



Legal Assistance Centre

Fighting for human rights in Namibia since 1988



ANNUAL REPORT 2010

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.



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Report Contents

The LAC Director's Reflections on 2010 ... 1

Staff of the Legal Assistance Centre 2

AIDS Law Unit (ALU) 4

Gender Research and Advocacy Project (GR&AP) 9

Human Rights and Constitutional Unit (HURICON) 14

Land, Environment and Development Project (LEAD) 18

The Namibian Law Reports 23

The Index of Namibian Laws (Namlex) 23

Interview with the outgoing Chairperson of the Legal Assistance Trust 24

LAC Publications in 2010 25



The LAC Director's Reflections on 2010



As the only public interest law firm in Namibia, the Legal Assistance Centre (LAC) has unique insight into the trends and needs of the human rights situation in Namibia. The year under review has shown us that while we must continue to focus on social and economic rights as the future of human rights intervention, we must also expand our capacity to enable us to strengthen our work in civil and political rights.

From the pages that follow, it is apparent that the LAC has continued its groundbreaking and nation-building work. The departments have focused on many different aspects, and have given attention to the needs of many communities. The overall mandate, however, remains unchanged: *building a democracy based on human rights*.

Building a nation is a long-term process, and the first step must be building a good foundation. With Namibia soon to celebrate its 21st year of independence, this is an exciting time, but also it is a time to reflect on where we should be concentrating our efforts when advocating, educating and litigating in the sphere of human rights with limited resources. Great sums of money will be spent on celebrations while there are still children going hungry daily around the country. What does this mean for Namibia as she sits on the cusp of a great celebration? Namibia has come of age, but have the achievements in the last 21 years been enough?

For many people living on the outskirts of society, knowing about human rights may seem less important than knowing how they can feed, clothe and educate their children. The task of the LAC is to show how a rights-based culture can improve life for all people in the country. With this information, Namibian society can progress beyond the challenges of ensuring everyone access to basic necessities, towards the goal of being a strong and successful nation.

The LAC is excited to continue contributing to this progress, and I commend each and every one of our committed staff members who steadfastly place a high premium on being instruments of change. Their families, too, are commended and thanked for their support.

In 2010 a new board of trustees was inaugurated – with a few faces unchanged. I thank the trustees for

their support and their continued belief and trust in the work of the LAC. I look forward to working with them in the future, and to the new ideas and energy that they will bring to the cause. The outgoing trustees are thanked also for their unwavering support in the years gone by.

For me personally, 2010 was a year of change due to being appointed as LAC Director in March, replacing Norman Tjombe. I thank Norman for laying the foundation on which I can build. I greatly appreciate the assistance and support I received from all of the staff members and trustees in 2010. They have led me to truly understand how well the LAC works as a team.

Finally, with great pleasure I thank the donors who made our work possible in 2010. Without their vision, trust and support, we would not be able to continue making a difference in the lives of the people of Namibia. We look forward to building on our current relationships with donors and forging new ones in 2011.

In conclusion, we look forward to serving our communities tirelessly in support of Namibia's transition into adulthood in 2011. In the words of Mahatma Gandhi, *let us all be the change we want to see in the world!*

Toni Hancox
LAC Director



The LAC Directors 1988-2010 with the Editor of *The Namibian* newspaper, Gwen Lister, at the dinner celebrating the newspaper's 25th birthday in 2010. From left: Clement Daniels, Adv. Dave Smuts, Toni Hancox, Norman Tjombe, Gwen Lister and Adv. Andrew Corbett.



Staff of the Legal Assistance Centre



BOARD OF THE LEGAL ASSISTANCE TRUST

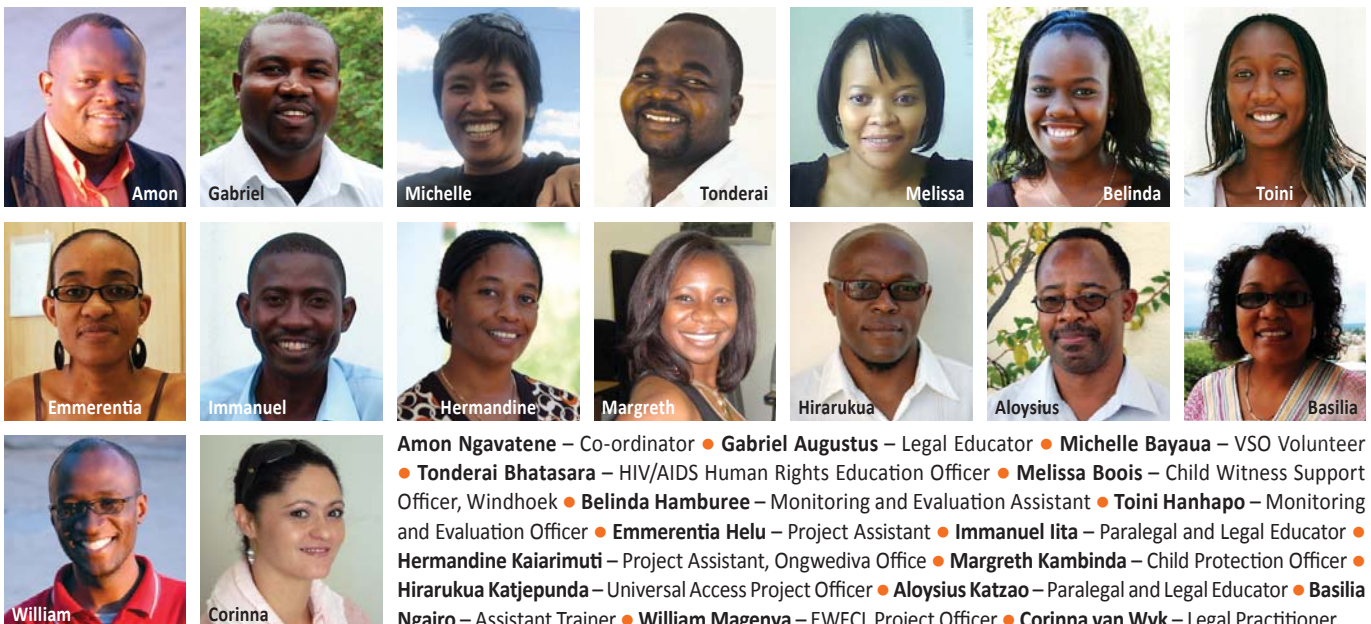
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Not pictured: **Mita Marita Pickering** – Child Witness Support Officer, Rehoboth • **Florence Shivute** – Child Witness Support Officer, Rundu • **Patricia Williams** – Consultant

GENDER RESEARCH AND ADVOCACY PROJECT (GR&AP)



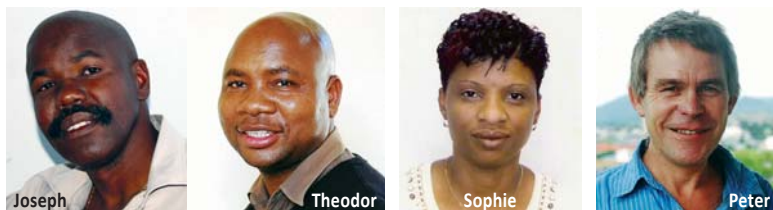
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HUMAN RIGHTS AND CONSTITUTIONAL UNIT (HURICON)



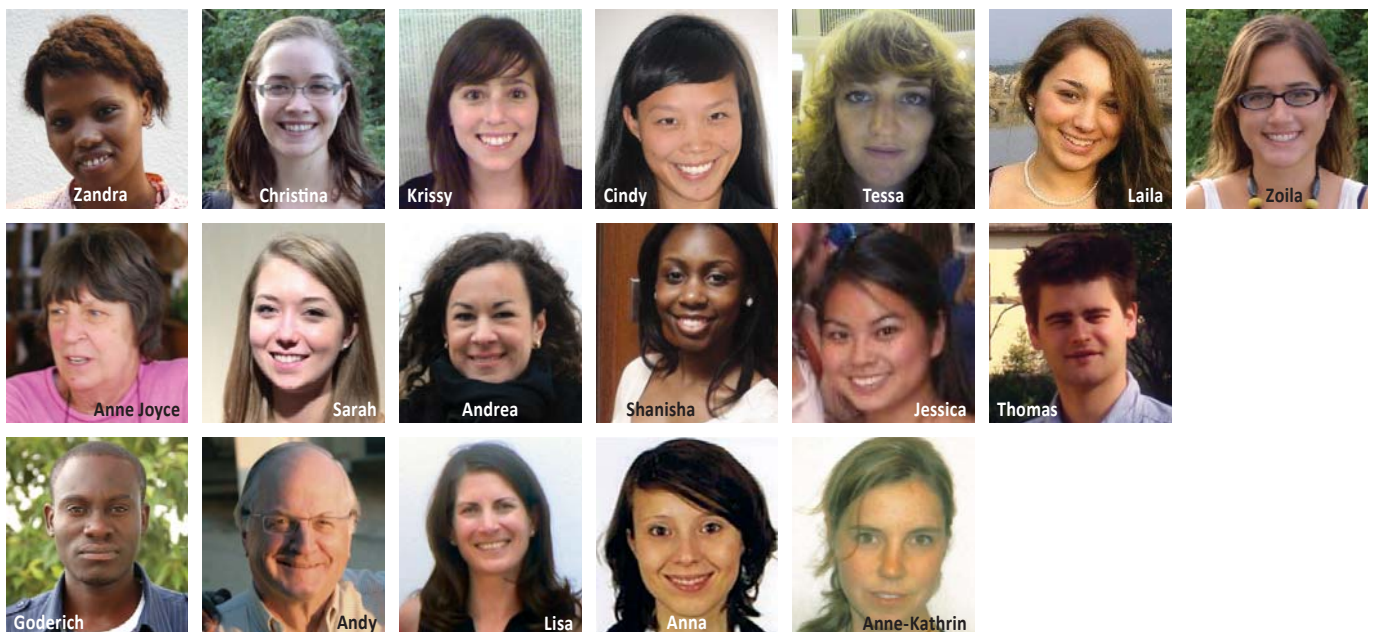
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Leslie Jansen – Legal Consultant
Joseph Kahuika – Paralegal
Theodor Muduva – Paralegal and Public Outreach Officer
Sophie van Wyk – Project Assistant
Peter Watson – Legal Consultant

INTERNS IN 2010



GR&AP: **Zandra Balzer** – Communications intern • **Christina Beninger** – Canadian lawyer (placement supported by the Canadian Bar Association Young Lawyers International Programme with the support of the Canadian International Development Agency) • **Krissy Bochicchio** – University of Pennsylvania Law School • **Cindy Cho** – Fulbright Scholar • **Tessa Harris** – Namibian law student, University of Cape Town • **Laila Hassan** – British lawyer (placement supported by the law firm Clifford Chance) • **Zoila Hinson** – Fulbright Scholar • **Anne Joyce** – VSO Volunteer • **Sarah Ramig** – Harvard Law School • **Andrea Russell** – Lawyer without Borders • **Elizabeth Summers** – Harvard Law School (not pictured) • **Shanisha Smith** – Lincoln University (USA) exchange student to Polytechnic of Namibia • **Jessica Sun** – University of Pennsylvania Law School • **Thomas Wood** – British lawyer

CORE: **Goderich Sikwana** – media student, Polytechnic of Namibia

HURICON: **Andy Joyce** – VSO Volunteer • **Lorraine Ndlovu** – University of Namibia (not pictured)

LEAD: **Lisa Couillard** – Canadian lawyer • **Anna Hüncke** – Masters in African Studies student, University of Leiden • **Anne-Kathrin Schwab** – Masters in Sociology and Cultural Anthropology, University of Siegen and Cologne



AIDS Law Unit (ALU)



The AIDS Law Unit (ALU) continues to adopt a rights-based approach in responding to the impact of the HIV/AIDS pandemic. The continued provision of human rights information to the general public, and specifically to people living with HIV/AIDS, has resulted in the identification of human rights violations, most notably in 2010 through the forced sterilisation cases.

