rights issues throughout the year.

"Your Rights is so popular that, despite the fact that all our programmes went on 'recess' during the festive season as is the norm, the Manager of National Radio recommended that re-broadcasts of this programme continue throughout the season," Eleaser says.

The show is broadcast every Wednesday evening at 19h00 on NBC National Radio and rebroadcast on Saturday mornings. LAC's Ongwediva office staff also work with Oshiwambo Radio to broadcast a bi-weekly show about HIV/AIDS and human rights. This phone-in show has proved tremendously popular and has been a solid platform for informing people of their rights in a language they easily understand.

LAC also regularly partners with a series of smaller stations – including Base FM, Kosmos Radio and UNAM Radio - to bring relevant human rights issues to listeners.

During Human Rights Day 2009, LAC worked with the United Nations to present a live broadcast about the theme: Embrace Diversity, End Discrimination. The show attracted a number of women who spoke about issues that affected them in their fight for equality and broadcast several LAC staff member voices.



4-1

A TOOL FOR TRANSFORMATION

LAC used both theatre and film to illustrate various human rights issues. The 2009 initiatives generated generous discussion and created significant attention.

Theatre and film were important tools in generating discussion about the state of democracy in Namibia and the country's culture of violence in two separate events during 2009.

With a presidential election around the corner, "The Show Isn't Over, Until...10 Years On" returned to the stage with a fresh new insight into Namibian politics. Partnering with the National Theatre of Namibia (NTN) and Home Brewed Production, LAC sponsored this political satire that reflected topical issues of 2009, including the issues of jobs-forcomrades, tribalism, attacks on people with opposing political views, sexual harassment in the workplace and other human rights infringements.

Written and directed by Vickson Hangula, the play was applauded by theatre enthusiasts and performed in Ongwediva and Windhoek. More than 500 people attended the production that also featured actors David Ndjavera, Anna Louw, Steven Afrikaner and Christine Gabriel.

"The Show Isn't Over, Until... must rank as one of the best plays I have seen on a local stage in some time," says Jonathan Sam, a theatre reviewer for the New Era newspaper.

Earlier in the year, LAC and Sister Namibia organized a three-day African film festival in Katutura to open community dialogue around violence, particularly violence against women. The aim was to:

- provide a lens through which viewers can explore violence in other countries and relate it to their own experiences;
- discuss the problems of violence in our world and in our communities so that we may find solutions together;
- · bring films from Africa to an African audience and
- promote the work of Sister Namibia and to make people aware of the organization.

The event showed four African documentary films with a human rights theme was sponsored by the Tri-Continental Film Festival and the Franco Namibian Cultural Centre. The event attracted about 100 people and significant media attention.

"The film fest tackled cross cutting issues that impact Africa and the world," says Robin Baumgarten, the former Senior Programme Manager at Sister Namibia. "The films led to personal testimonies in discussions after each showing. It illustrated the crushing impact of violence and the urgent need for action."

In 2010, the LAC is planning to expand the role of film and theatre in bringing human rights issues to communities across Namibia.



DEFENDING THE RIGHTS OF INDIGENOUS PEOPLES

Johannes Berndalen

A Swedish reality television show filmed in Namibia stirred controversy after the LAC and its Swedish partner Africa Groups of Sweden alerted the media to the undercompensation of participants, failure to meet filming conditions and oppressive marketing.

It was a big scandal in the Swedish media. A Swedish film company travelled to the traditional Himba village of Ohama-remba, located in the northern Kunene Region in order to film a reality show centered on the Tjiposas, a Himba family.

LAC was alarmed by a number of problems that developed during the course of the show's filming. The film company had failed to follow filming regulations in Namibia. The Himba family was offered insufficient compensation, and the marketing of the programme was reminiscent of colonial times. In partnership with the Swedish NGO Africa Groups of Sweden, the media was alerted. Between the months of August and September, 100 articles about the show and its issues appeared in the Swedish press. Controversy erupted. Apologies and calls for better compensation were demanded.

After significant media pressure, the Swedish production company, Eyeworks, returned to Namibia to pay a proper salary for the family's engagement in the production.

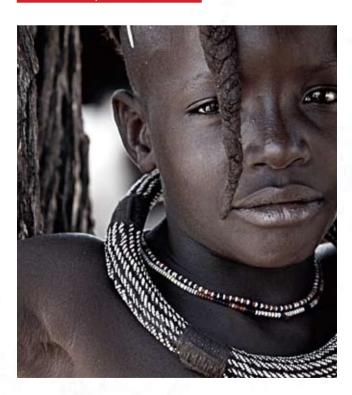
According to the Film Commission of Namibia, production companies interested in filming people from disadvantaged groups like the Himba and San, have to go through the LAC before they can get a film permit. With assistance from the LAC, people who do not speak or read English learn what the filming production is about and what contractual rights they have in return for participation.

Normally, the Tjiposa family works in agriculture with cattle and goats. The television production gave them less time to do this important agricultural work. "We are living in a disadvantaged area, and couldn't say no to the low salaries," says Majuru Tjiposa, who together with his

wife, Kakuzara, and their children, were among the main actors in the show.

The maize meal the family received was not enough food during the TV filming. Majuru's daughter Vaijajke remembers feeling deceived. "We hardly got any payment. We really felt cheated," she says.

According to the LAC, the television programme contradicted the 2007 United Nation's Declaration on the Rights of Indigenous Peoples. In Article 18 of the international document, "Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights; through representatives chosen by themselves in accordance with their own procedures.." and in Article 15, Indigenous People have "the right to the dignity and diversity of their cultures; traditions and histories and aspirations which shall be appropriately reflected in education and public information."





SUPPORTERS

SUPPORTERS

The Legal Assistance Centre is extremely grateful to its donors who continue to make the fight for human rights possible in Namibia. During 2009, our generous supporters included:

Africa Group of Sweden

AIDS Rights Alliance of Southern Africa (ARASA)

Black Opal Systems

Del Mundo PA

Dutch Ministry of Foreign Affairs - MDG3 fund

Economic and Social Research Council (ESRC)

Embassy of Finland

European Commission

Evangelischer Entwicklungsdienst (EED)

Ford Foundation

Global Fund

HIVOS

IBIS

Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape

Legal Resource Foundation

Ministry of Gender Equality and Child Welfare

Namibian Law Report

Open Society Initiative for Southern Africa (OSISA)

PACT Agencies Collaborating Together

Pupkewitz Holdings

Royal Danish Embassy

SALAN

Social Marketing Association

Southern Africa Legal Services

Stanford University

Swedish International Development Cooperation Agency (SIDA)

The Social Development Fund: French Embassy

TUSANO

UNICEF

United Nations Development Programme

For a complete financial report, please visit the LAC's website: www.lac.org.na