Law reform and advocacy



ALU staff members in a planning workshop

ALU conducted a wide range of law reform and advocacy activities in 2010, the following being the key examples.

The Unit gave input on the **Intestate Succession Act** prepared by the Master of the High Court at the request of the Law Reform and Development Commission.

ALU played a critical role in the removal of travel restrictions for people living with HIV/AIDS as stipulated in the **regulations for the Immigration Control Act**. Through consultative meetings with the Minister of Home Affairs and Immigration, letters to other relevant Ministers and media engagement, the Unit lobbied for changes to the regulations. In June 2010 the Minister of Home Affairs and Immigration announced the repeal of the discriminatory provision with effect from 1 July 2010.



ALU challenged the practice of foreign governments and universities offering **scholarships to Namibian students on condition that they are HIV negative**. Countries which have offered such scholarships include Russia, Cuba, Turkey, Slovakia, the Philippines and Hong Kong. ALU petitioned the Ministry of Education and the Ministry of Foreign Affairs against this practice. The Ministry of Foreign Affairs has requested ALU to make a further submission to better inform its engagement with the foreign governments and universities. Although the Unit has not received a response from the Ministry of Education, the latest advert for scholarships in China did not require students to be HIV negative, hence ALU believes that its advocacy has been successful. The Unit will monitor the situation in 2011.

Government defies own HIV law: LAC

• JANA-MAHI SMITH

THE legal Assistance Centre has accused Government of discrimination and prejudice against people living with HIV/AIDS, after the Ministry of Education offered a scholarship only available to HIV-negative people.

In a press release last week, Amon Ngavetene, the Project Co-ordinator of the LAC's AIDS Law Unit, condemned the "disturbing" advertisement placed by the Ministry of Education in which pregnant women or HIV-positive people were barred from applying for a Turkish engineering and

agriculture scholarship. Ngavetene said by giving in to foreign demands Government was violating and undermining Namibia's own laws, policies and values, and the advertisement was "thus in direct conflict with Government programmes".

Ngavetene said the advertisement was in direct conflict with Article 10 of the Constitution, which guarantees freedom from discrimination and the right to equality. The LAC demanded that the advertisement be withdrawn and a new advertisement be published before April 16.

ALU requested the Ministry of Education to conduct an independent investigation into alleged **stigma and discrimination against a learner**. As an example of the language used, the teacher asked the learner, "What is that pimple on your face? Are you also HIV positive just like your mother?" The Unit achieved a successful result for the client as the Ministry found the teacher guilty of the offence and conducted a disciplinary hearing.

ALU also engaged in discussions with the Ministry of Education and civil society on how to address **child labour**. The Ministry has agreed to consider capacity building for Regional Education Inspectors. Organisations such as Catholic Aids Action and LifeLine/ChildLine are willing to assist with material needs and counselling, and ALU will provide legal support for victims of child labour.

Acting on a report in a local newspaper, the Unit addressed a letter to the Police Commissioner demanding an **investigation into the maltreatment of inmates**, with particular reference to inmates living with HIV/AIDS.

ALU is concerned about prisoners' complaints of a lack of nutritious food, denial of anti-retroviral treatment and physical isolation. The Police investigated the matter and provided feedback, but ALU was not satisfied with the report and referred the matter to the Office of the Ombudsman for independent investigation.

Litigation and legal advice



"NON-NEGOTIABLE: MY BODY, MY WOMB, MY RIGHTS"
The LAC and a number of other Namibian NGOs embarked on a campaign to end the practice of sterilising HIV-positive women without informed consent.

ALU provided legal advice to clients whose rights were infringed or violated on the basis of their HIV status. Many of the cases came through referrals from partner organisations and people accessed through training initiatives run by the Unit. The following is a summary of some of the issues dealt with.

- **Forced sterilisation of HIV-positive women:** ALU has been working on these cases since 2009. In total, 18 clients allege that they were sterilised without their consent at public health facilities between 2006 and 2008. Most of these women signed a consent form, but they were led to believe that they were consenting to a caesarean section. Most of the women are not able to read and understand English, the language of the consent form. Four of the 18 cases are currently in the High Court of Namibia. Three of the cases which commenced in June 2010 were concluded at the start of 2011, but with judgement reserved until an unknown date, the outcomes are still awaited. The forced sterilisation cases drew significant media attention nationally and internationally. To accompany the litigation, ALU raised community awareness on the issue. Activities included the development of materials for an "End Forced Sterilisation" campaign.
- **HIV/AIDS and insurance:** A client reported that a local insurance broker refused to pay out claims following the policy-holder's death from an AIDS-related illness. The insurer stated that such an illness was an exclusionary ground for payment according to the contract. Asked to analyse the contract, ALU found that the exclusionary provision was not initially part of the contract; it was included later when the insurer amended its terms and conditions, and the client was not notified of the change. ALU intends to challenge the insurer as contractual terms cannot apply retrospectively and without notice, and excluding someone from benefits due to HIV status constitutes unfair discrimination.
- **HIV/AIDS in prison settings:** A client believed that he contracted HIV while in custody in 2008 as he was forced to use a common razor blade for shaving. This case demonstrates the failure of the State to protect inmates' right to health. It is a well-known fact that HIV is transmitted through the exchange of body fluids, and the sharing of razor blades could well be a conduit of transmission. Prison officials have a duty to provide sufficient sanitary items such as razor blades to reduce the risk of HIV transmission, and their failure to do so means that the Prison Authority is liable for the harm done to the inmate. Furthermore, if the inmate was not incarcerated, he could have taken the necessary precautions to reduce the risk of transmission. ALU plans to litigate on this matter in 2011. The case is of interest on two levels: a positive result will compel the Prison Authority to adopt a comprehensive approach to HIV/AIDS in prisons, and the individual will have financial recourse for the harm suffered.
- **HIV/AIDS in the workplace:** Cases included dismissal of a worker for taking unpaid leave to collect anti-retrovirals, and a worker demoted and then dismissed without a fair and valid reason after informing his employer that he was HIV positive. ALU will take the cases to the Labour Commissioner for arbitration.
- **HIV/AIDS and the criminal justice system:** ALU will lodge an appeal on the sentencing of a rapist. The client alleges that in considering the sentence for the crime, the Magistrate took into account that the accused knew that he was HIV positive, but the client states that he did not know his status at the time of the crime. ALU will litigate on this matter in 2011.
- **HIV/AIDS and confidentiality:** A nurse employed by the Ministry of Health and Social Services intentionally disclosed the HIV status of a prisoner at Windhoek Central Prison, thereby infringing the prisoner's constitutional rights to confidentiality and privacy. The prisoner is now experiencing harassment and discrimination. ALU plans to litigate against the Ministry in 2011 on the principle of vicarious liability.

- **HIV/AIDS testing without consent:** An inmate at Windhoek Central Prison alleges that he was tested for HIV without his consent. ALU believes that every human being, therefore every inmate, has the right to autonomy and bodily security. The Unit plans to litigate on this matter in 2011.
- **Inheritance issues:** ALU continues to assist a number of clients involved in inheritance disputes. The Unit took on these cases for strategic reasons as property grabbing can leave women vulnerable to poverty and thus exposes them to a greater risk of HIV infection.

Education and training



A meeting on the ALU Universal Access for Women & Girls Now Programme

ALU facilitated trainings in a range of areas in 2010, as summarised below.

- **Empowering people living with HIV/AIDS (PLWHA):** ALU trained support group members on the rights of PLWHA, the main objectives being to address stigma and discrimination and to promote empowerment of PLWHA. The Unit undertook ongoing visits to the communities trained after the initial sessions. These visits enable ALU to take on new cases and provide legal advice on a continual basis. A total of 69 people were trained in this programme in 2010.
- **Protecting prisoners:** This training programme addresses HIV/AIDS and human rights in prisons. The workshops target prison officials and inmates at prisons across the country. In 2010, 73 prisoners received training.
- **Informing traditional authorities, rural women and young girls:** ALU provided training on HIV/AIDS and human rights to a total of 218 traditional leaders, rural women and young girls. This training is aimed at increasing the participants' knowledge of the relevant Namibian laws to promote their empowerment and protection against HIV infection.

- **Supporting child witnesses:** As part of its Child Witness Support Project, ALU conducted trainings with government and non-governmental stakeholders – particularly police officials and social workers – who work on cases involving children. In total, 198 people within a 50km radius of the Woman and Child Protection Units in Rundu, Windhoek, Keetmanshoop, Oshakati, Katima Mulilo and Rehoboth were trained. The trainings addressed issues such as the impact of abuse and trauma on a child, investigating child abuse, taking statements in child abuse cases, communicating with children in a forensic environment and evaluating evidence given by children.
- **Empowering children at school:** ALU runs a School Outreach Programme in Rundu, Windhoek and Rehoboth, with the aim of empowering young children and adolescents to recognise their rights and to report violations of their rights to teachers, police officers or social workers. A total of 393 learners were reached through the programme in 2010. Associated with this programme is the Child Witness Programme run in the same towns, the aim of which is to reduce the fears and anxieties of child witnesses by giving them information that helps them to understand the legal process and their role in the process. A total of 13 children were supported through this programme in 2010.
- **Eliminating all forms of child labour:** ALU recruited and trained six Community Rights Monitors in 2010. They are responsible for monitoring child labour cases in Oshana, Oshikoto and Ohangwena Regions. The Unit also conducted a group training session with police officers, social workers and representatives of local NGOs in these three regions.

Using radio and television

ALU uses radio and television to disseminate information. For example, the Unit participated in a radio show on issues relating to HIV and human rights for prisoners, broadcast on the national service of the Namibian Broadcasting Corporation (NBC). After the show, ALU was invited to present the same topic on the University of Namibia (UNAM) radio station. Also for the NBC national radio service, the Unit pre-recorded a radio programme on major HIV and human rights issues in Namibia, human rights instruments and other legal avenues available for those whose rights are infringed or violated. In addition, ALU representatives were interviewed on *Good Morning Namibia*, the NBC breakfast television show, about sterilisation, insurance and scholarship issues in the context of HIV infection.

As reported on page 5, the forced sterilisation cases drew significant media attention nationally and internationally. In Namibia, nine newspaper articles, four radio broadcasts and two television broadcasts covered these cases. ALU representatives were interviewed on the international radio station of the British Broadcasting Corporation (BBC) and radio stations in Canada and Germany.

HIV/AIDS in the workplace

The impact of HIV/AIDS on the workplace necessitates a pro-active approach from employers. To support employers in this regard in 2010, ALU helped a number of public and private sector bodies to develop HIV/AIDS workplace policies.

Institution	Nature of intervention	Status/progress of HIV/AIDS workplace policy development	Number of participants
Auto-Sueco, Atlas Copco and ABB (local agents of foreign companies)	Training of Peer Educators and establishment of HIV/AIDS Workplace Committee	Following the training, two of these companies stated that they will adapt policies from sister companies in South Africa and Botswana.	59
Kalahari Sands Hotel and Casino	Training of Peer Educators on HIV/AIDS and the law	The company has a policy in place.	14
National Union of Namibian Workers HIV/AIDS Workplace Programme	Training of Peer Educators on HIV/AIDS and the law	ALU will continue to provide guidance and mentorship to trade unionists on workplace issues.	21
National Assembly	Training of Peer Educators	ALU is helping the National Assembly to draft a policy.	14
Khorixas Town Council	Training of Peer Educators and drafting of a policy	ALU drafted a policy for the Council, and is awaiting the Council's input.	35
Total number of trainees			143

ALU also provided input and guidance to the Ministry of Regional and Local Government, Housing and Rural Development on the development of a policy on HIV/AIDS in the workplace.



A workshop run by ALU to develop a policy on HIV/AIDS in the workplace

Research

Assisted by the Georgetown University Law Centre, ALU conducted research on customary law, HIV/AIDS and women's rights. The researchers interviewed a range of stakeholders including traditional authorities, religious leaders, lawyers and judges. The final report, to be released in 2011, will include notes on where existing legislation is inadequate. The report will be distributed to government and civil society.

Educational materials

In 2010, ALU reprinted a total of 14 000 copies of its publications and distributed a total of 8 940 copies of different publications to a range of target groups.

Publication	Number of copies printed	Number of copies distributed
<i>Understanding Prisoner Rights</i>	2 000	1 398
<i>HIV/AIDS Charter of Rights</i>	4 000	2 797
<i>Right to Health</i>	2 000	1 553
<i>Your Guide on How to Write a Valid Will</i>	2 000	1 403
<i>The Aids Law Unit (information booklet)</i>	2 000	1 395
<i>HIV/AIDS and the Law in Namibia (training manual)</i>	2 000	394
Total	14 000	8 940



Commemoration of World AIDS Day 2010

To commemorate World AIDS Day 2010, ALU conducted a campaign to end discrimination in the education sector, particularly in the area of accessing scholarships overseas. This was in keeping with the international theme of “Stigma and Discrimination”. The campaign was a supplement to direct lobbying of the Ministries of Education and Foreign Affairs discussed on page 5 of this report. The Unit obtained 453 signatures on postcards asking the Ministry of Education to repeal the practice of requiring students to be HIV negative to access scholarships, and instead to grant scholarships to all suitable candidates regardless of their HIV status. Two Ministers were among those who signed the postcards. ALU also distributed flyers and T-shirts at panel discussions at three different venues in Windhoek.

The Unit also met with Members of Parliament. At this meeting, the MPs agreed to table a motion in Parliament to urge the government to formally recognise the burden of care on women, and to standardise remuneration, provide training and mainstream home-based care in primary health care services.

Also as part of the campaign, ALU gave interviews on Base FM radio and the NBC television show *Good Morning Namibia*.

Other activities

ALU gave input on the development of the **National Strategic Framework (NSF) for HIV/AIDS 2010-2015**. The adoption of a stronger rights-based approach in the latest framework is an indicator of ALU advocacy.

The Unit also gave input to the development of new **guidelines on HIV testing and counselling** for the Ministry of Health and Social Services. This input focused particularly on the issues of confidentiality, disclosure, informed consent and the testing of minors.

ALU prepared a **draft manual for social workers** on human rights, succession and will writing for the Ministry of Health and Social Services.

The Unit is one of the leading members of the **National Technical Working Group on HIV/AIDS and Discriminatory Laws and Policies**. The Working Group will serve as a springboard for promoting the principle of non-discrimination articulated in the 2010-2014 National HIV/AIDS Policy and the National Strategic Framework on HIV and AIDS.

ALU representatives attended the **54th Session of the Commission on the Status of Women** and the **Beijing +15 Review Meeting** in March 2010, and took part in the main session and several side events at the conference.

ALU representatives also attended an **international conference on HIV/AIDS** held in Vienna, Austria, where they presented a paper on the forced sterilisation cases discussed on page 5 of this report. At this conference, the ALU representatives participated in a panel discussion on the need for universal access of rural women and young girls to HIV/AIDS prevention, care, treatment and support.

Conclusion

ALU continues to play a significant role in facilitating the establishment of a legal and social environment in which people living with HIV/AIDS receive fair and equitable treatment from society. ALU has helped to enhance understanding of and respect for the rights and requirements of people living HIV/AIDS, with the ultimate aim of instilling a rights-based approach to HIV/AIDS in Namibia. The **key achievements** in 2010 were as follows:

- Successful advocacy for the repeal of regulations which request health information, including HIV status, on the visa forms when entering Namibia.
- Challenging the practice of foreign governments and universities offering scholarships to Namibian students on condition that they are HIV negative.
- Participation in a campaign to raise awareness about forced sterilisation.
- Provision of legal advice to over 30 people.
- Taking three public interest cases to court for litigation.
- Provision of training to a wide range of people.
- Helping a number of public and private sector bodies to develop a policy on HIV/AIDS in the workplace.
- Reprinting and distributing a range of educational materials.



Gender Research and Advocacy Project (GR&AP)



Children photographed during a GR&AP visit to a Nama village

GR&AP's flagship programmes for 2010 included interventions on alternatives to corporal punishment and research on various aspects of family relationships such as domestic violence, cohabitation and stepchildren.

GR&AP produced and distributed almost **one million publications in English, Afrikaans and a range of indigenous languages**, aimed at raising awareness of gender-related legal issues. Many of these publications were comic books in English, Afrikaans and Oshiwambo, distributed as inserts in national newspapers. A cellphone number was provided for feedback via text message, which has enabled GR&AP to gauge public response and to enter into interactive dialogue with people in far-flung areas.

GR&AP convened/facilitated **a total of 65 workshops in 2010, reaching almost 12 000 people**, many of whom were children who attended screenings of GR&AP's film on alternatives to corporal punishment. The workshops, conducted for a range of participants, included training for staff of the Ministry of Gender Equality and Child Welfare, presentations on rape to ITeCh nursing students and students at the University of Namibia, training for married couples and facilitators of the after-school programme *My Future My Choice*, inputs to the SWAPO Women's League on urgently needed law reforms, and presentations at conferences hosted by the Ministry of Education and LifeLine/ChildLine. GR&AP also conducted many workshops for community members, and tried a new workshop paradigm involving repeated contact with four small, relatively isolated communities.

Media outreach was also strong, with the Project maintaining an average of eight radio, four television and four print appearances per month.

GR&AP helped a wide range of **clients** with queries in 2010, mostly on family law issues. Questions from clients concerned problems with inheritance, custody, maintenance, domestic violence, adoption, domicile and rape. In situations where clients experienced inadequate service provision, GR&AP wrote letters of complaint to the relevant government department or intervened using other methods. In a new initiative, GR&AP was also able to respond to client queries sent by sms. This method is cheap and easy for the public to access, and it vastly increased contact with individual members of the public, particularly those who are far from the LAC offices. We hope to upscale this technology in future.

Alternatives to corporal punishment

A GR&AP campaign for alternatives to corporal punishment grew out of consultations around the draft Child Care and Protection Bill in 2009. These discussions showed that, while corporal punishment is a contentious issue among adults, children overwhelmingly advocate alternative forms of discipline which centre around explanations of what they have done wrong.

The campaign included disseminating information in a range of forms. This measure was based on the rationale that multi-messaging is more effective than a single intervention. The campaign incorporated awareness-raising through traditional means such as workshop presentations and print, radio and television, combined with the use of newer media such as Facebook and communication via text message. The outreach in this campaign in 2010 included:

- **two comics in five languages** distributed as inserts or single-page adverts in the national newspapers, reaching an estimated 20% of the population;
- **posters and factsheets in three languages**, which are cheap to reproduce and can therefore be easily reproduced by community groups;

- a light-hearted **drama** produced for distribution on DVD, filmed in three languages and accompanied by a discussion guide, broadcast in English on national television and used in workshops;
- a **monograph** conveying national and international perspectives on corporal punishment, aimed at policy-makers, community leaders and teachers;
- **workshops and a trainer-of-trainer session conducted with approximately 11000 people in four regions**, often utilising the film to spark discussion, with young actors in the film leading some of the sessions;
- use of **text messages** to respond to questions and queries about corporal punishment from the public; and
- a dedicated page on the LAC **website**.

This multi-layered outreach is typical of the GR&AP approach in other thematic areas.

***A Betta Way* – a film on alternatives to corporal punishment**

The film *A Betta Way* is a sustainable outreach tool as it can be used by trainers again and again to educate communities. GR&AP screened the film to over 11000 people in 2010, and also conducted a trainer-of-trainer session to increase the number of people who have the confidence to screen the film and facilitate a discussion on their own. In addition, the film was screened twice on national television, and we anticipate that the Namibian Broadcasting Corporation will continue to screen it at suitable intervals.

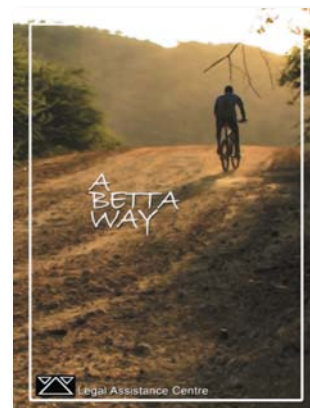
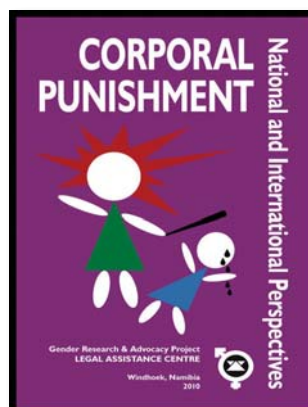
We have received extremely positive feedback in response to the film, and the feedback makes clear that there is still a great need for debate on this topic. During the screenings at schools in 2010, it became clear that the use of corporal punishment in schools is even more widespread than we had anticipated, despite being banned by law since 1991. Young people also often reported violence at home at the hands of parents and other adult caregivers. At each event, the most frequent question was where can children go for help if they face violence at school, in the community or at home? The fact that this question was continually asked reveals a lack of awareness about avenues for help available to children who are living with violence.

National and International Perspectives on Corporal Punishment

GR&AP published a brief, accessible report on corporal punishment to provide relevant information from a Namibian perspective to policy-makers and other stakeholders. It discusses international research on the detrimental impact of corporal punishment, the international and national legal framework, and public opinion on the issue in Namibia – particularly from children. It presents new data on the opinions of Namibian children based on input from over 2000 children collected as part of the public consultation process around Namibia's Child Care and Protection Bill in a joint initiative of GR&AP and the Ombetja Yehinga Organisation (OYO). The monograph also reports how a range of countries have addressed the issue of corporal punishment in their legal systems, with an emphasis on developments in Africa, to provide insight into options for addressing the issue of corporal punishment in Namibia. The report concludes with a chapter on practical alternatives to corporal punishment.



Children in Gibeon attending a GR&AP talk on corporal punishment



Family relationships and the law



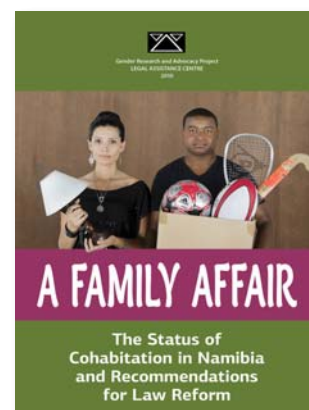
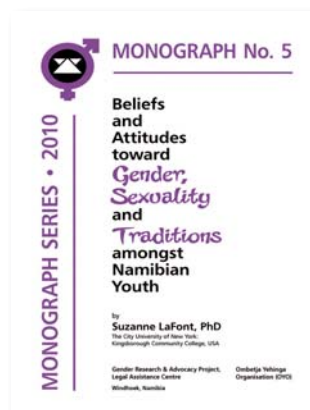
While much progress has been made in Namibia on gender-related law reform, there is still a need for new and improved legislation in the area of family law. In an effort to address this problem, GR&AP conducted research on several family law topics in 2010. In most of these research projects, detailed research and recommendations for law reform and the improvement of service provision were accompanied by summaries in shorter and easy-to-read formats which appeal to a broader audience and facilitate media coverage.

In 2010 GR&AP finalised research on **the status of cohabitation in Namibia** – an important topic given that some recent studies suggest that 7-15% of Namibians are cohabiting, while the percentage who are married is not much larger. The purpose of the study was to assess the status of cohabitation in Namibia, to gauge public opinion on the need for law reform and to make recommendations for legislative change. Data was collected through 61 individual interviews with cohabitants and key informants and 10 focus group discussions in 2002 and in 2009, with the second round of field research being conducted in co-operation with the Law Reform and Development Commission. The study also gives examples of how different laws across the world address the issue of cohabitation. The research report will be launched in 2011.

GR&AP also finalised a report on **the beliefs and attitudes towards gender, sexuality and traditions among Namibian youth**. The study was a co-operative venture between GR&AP and the Ombetja Yehinga Organisation (OYO), and was led by visiting academic Dr Suzanne LaFont, Professor of Anthropology at Kingsborough Community College, City University of New York. The report, which is based on data collected from learners attending schools in Kunene and Khomas

Regions, aims to provide contextual information to inform educational and social programmes concerning HIV prevention, gender equality and sexual rights. The report also identifies areas of potential legal and social reform. It will be launched in 2011.

One ongoing research project is **research to assess the effectiveness of the Maintenance Act of 2003**. GR&AP collected quantitative data from 18 courts across the country. Focus group discussions were also conducted to gauge public opinion about service provision in this area, and key informant interviews have explored some of the challenges faced by service providers. The data collection was finalised in 2010, and the data will be analysed and reported in 2011. One of the most important features of projects conducted by GR&AP is the potential to integrate research with awareness-raising. For example, in 2010 we also produced comics, training materials and a poster on maintenance, and started production of a film (in the form of an educational drama) about maintenance. We also spoke about maintenance a number of times during the year on television and radio. Such activities and materials constitute a comprehensive outreach strategy on maintenance that benefits both service providers and community members while at the same time informing the ongoing research.



Workshops

One of GR&AP's new initiatives was to trial a workshop paradigm involving **repeated contact with four small, relatively isolated communities**. Women and children in Namibia are generally still seen as second-class citizens, with less access than men to income and decision-making powers and personal freedoms. Many women and children also face violence and abuse from partners, family members or people they trust. These problems are often exacerbated in rural and isolated communities where there is less access to information and where changes in traditional norms are only slowly achieved. In an effort to address these problems, we decided to support four communities on an ongoing basis by providing much-needed information on gender-related laws and by explaining legal options in community-friendly language. Through these workshops GR&AP had the opportunity to explore both the social context of problems and the efficiency of the legal framework in these isolated communities, while promoting gender equality and the empowerment of women. After the visits, GR&AP continued to focus on bringing together the communities and stakeholders such as the police, social workers, teachers and traditional leaders, with emphasis on community support for people who lay charges of rape, violence, abuse and maintenance claims.

Advocacy and lobbying

In 2010, GR&AP gave input to the Law Reform and Development Commission on an early draft of the **Intestate Succession Bill** prepared by the Master of the High Court. GR&AP wrote a 30-page memo on the law providing information about inheritance based on Namibian research as well as recommendations based on laws in other countries including the United Kingdom, Zambia and Zimbabwe.

GR&AP also gave input on a **draft Land Bill** intended to replace the Communal Land Reform Act and the Agricultural (Commercial) Land Reform Act. GR&AP wrote a 20-page memo on this draft law, providing information on communal land laws in countries such as Tanzania and Zimbabwe, and making extensive recommendations for alterations to the proposed draft – particularly for the protection of widows and affirmative action measures for rural women. GR&AP used this report as the basis for input in collaboration with the LAC's LEAD Project at a consultative meeting convened by the Ministry of Lands and Resettlement.



Participants in a youth workshop producing a GR&AP show for radio

In 2010 GR&AP lobbied for the **rights of domestic workers** through opinion pieces in the print media, broadcasts on radio and television, and the production of publications including a factsheet, a sample contract for employers and a comic about maternity leave for domestic workers. We received positive feedback on this project from a range of stakeholders including the Namibian Employers' Federation, a Parliamentarian, the Namibia Institute for Democracy, the Ministry of Gender Equality and Child Welfare, the Ministry of Education, the European Union and the general public.

GR&AP continued to be one of the key organisations lobbying to address **baby dumping** in Namibia through awareness-raising about alternative options, suggestions for improved service provision and proposals for legislative change. GR&AP continued liaising with the Ministry of Gender Equality & Child Welfare on potential interventions and formed a new working relationship with the Ministry of Youth, National Service, Sport & Culture around this topic.

In 2008, GR&AP was engaged to consult on and draft a new policy for the Ministry of Education on the prevention and management of **learner pregnancy**. Cabinet approved the policy in October 2009. However, little progress has been made on the policy since then. In 2010, GR&AP continued lobbying for the effective roll-out of this policy.

Throughout 2010, GR&AP conducted follow-up advocacy to move forward a revised **Child Care and Protection Bill** which was the subject of an extensive public consultation process conducted in partnership between GR&AP and the Ministry of Gender Equality and Child Welfare, with support from UNICEF, in 2009.

Media

GR&AP maintained a strong media presence in 2010, averaging eight radio, four television and four print appearances per month. In total, we made 203 media appearances over the year.

GR&AP staff members appear on two live weekly shows produced by NBC – *Young and Cool* on national radio (in English) and a talk show on Damara/Nama radio. Both shows are popular with listeners, and during and after each show GR&AP receives a number of text messages with questions about the topics discussed. GR&AP also pre-records a weekly **radio show** for *Your Rights Right Now* (NBC national radio) and participates in topical radio interviews on request. In addition, GR&AP has a regular weekly slot on the NBC **breakfast television** programme *Good Morning Namibia*, and staff appear as regular guests on the *Tupopyeni evening discussion* programme. The Project's presence in the print media is a mix of **opinion pieces, articles and interviews** in national newspapers and local magazines. In 2010, GR&AP wrote articles on a range of issues including corporal punishment, communal land, stalking and rape.

GR&AP also develops **pre-recorded material for radio**, and released two CDs in 2010. The first consists of eight segments, of 5-10 minutes each, on gender law issues. The second consists of 10 shorts, of under one minute each, also on gender law issues. The CDs have been used by both government and commercial stations.

GR&AP is conducting a grassroots communication initiative involving the production of 20 comics of eight pages each. **GR&AP produced and released 11 comics in 2010**, with a further six in production for release in early 2011. The final two comics will be developed in 2011. The comics produced in 2010 are listed below:

1. **What to do if someone stops paying maintenance**
2. **Alternatives to corporal punishment (comic 1)**
3. **How to get a protection order**
4. **Rape: Should you withdraw a rape case?**
5. **Alternatives to corporal punishment (comic 2)**
6. **Rape in marriage**
7. **What does gender equality mean in a relationship?**
8. **Sexual harassment in the workplace**
9. **Options when you are pregnant and you do not want the baby**
10. **How to claim social security benefits for maternity leave**
11. **Civil and customary marriages: The choices**
12. **A new approach to the prevention and management of learner pregnancy in schools (to be released in 2011)**
13. **Child abuse (in production)**
14. **Preventing underage drinking (in production)**
15. **Child labour (in production)**
16. **Bail in rape cases (in production)**
17. **How to register the birth of your child (in production)**



Each of the comics is pre-tested with a sample target group prior to finalisation. This enables GR&AP to ensure that the messaging is clear. The pre-testing sessions also function as another means of public outreach, and often include lively discussions of the comic topics.

The comics are **distributed as inserts in *The Namibian* newspaper in English and Oshiwambo, and *Die Republikein* newspaper in Afrikaans**. In total, about 65 000 copies of each comic are distributed in this way. It is estimated that on a Thursday *The Namibian* has a readership of 320 000 people – which is nearly one fifth of Namibia's population. Therefore the distribution of comics in this manner is an extremely effective way of reaching the country's widely-dispersed population.

Contact details (post, email, fax, telephone and sms) are included on the back of each comic. The **sms line** has been extremely popular with the public, and with each comic GR&AP receives many queries, requests and messages of thanks. On average GR&AP receives 50 text messages on the first day of a comic's release, the record number so far for one day being over 150. Many of the text messages ask specific questions related to the topic. For example, following the maintenance comic, many people contacted us with queries about their individual situations. Responding to clients via text message enables GR&AP to access a much greater population than if all the clients are met in person, and has enabled us to have a national reach.

Based on the success of the eight-page comics, GR&AP produced **one-page comics that were placed as full-page adverts in *The Namibian* newspaper**. The purpose of these was to address common issues, suitable for coverage in a shorter space, arising from the responses received from the previously-inserted comics. GR&AP hopes to find funds in 2011 to print the one-page comics as posters.

The comics, like many of the publications produced by GR&AP, have gained **international exposure**. The comics focusing on children's rights issues have been particularly popular with the Children's Rights and Information Network, an international organisation.

GR&AP distributed a total of 807 654 publications in 2010, of which 657 000 were distributed through newspapers and 150 554 through other channels.

Conclusion

GR&AP continues to have a substantial impact in its mission to promote gender equality and the empowerment of women through legal research, law reform and related advocacy and awareness-raising initiatives.



Human Rights and Constitutional Unit (HURICON)



Namibia's Constitution must be tried and tested to ensure that it meets the needs of the country's next generation.

Namibia has been hailed as one of the countries with the most progressive Constitutions in the world. However, even the most progressive Constitution must be enforced through the application of law and litigation to aid its interpretation and application. Therefore, for the Namibian people to enjoy the protections provided in the Constitution, it is essential that they have access to legal mechanisms to challenge unconstitutional and discriminatory practices. The reality, however, is that only a very small percentage of the country's population can afford to pay for legal services. The vast majority of people in Namibia, particularly women, children, ethnic minorities and people living with disabilities, are hindered by the high costs involved. Yet it is these very groups whose constitutional rights are often weakened and violated by organs of the State, juristic persons and private individuals.

HURICON dealt with a wide range of human rights violations in 2010, including the denial of permanent residence and citizenship rights to foreigners who have resided in Namibia for a long time, the denial of the right of prison officials to be members of a trade union, and unlawful arrests, detentions and assaults

perpetrated by the Namibian security forces. The Unit also dealt with cases of medical negligence in public hospitals, a pivotal case being the sterilisation of 18 HIV-positive women without their informed consent, conducted in collaboration with the LAC's AIDS Law Unit. HURICON's action of litigating on these cases has made a considerable contribution to human rights jurisprudence in Namibia.

Despite the difficult and challenging funding situation that HURICON currently faces, the Unit has continued to play a significant role in ensuring that people with the least access to the law are given an opportunity to have their cases litigated.

Litigation

Holding the government accountable

The LAC has a long history of helping to ensure that the government is held accountable for its actions. In 2010, HURICON acted for the Magistrates Commission to bring an application on their behalf. The purpose of the action was to ask the Court to order the Minister of Justice to comply with a recommendation made by the Magistrates Commission to terminate the services of a magistrate who had been found guilty of misconduct. The Minister failed to act expeditiously on the recommendation, and contended that she needed further documentation to make a decision. The stance taken by the Minister is not supported by the legislation governing the appointment and vacation of the office of magistrates. HURICON took on the case to highlight the importance of preserving the separation of powers between the executive, legislative and judicial functions of government. A judge from Lesotho heard the matter, and in a very quick judgement ordered the Minister to terminate the services of the magistrate in question. The Minister of Justice has appealed this decision and the case will be argued in the Supreme Court in April 2011.

Citizenship

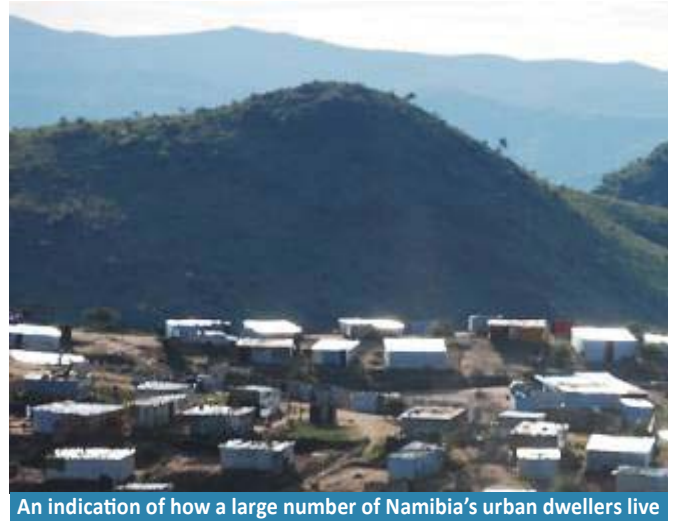
HURICON has been aware for some time that a number of foreign spouses applying for residence in Namibia experience delays or denials in their applications for permanent residence or citizenship. In 2010, the Unit brought an application on behalf of Wesley Shanglee in this regard. The application was initially opposed by the Minister of Home Affairs and Immigration, but no further papers were filed. The Ministry then withdrew the opposition, and the matter was heard as an unopposed application and the order was granted. This case is an example of how the rights of individuals can be ignored in Namibia, but when an organisation such as the LAC is able to monitor and safeguard such rights, positive steps towards a culture of human rights within a government body can be achieved.

Litigation to address danger to the public during road renovation

During the re-tarring of road surfaces in Windhoek, two children were burnt by tar ejected from the machinery utilised by Namibia Road Products and Services. The children were severely burnt and spent considerable time in hospital. Although they received prompt medical treatment, the children have been scarred for life by their burns. HURICON took on this case to hold the Municipal Council of the City of Windhoek and Namibia Road Products and Services accountable for their negligence. The defendants attempted to place the blame on one another, but the Unit argued that joint negligence was evident, and ultimately both defendants contributed to the settlement sums secured for the children, albeit without admission of liability, and the case was settled to the clients' satisfaction.

Constitutional challenge to overturn an apartheid-era law

Section 4 of the Squatters Proclamation of 1985 gives the owner of a piece of land the right, without a court order, to demolish or remove any building or structure erected by an unlawful and illegal occupant. HURICON brought an urgent application to the High Court of Namibia on behalf of Mr Shaanika and 13 other squatters (the applicants) to stop the removal of buildings and structures erected by the applicants on an erf owned by the Municipality. The basis of the application was a challenge of the constitutionality of section 4. While



ownership of land is a concept that deserves protection, HURICON's stance is that any removal of persons living on such land must be effected by way of a valid court order, as only the Court should decide whether or not persons have a valid right to live on land that does not belong to them. This premise prevents the eviction of persons for malicious or invalid reasons.

The application was initially heard in July 2010, and the Court made a temporary order preventing the employees of the Municipality from demolishing and removing the properties belonging to the applicants. However, on 16 September 2010, the Court held that the applicants could not ask the Court to stop the intended demolition because their application was made with "dirty hands" due to their unlawful occupation of the land. HURICON will challenge this ruling on the grounds that this judgement limits access to the Court, particularly as the squatters occupied the land out of desperation rather than intentional defiance of the law.

Civil torture claims of the Caprivi secession detainees

HURICON continues to work on the civil torture claims of the Caprivi detainees. Eleven Caprivi cases were dealt with in 2010. Though not successful, two cases were considered in the High Court and finalised in July 2010, thus ensuring that the clients reiterated the abuses they endured to the Court. Nine cases were settled out of court to the clients' satisfaction. It is hoped that the experience gained over the last period will contribute to the efficient finalisation of the Caprivi matters and increased jurisprudence. The LAC will continue to assist all the accused persons in these matters who were subjected to torture.



This boy is from Sabbinda village in Caprivi Region. His father was arrested during the treason trial. Today he is the family breadwinner, and reports that a lot of families in his community have struggled in the years since the arrest and detention of their male family members. Many of the children have had to drop out of school to help their families to earn an income through cattle-herding.

Screening of potential clients and provision of legal advice

Over 10 potential HURICON clients were screened each week in 2010, resulting in over 600 potential cases.

In the past, HURICON attended to almost all of the cases brought to the LAC, but presently, due to financial constraints, the Unit is only able to deal with a selection of the cases brought, and many of the cases screened were beyond the Unit's current remit or capacity. Clients whom the Unit could not assist were referred to suitable contact points. A few examples of the cases taken on in 2010 are discussed below.

Prison members prohibited from forming and joining trade unions

On 28 October 2008, the Commissioner of Prisons released a circular revoking the right of prison service members to join or be represented by a union or to receive overtime and special pay on weekends and public holidays. On 2 November 2009, the Prison Authority denied a member of the prison service trade union representation during disciplinary proceedings. HURICON has taken on this case for action in 2011

on the grounds that the Prison Authority's action is in conflict with Article 21(e) of the Constitution. The Unit hopes that by taking on the case, the Ministry of Safety and Security will be encouraged to adopt a rights-based approach to labour issues.

Article 21(e):

All persons shall have the right to freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties.

Police use of excessive force

HURICON continues to receive complaints of police brutality. In 2010, HURICON was informed of a case in Opuwo where the police allegedly shot Hipura Tjambiru who was sitting in a tree while tending cattle. The police stated that the shooting was a result of mistaken identity. HURICON employed a paralegal to consult with eye witnesses, but found that the eye witnesses are afraid of testifying against the police. For this reason, the Unit will not be able to take the case forward. This case exemplifies some of the challenges that remain in addressing human rights in Namibia. Although the rule of law is in place, many people are afraid to challenge violations. To address this problem, HURICON continues to provide public education and training on human rights in an effort to empower community members and build their confidence to assert their rights.



Many clients first learn about the LAC's services while participating in LAC workshops and training programmes, and make contact with the Centre at a later date when in need of legal advice and representation.

In-house training

HURICON trained its 15th candidate legal practitioner in 2010. The candidate training programme continues to reap much success in helping to increase the number of lawyers in Namibia who have a solid background in human rights and constitutional law. The programme also builds capacity within HURICON, and the Unit would like to increase the number of candidate practitioners trained each year.

Supporting other LAC departments and government institutions

The co-ordination of HURICON changed in 2010, with Toni Hancox taking over as LAC Director, and AIDS Law Unit (ALU) lawyer Linda Dumba-Chicalu replacing Toni as HURICON Co-ordinator. Because Linda had been intimately involved in the sterilisation cases brought by ALU (see page 5 for further detail), she continued to work closely with ALU in her new position.

Furthering the advocacy in the area of **sterilisation**, the HURICON Co-ordinator and representatives of ALU attended an international seminar on sterilisation and medical professionalism held in Salzburg, Austria, in November 2010. The seminar was prompted by the work done by the LAC in the sterilisation cases. The seminar provided a forum for medical professionals and colleagues to discuss the complex ethical and professional challenges associated with sterilisation procedures. An important outcome of the seminar was the development of a World Medical Association Declaration on Sterilisation that will be forwarded to national medical associations, including those in Namibia, for adaptation to local circumstances.

In October 2010, the HURICON Co-ordinator participated in the Universal Periodic Review process run by the Inter-Ministerial Committee on Human Rights within the Ministry of Justice, for civil society and **government institutions** working in the area of human rights. She was tasked to give input on the LAC's work around the issues of child marriage, forced sterilisation of HIV-positive women and the civil claims of the Caprivi torture clients.

HURICON works closely with **parliamentary bodies**. In 2010, the Unit addressed a Southern and Eastern African parliamentary meeting on social protection. The Unit presented information on how Members of Parliament can be engaged to advance social protection for the most vulnerable children. This presentation was made in association with ALU.



The legal team representing the sterilised women in the sterilisation case brought by HURICON and the LAC AIDS Law Unit (ALU). From left: Adv. Natasha Bassingthwaighe, Adv. Dave Smuts (SC) and HURICON legal practitioner Linda Dumba-Chicalu. Absent from the photograph is the fourth team member, ALU legal practitioner Corinna van Wyk.

Conclusion

HURICON often serves as the first or last port of call for the many Namibians who do not have access to legal services. Based on the cases screened in 2010, the Unit has identified a clear need for ongoing widespread advocacy and community outreach to empower the public to seek redress when their constitutional rights are violated.

The main challenge now facing HURICON is a lack of funding. Apart from having led to understaffing, this limited the number of cases that the Unit was able to take on in 2010. It has also limited the expansion of the Unit's non-litigious activities, such as community outreach and training on human rights and the rule of law.

Nonetheless, HURICON will continue its support for the ongoing litigation, particularly for the realisation of the right of the alleged Caprivi secessionists to a speedy and fair trial, and will also continue conducting impact litigation to advance socio-economic rights.

HURICON currently has only one full-time legal practitioner, i.e. the Co-ordinator, but requires at least two full-time practitioners to ensure that all the crucial activities can be carried out. The Unit's immediate goal is to raise funds for a second practitioner and to train another practitioner to assist with litigious and non-litigious activities.



Land, Environment and Development Project (LEAD)



L EAD continues to monitor the state of the environment in Namibia and works to protect the rights of people living from the land, with a particular focus on the rights of indigenous minorities and marginalised groups. In many cases, LEAD provides long-term support to help clients to build their capacity to address rights-related problems in future. For example, LEAD was involved in the hosting of elections for the Bakgalagadi Traditional Community in 2010 to help the community to develop a model which they can replicate in future. LEAD has also assisted several Conservancies with governance issues, and in 2010 helped to develop or amend the Constitutions of a total of 14 Conservancies and Community Forests. LEAD was also involved in a number of other activities in 2010, as discussed in this section of the report.

Hardap and Omaheke Regions by LEAD in collaboration with Dr Wolfgang Werner. The studies in South Africa and Zimbabwe were conducted in Limpopo Province and Masvingo Province respectively, by two separate research teams. The report on the findings in Namibia recommends a number of policy improvements. Three key recommendations are to re-design the models for resettlement, introduce joint ventures, and provide long-term post-settlement support such as capacity-building and financial assistance to resettlement beneficiaries. Financial support from the Economic and Social Research Council in the UK made the three-year project possible. The overall co-ordinator was Professor Ben Cousins of the Land and Agrarian Studies Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape in South Africa.

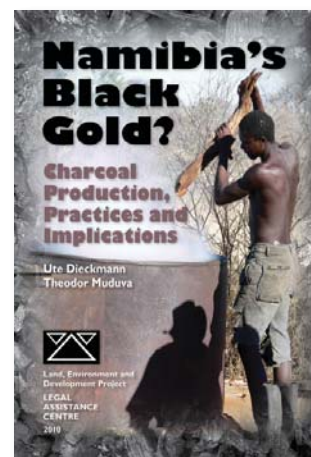
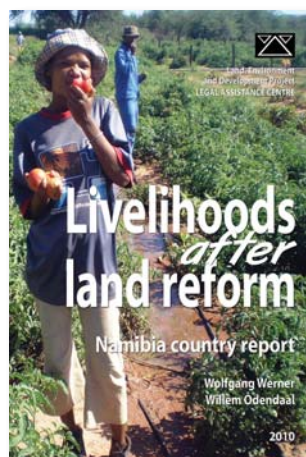
Monitoring land reform

A study on livelihoods after land reform

The “Livelihoods after Land Reform (LaLR)” research project, concluded in 2010, was conducted to assess the impact of land redistribution on the livelihoods and poverty levels of land reform beneficiaries in three southern African countries, i.e. Namibia, South Africa and Zimbabwe. The data for Namibia was collected in

A study on Namibia’s charcoal industry

The charcoal industry is a fairly new industry in Namibia, developed as an innovative means to clear invader bush. In 2010, LEAD conducted research on the specific area of charcoal production. The study identified a number of problems in this area, including a lack of workers’ rights. This is because the majority of those producing charcoal are employed as contract workers and thus are not covered by the protections in the labour law.



Charcoal production is hard physical work, entailing cutting down trees for the wood, burning the wood to produce charcoal, packing the charcoal into bags and loading the bags for delivery. Yet, most of the workers were working without any protective clothing. The vast majority of the 205 workers interviewed were migrant workers who were attracted to charcoal production only because they could not find other employment options. Over 50% had not attended school beyond Grade 4. The study report, to be launched in early 2011, makes a number of recommendations for improving and protecting the rights of workers in charcoal production.

In 2010, LEAD published an updated version of its *Guide to the Communal Land Reform Act of 2002*, with some improvements. The Ministry of Lands and Resettlement endorsed the update, and also invited LEAD to contribute at a national workshop on a draft Land Bill intended to replace both the Communal Land Reform Act and the Agricultural (Commercial) Land Reform Act. LEAD gave input on land rights, the environment and community-based natural resource management, and together with the LAC's Gender Research and Advocacy Project, input on the gender perspective.

A study on fencing in Omusati Region

In 2008, the Omusati Communal Land Board asked LEAD for legal advice on 11 applications for the retention of fences in the Ongandjera and Uukwambi communal areas. The applicants wanted permission to fence off land areas of 1000 to 10 400 hectares. Some of the applicants claimed that they received permission from chiefs/headmen before independence to fence off the land. In 2010, LEAD conducted comprehensive legal research on the matter, and held several meetings with stakeholders including the Ministry of Lands and Resettlement, Traditional Authorities in Omusati Region and subsistence farmers affected by the fences. LEAD concluded that the subsistence farmers' livelihoods had been significantly affected by these land enclosures, as cattle production had declined due to lack of access to grazing and water points. LEAD also found that most of the people who applied to retain their fences did not have valid supporting documents to justify the fencing. Although some applicants had permission-to-occupy certificates, these should have been converted into leaseholds – as per the provision in the Communal Land



An example of the fencing used to fence off parcels of communal land

Reform Act of 2002 – rather than into customary land rights as the applicants were attempting to do. LEAD is continuing to monitor the situation and is waiting for the Etango Farmers Association to put its request for legal representation in writing. LEAD will then assist the farmers with possible legal action in 2011.

Urban land tenure conflicts

In 2010, LEAD received several complaints from people who have been resettled from communal land situated inside local authority areas. The complainants stated that they received inadequate or no compensation. Two of the five cases that LEAD investigated in 2010 are discussed below.

A case study – grievances regarding housing

LEAD has worked with the Twahanga Housing Association for many years. About 10 years ago, aggrieved members launched proceedings against the Association due to its Chairperson's corrupt practices. The matter was not resolved, and the parties reached an impasse. Association members approached the LAC again in 2009/10 after the Chairperson presented to them eviction orders that were contrary to the Association's Constitution. LEAD agreed to investigate the matter, and in 2010 interviewed 107 members, who cited a number of grievances against the Chairperson. To address these problems, LEAD followed the procedure in the Association's Constitution to invoke a general meeting to elect a new committee. However, the Chairperson obstructed the meeting. To address this obstruction, LEAD intends to take the matter to the High Court in 2011 for an application to compel the Association to comply with the terms of its Constitution. LEAD has also taken instructions from one member for a damages claim against the Association arising from unlawful

eviction, unlawful detention, malicious prosecution, malicious injury to property, assault and defamation by the Association and its attorneys. LEAD expects to issue summons for this case in early 2011.

A case study – grievance regarding land rights

In Caprivi in 1984, a Mafwe Chief granted the K. family communal/customary land rights within what is now the Katima Mulilo local authority area. In the late 1990s, the Katima Mulilo Town Council started to “sell” parcels of this land. In 2010, LEAD addressed two letters to the Council spelling out the illegality of selling off land which has not been acquired by the State in accordance with the Communal Land Reform Act. LEAD also forwarded copies of the correspondence to the people who received the land from the Town Council. The Council replied to confirm that it had received the correspondence, and stated that the matter was under consideration. On a positive note, one of the “illegal” occupants has contacted LEAD and is willing to co-operate in the K. family’s struggle with the Town Council. The occupant is offering to provide documentary evidence of corrupt and nefarious practice within the decision-making bodies of the Town Council. These include the transaction details and the various promises made by the Council to the would-be land owners. LEAD will continue with the case in 2011.

Community-based natural resource management (CBNRM)

LEAD supports several community-based organisations by providing information and training on good governance, accountability and conflict resolution for community-based natural resource management programmes.

In 2010, LEAD piloted two projects in Caprivi Region in partnership with Integrated Resources Development and Nature Conservation (IRDNC). One of the projects entails the review and amendment of Constitutions of existing Conservancies (Wuparo, Sobbe and Kwandu) to improve their performance. The second project entails facilitating the use of local radio as a means to disseminate information.

The constitutional reviews were initiated through a bottom-up process, with consultative village meetings followed by meetings with Conservancy leaders and *Indunas*. To date, Wuparo and Sobbe have adopted new Constitutions, and the Kwandu Constitution is being edited. LEAD expects that the Kwandu Constitution will be adopted in the first quarter of 2011. Wuparo has taken the further step of restructuring its management system into decentralised zones. The decentralised structure will



facilitate decision-making and benefit-sharing. Early observations of the project’s effectiveness have shown that Conservancy members have an increased awareness of governance procedures. Also, the positive results have motivated other Conservancies request support for similar review processes.

In other CBNRM projects, LEAD has supported the development of Constitutions for the Ngonga and Sachona Community Forest in Caprivi and the Omufitu Wekuta Community Forest in Ohangwena, and integrated the Constitutions of Conservancies and Community Forests which have united in the Nyae Nyae community in Otjozondjupa and the Kwandu community in Caprivi. LEAD is also supporting the review and amendment of Constitutions of five Conservancies in northern Kunene which intend to apply for Community Forest status.

In addition, LEAD has developed facilitator guidelines for the development of Community Forest Constitutions, reviewed the legal basis for “by-laws” for Community Forests, and helped government agencies to develop a draft Operational Agreement on how to collaborate with Conservancies on registration, governance structures and resource management plans where government projects and private management overlap.

Rights of marginalised groups

The Bakgalagadi Traditional Community

In 2010, members of the Bakgalagadi Central Committee approached LEAD for advice on the Traditional Authority’s succession, as for some years the community had been dissatisfied with the conduct of the Authority which they accused of being autocratic, corrupt and indifferent to the community’s needs. Community members had tried various avenues to have the Authority replaced, to no avail. LEAD investigated, and concluded that the Chief could be removed through an election – as provided for in the Authority’s Constitution. LEAD provided considerable support to prepare the community for the election, and advice on the statutory procedures that should be followed. LEAD prepared ballot papers, scoring

sheets and an election guideline, and helped the Central Committee to draw up the relevant correspondence and notifications in terms of the Traditional Authorities Act. A new leader was duly elected, but the Ministry of Regional and Local Government, Housing and Rural Development refused to appoint the elected leader, incorrectly stating that the dispute should be resolved under customary law – in fact this process should be dealt with under the Traditional Authorities Act. LEAD wrote numerous letters to the Ministry to resolve the issue, but a resolution was not achieved in 2010. The matter will be referred to the High Court in 2011 for an order to compel the Ministry to make a decision. Once the decision is made, further review proceedings will be instituted if necessary.

The Nyae Nyae Conservancy

In April 2009, about 40 farmers at Gam in Otjozondjupa invaded the Nyae Nyae Conservancy near Tsumkwe with over 300 head of cattle and other livestock. The land occupation took place without the Ju/'hoansi Traditional Authority's consent. After the initial invasion, the number of Gam/Herero members occupying the land continued to rise, and by the end of 2010 sat at over 300 farmers (number unconfirmed). The government responded by confiscating the Gam farmers' cattle. The farmers then moved to reside within the Tsumkwe township area. Although this area is outside the Ju/'hoansi communal lands, the farmers' presence there has given rise to several challenges for the area's residents and members of the Ju/'hoansi Conservancy. LEAD has consulted with the Office of the Prime Minister to strengthen law enforcement mechanisms to prevent similar situations in future. LEAD is playing a facilitating role to ensure that the Ju/'hoansi community's rights to natural resources are not denied.

The Hai||om in Etosha

The area south of the great white pan in Etosha National Park – Namibia's premier tourist destination – where tourist roads and restcamps are located, was once the dominion of the Hai||om, an indigenous San community who hunted and gathered around the pan. The German colonial administration established the park in 1907, and welcomed the presence of the Hai||om, much of whose traditional territory outside the park had been colonised by white settlers. In 1954, the South African Administration forced the Hai||om out of their ancestral land. As a result, they joined the legions of landless farm labourers eking out a living on farms on Etosha's borders, and their labour sustained an uneconomic and heavily subsidised white-owned commercial agricultural sector. Today the Hai||om are among the most disadvantaged people in Namibia.

Under the San Development Programme run by the Office of the Prime Minister, the government has bought several resettlement farms south of Etosha for the Hai||om, but the Hai||om still living at tourist camps in the park are apprehensive about this solution, and asked LEAD to assist them in their negotiations with government. While some Hai||om in Outjo, Tsumeb and Grootfontein are eager to move to the farms, those resident in Etosha are hesitant to leave as they fear losing their links to Etosha, which they call their home. Also, the Hai||om would like to be acknowledged as the original inhabitants of Etosha, and to benefit from the tourism opportunities relating to their culture. Those resident in Etosha are also concerned that Hai||om will find it difficult to get employment in the park as they will have to compete with people from other parts of the country for the jobs offered. LEAD is assisting the Hai||om with their negotiations for relocation, and is investigating legal instruments that could assist them in their claims.

The Xoms |Omis Project (Etosha Heritage Project), administered by the LAC, is documenting the Hai||om cultural knowledge of Etosha. By making their rich cultural heritage and their links to Etosha known to tourists, the Hai||om can finally benefit from this park located on their ancestral land. With funding from the Self-Help Programme of the United States Embassy, LEAD produced a set of four T-shirts in various colours and sizes inscribed with different mottos. The T-shirts, and fridge magnets with similar inscriptions, are available at the LAC, the Craft Centre in Windhoek, the Etosha Safari Camp and the Etosha Safari Lodge.



The Aussenkehr small-scale farmers

In 2010, the Aussenkehr small-scale grape farmers asked LEAD to assist them in their conflict with the Ministry of Agriculture, Water and Forestry and the current service provider, Coolfresh Management Namibia (Pty) Ltd, over tenure and business rights. The farmers want clarity on their land rights, and are disputing the government agreement which holds that they may deal only with Coolfresh. The farmers feel that the service provider is uncompetitive and the marketing strategy has realised too small a return for the products. The farmers are also concerned about Coolfresh having terminated an agreed-upon advance funding scheme. LEAD provided legal

advice and support to the farmers in their discussions about independently marketing their products and obtaining services. No substantial agreement had been achieved by the end of 2010, but LEAD will continue to support the farmers in 2011.

Women's property rights

LEAD deals with a number of cases each year to help women to assert their property rights. For example, in 2010, LEAD defended a client whose husband sold their marital home to a third party without her consent. LEAD approached the High Court for a spoliation order and the court ordered that the house and personal belongings be returned to the wife. LEAD is now defending eviction proceedings instituted by the third party.

In another case, the client is one of 28 children, only three of whom were born in wedlock. The client was lawfully occupying the deceased father's home at the time of his death, but the three children born in wedlock sold the house. In 2010, LEAD applied to the High Court to have the transfer set aside on the grounds that the Children's Status Act of 2006 gives all children, legitimate and illegitimate, the right to benefit from intestate succession.

The Khwe Traditional Authority

Over 3 000 Khwe San live in the Bwabwata National Park in West Caprivi. They are the only San group whose Traditional Authority is not recognised in terms of the Traditional Authorities Act. The Act allows a traditional community to apply to the State for recognition of their traditional leadership. In 2001, the Khwe were informed of the President's decision to accept the Council of Traditional Leaders' recommendation that the area claimed should belong to the Mbukushu Traditional Authority, and that there was no reason to establish a Khwe Traditional Authority. The LAC has represented the Khwe in their fight for recognition since 1997, and in 2010 made a formal representation to the Council of Traditional Leaders, along with several attempts via correspondence to get the President to revise the decision. The pending recognition application was again referred back to the Council for reinvestigation. This process of applying to the Council for recognition has been ongoing for 10 years. As a result, the Khwe still face ongoing land invasions by the Mbukushu community, and have no formal authority over their traditional lands to address the situation.

To help the Khwe to progress beyond the stalemate, LEAD revisited its strategy around the recognition case. LEAD has consulted with the legal team at the Legal Resources Centre (LRC) in Cape Town who successfully defended the Nama of the Richtersveld in South Africa,

where, in a landmark ruling, the courts returned the traditional lands to the Nama. The LRC team is helping the LAC to find the best possible legal and advocacy options for taking this matter forward. This is an example of how the LAC's regional involvement in human rights issues can help to address specific issues in Namibia where case law is lacking.

In November 2010, LEAD also entered into a research consultancy agreement with Dr Getrud Boden, an expert on the social-political situation of the Khwe, to conduct field research to establish the extent to which the Khwe exercise control over their traditional lands and how they go about their day-to-day decision-making. The research was finalised by the end of 2010, and the information will be used to inform LEAD/LRC on the best way forward in this case.

Conference on marginalised communities' rights

The International Labour Organisation (ILO) and the Office of the Prime Minister asked LEAD to organise a sub-regional conference on the rights of indigenous peoples / marginalised communities and to launch the "Overview Report of the Rights of Indigenous Peoples in 24 African Countries" in October 2010. The conference objective was to increase the participants' awareness of indigenous peoples' rights and obtain inputs on future Namibian policy directives for a white paper on marginalised communities. The conference was attended by representatives of the Namibian government at central and regional level, Traditional Authorities and civil society. Experts from the ILO, the African Commission on Human and Peoples' Rights and the University of Pretoria, and representatives of indigenous communities and bilateral partners in southern African countries also attended.

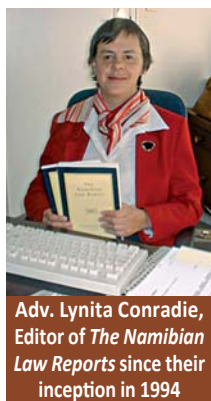
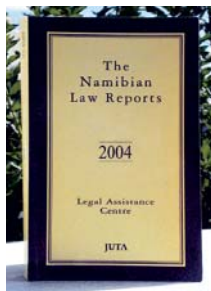


LEAD meetings with the leaders of conservancies in northern Namibia

Conclusion

In another eventful year, LEAD reached out to rural and urban communities across Namibia who needed legal advice and representation. LEAD continues to be one of the key players supporting marginalised communities seeking to realise their constitutional rights as citizens, and assuring them equitable access to natural resources.

The Namibian Law Reports



The foundation of the Namibian legal system is judicial precedent. Legal practitioners refer to previous cases to bolster their arguments, judges use case law as a basis for their conclusions regarding the legal position, and academics use case law as a basis for their law-related propositions. Law students of all generations will remember poring over cases trying to figure out what exactly a judge meant. But how do practitioners, judges, academics and students find these cases? Their first port of call is often *The Namibian Law Reports*,

produced by the LAC and published by Juta & Co. in South Africa. Adv. Lynita Conradie has been the Editor of the Reports since the inception of this project.

The Reports contains the most important judgements given by Namibia's Labour Court, High Court and Supreme Court. Each judgement included in the Reports is accompanied by a headnote which briefly summarises the main points of the judgement, and a flynote which introduces the judgement and forms part of the subject index. In addition, all references to previous judgements are provided in a table of case annotations serving as a cross-referencing system. Each reference is checked by the Editor for accuracy. Compiling law reports requires a high level of skill, both in law and in communicating complex information.

The first volume of *The Namibian Law Reports* was published in June 1995. By that time, Namibia had been independent for five years, so production of the Reports each year involved summarising cases not only for the current year but also for previous years.

Fast forward to 2010 and the Reports are virtually up to date. **At the time of writing, the first volume of 2010 is about to be dispatched to subscribers. This will be the 25th volume.** The second volume of 2010 will be ready by May 2011, and the first volume of 2011 by the end of the year. It has taken many years of hard work to reach this point, but the work has been worth it, as many people can testify.

The Namibian Law Reports are an indispensable tool for legal practitioners, judges, academics and students. However, because Namibia has a small population, the Reports are not commercially viable. This project can only

continue with funding from outside sources. The project does not have a high profile, and on the face of it, does not seem to impact the lives of citizens in general. But, if discontinued, the lack of law reports would result in uncertainty regarding jurisprudence. As case law plays a fundamental role in the Namibian legal system, this uncertainty would be detrimental to the rule of law.

While more modern means of producing the Reports, i.e. electronic/online editions, may be considered in future, it is unlikely that law reporting in its traditional form will become obsolete in the near future as access to modern forms of communication has not yet been adequately dispersed throughout Namibia. Therefore, at the close of 2010, it is vital that the Reports in their current format are sustained at all costs until alternative means prove accessible to all those who utilise the Reports in Namibia.

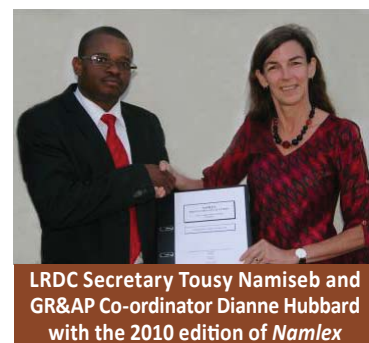
Namlex

Namlex is an index of the laws and regulations in force in Namibia. The goal of *Namlex* is to make the law more accessible

to the public. Its starting point was the *Index to the Laws of Namibia* published by the NAMLAW Project under the direction of the late Advocate Anton Lubowski in 1987. The project was subsequently adopted by the LAC and is run by the Gender Research and Advocacy Project (GR&AP). The LAC has produced six updates (1999, 2000, 2001, 2003, 2004 and 2010).

The latest update includes information on laws and regulations in Namibia until 30 June 2010, cases in *The Namibian Law Report* until December 2009, and details of multilateral treaties signed or ratified by 31 May 2010. A new feature of this update is links to academic articles which are relevant to the statutes and cases cited.

The time gap between the 2004 and 2010 editions was due to a lack of funding to support the project. The 2010 edition was funded in part by Namibia's Law Reform and Development Commission (LRDC). The LAC hopes to access funding to allow for *Namlex* to be updated annually in future.





Interview with the outgoing Chairperson of the Legal Assistance Trust

Judge Dave Smuts, founder of the LAC, sits behind his desk in his office as he starts his job as a newly-appointed judge of the High Court.

The last case of his career as a lawyer and advocate was acting for the LAC on the forced sterilisation cases mentioned in various sections of this report. The LAC is representing 18 women who claim that they were sterilised without their knowledge or consent when undergoing caesarean-section operations, due to their HIV-positive status. "When I walked out of the court it was ending on a right note," he says. "It was fitting that it ended with the Legal Assistance Centre ... because that's how it all started."

Dave speaks with the kind of passion and strength that made it possible for him to establish the LAC in 1988 in the extremely hostile political environment of that time, when Namibia was firmly under the iron fist of South African apartheid rule. People in northern Namibia faced the daily realities of torture, assault, intimidation, arbitrary arrest and illegal detention without trial, as well as destruction of property, livelihoods and ultimately lives. Human rights abuses were rampant and went unchecked.

"It was brutal and lawless," Dave recalls. Establishing the LAC, he says, was meant to "reintroduce law in the

north ... hold authorities to account ... and make sure that people can assert their rights".

Looking back at his time at the LAC, Dave reflects that this period of his life was both tumultuous and rewarding. He recalls the difficulties of obtaining office space for the LAC in northern Namibia since the Centre's very existence challenged the status quo, and though pro-independence organisations supported the Centre, they were also afraid that the South African government would retaliate with violence. There were also funding challenges, but even more challenging was the constant threat from the government itself, which attempted to shut down the Centre on technicalities.

Despite many challenges, the LAC has expanded its scope beyond litigation to concentrate also on training, research and advocacy, with a particular focus on topics relating to the Namibian Constitution, conservation, gender and HIV/AIDS.

"We've gone from strength to strength," Dave reflects, adding that "subsequent Directors have been able to ensure that the work remains relevant to the country."

"The Centre has made a difference," he continues. "It has developed a life of its own." He speaks proudly about the Centre's dynamic growth, fostered by teamwork and a shared dedication to human rights.

Looking back at his work as founding Director of the LAC and then as Trustee and Chairperson, Dave has no regrets, and as he embarks on the next part of his journey as a committed advocate for human rights, he reflects on his appointment as a High Court Judge: "I am committed to the rule of law ... to seeing that there is justice in the court."

He concludes the interview on a positive note: "I look forward to the challenges and possibilities."



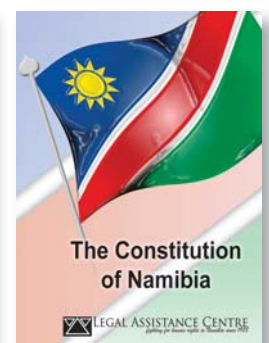
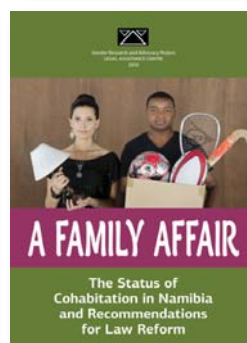
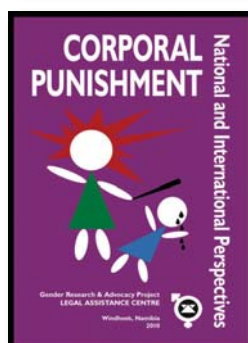
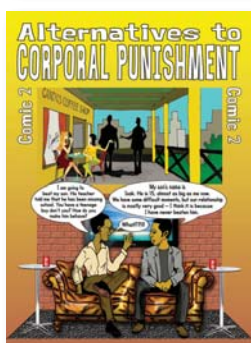
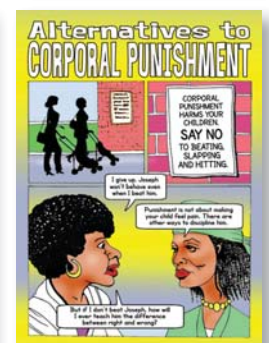
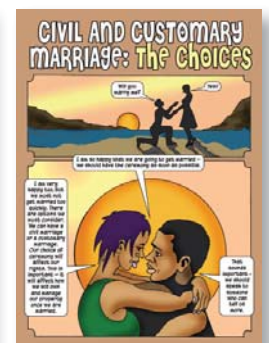
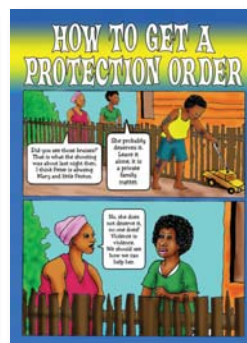
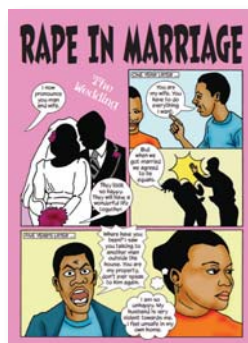
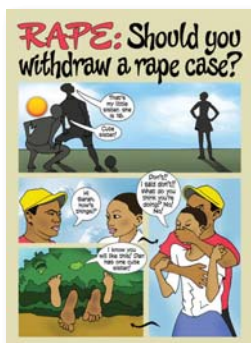
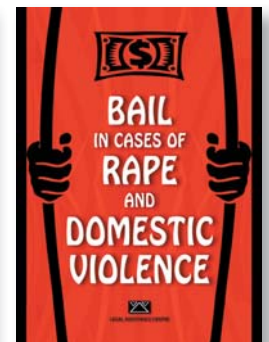
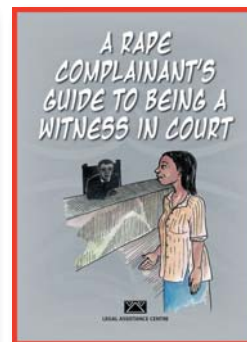
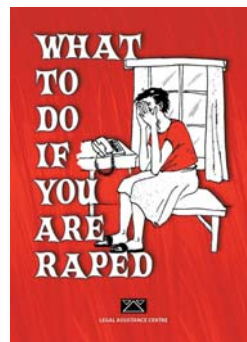
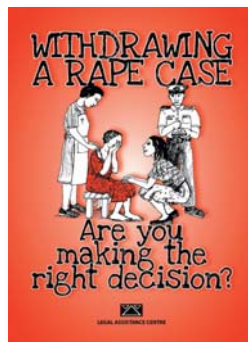
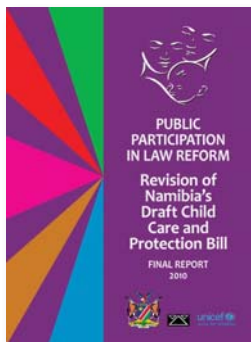
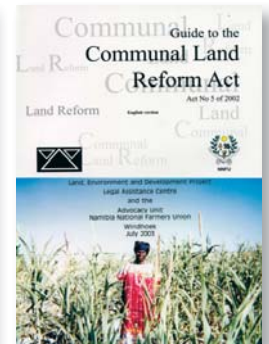
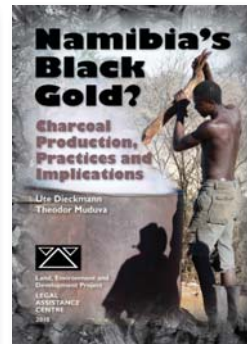
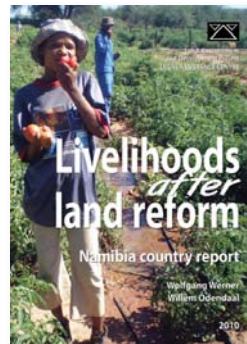
The founding staff of the Legal Assistance Centre, photographed in Ongwediva in July 1988. From left: Michaela Clayton, Karl Ndoroma, Israel Shikongo, Dave Smuts, Andrew Corbett and Philip Mwandingi.



LAC Publications in 2010



These are some of the publications produced by the LAC in 2010. Virtually all recent LAC publications are available as PDFs on the LAC website (www.lac.org.na). Many of the publications are available in Namibian languages other than English.



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.

