

LEGAL ASSISTANCE CENTRE



Fighting for human rights in Namibia since 1988

Annual Report 2014



Wildlife crime in Namibia

**Eroding rural livelihoods and decades
of socio-economic developments**



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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Cover photo: Rhinoceros in northern Namibia, photographed by
Marcia A. Fagnoli, Director of The Earth Organisation, Namibia



Introduction to the LAC

The Legal Assistance Centre (LAC) engages in three main activities, namely:

1. Legal advice and litigation
2. Education and training
3. Research, advocacy and lobbying

through four major units, being:

1. **LEAD (Land, Environment and Development Unit)** – works specifically on land, environment and rural community empowerment issues.
2. **HURICON (Human Rights and Constitutional Unit)** – works directly in fighting human rights violations, mainly through litigation;
3. **GR&AP (Gender, Research and Advocacy Project)** – works to promote gender equality and the empowerment of women through legal research, law reform and related advocacy work;
4. **ALU (AIDS Law Unit)** – works to maintain the rights of those affected and infected with HIV.

This report outlines the activities of the four units in 2014. This is not an exhaustive document detailing all activities of the LAC; instead it provides an overview of the organisation's work during the period under review. We are happy to provide more information on any topic on request.

A Note from the Director

This report describes the work of the four LAC units (LEAD, HURICON, GR&AP and ALU) in 2014. Although our activities are reported herein by unit, all of our activities fall under cross-cutting themes. This is because the LAC upholds the view that all human rights are interdependent and interrelated. For example, training given by ALU to sex workers in 2014 empowered them to access health and other services more effectively, and therefore also addressed social and economic inequalities. LEAD's assistance to conservancies and interventions with the San had similar impacts, dealing with specific as well as more long-term change. Social and economic inequalities



are also intrinsically linked to environmental sustainability, including anti-poaching efforts – another key focus area of LEAD in 2014. Another example of our cross-cutting impact is that while issues of gender equality are addressed specifically by GR&AP, all of the LAC units are mindful of the need to recognise gender in their work and do so accordingly – both through the use of resources produced by GR&AP and through integration into their activities. Finally, many of the cases dealt with by HURICON have health, gender and environmental aspects interwoven in them.

The picture we have chosen for the cover of our 2014 annual report is a departure from our more traditionally used images of people in Namibia, be it of the population we serve or the staff of the LAC. This year we have chosen to highlight the problem of wildlife crime in Namibia due to the significant risks that it poses, not just to the animals but also to the livelihoods of conservancy communities. The operation of criminal syndicates in Namibia robs the country of its natural heritage and biodiversity, and denies the rural poor of some forms of income, jeopardising the safety and security of Namibia as a whole.

Namibia prides itself on its conservation achievements. We are seen as a world leader in black rhino conservation and community-based natural resource management. In 1982, black rhinos were almost extinct in Namibia's Kunene Region, but today this region has the largest concentration of free-roaming black rhino in the world. Elephant numbers have increased from 7 500 in 1995 to more than 20 000 today. Poaching of black rhino in Namibia first recurred at the end of 2009 after almost two decades of dormancy. Since then, more and more rhinos have been killed. In 2014 alone, all of the rhinos in an entire valley in the Kunene Palmwag Concession were poached. We stand to lose all of the gains we have made in terms of community-based natural resource management should we succumb to the international black-market demands which threaten to undermine our precious and endangered natural resources and spectacular natural treasures.

Legislation has to be addressed and amended. Conservation-minded communities have to be mobilised. Authorities have to be trained and equipped. Coordination has to be improved. National pride in our natural heritage has to be instilled in the entire nation.

The LAC is renowned to have served as a moral conscience to the Namibian nation. As we continue to adapt our function and mandate in the 21st Century, we include in our mission the struggle against wildlife crime. Unless change is achieved in this area, the advances made within community-based natural resource management projects will be lost and we will have failed in our mission to create and maintain a holistic human rights culture in Namibia.





Land, Environment and Development Unit

(LEAD)



Namibia joined the Global March on World Animal Day in September 2014. LEAD was one of the organisers of the march in Namibia (see page 6 for details).

Wildlife crime

Following the surge in poaching cases in Namibia, LEAD came forth with suggestions and advice, which in turn led to the **National Stakeholder Consultative Workshop on Enforcing Wildlife Law and Preventing Wildlife Crime**, held in Windhoek in May 2014. Participants were invited to share best practices and lessons learnt in their respective fields, and to identify the gaps, challenges and constraints they faced. The final outcome of the workshop was a decision to produce the building blocks of a strategy for the effective enforcement of the law and combating of wildlife crime – nationally, regionally and internationally.

Wildlife Crime Taskforce established

A high-level taskforce was established after the National Stakeholder Workshop to carry the strategies forward and to improve communication. This taskforce includes the Prosecutor-General's Office, the Protected Resources Unit of the Namibian Police (NamPol), the Ministry of Environment and Tourism, the Anti-Corruption Commission and the LAC. As a result of the information gathered from our field team, the Prosecutor-General addressed a memo to the NamPol Inspector-General requesting authorisation for a joint investigation team to launch an independent investigation into the problem on the ground, and the Inspector-General approved this request. The United Nations Office on Drugs and Crime has agreed to send a representative to assist with the investigation.

LAC Conservancy Support Project established

It is upon the workshop building blocks that the LAC Conservancy Support Project was established in July 2014 to take leadership in implementing the strategies flowing from the workshop. One aim of the project was to first implement the strategies in one key problem area. In this case, by 2014 the Palmwag and Etendeka concessions and the surrounding communal conservancies were being hardest hit by rhino poaching, hence this was the LAC's first area of focus. However, also during 2014, rhino poaching surged in the Etosha National Park, and elephant poaching dramatically increased in Zambezi Region.

Accomplishments of the LAC Conservancy Support Project have already been numerous:



Eviction orders

We assisted the Big 3 Conservancy Trust in obtaining eviction orders for non-conservancy members settling illegally within the Palmwag Concession. They were settled in the very areas where rhinos were poached. These eviction orders were served on them and the court ruled in favour of the Big 3 Conservancy Trust.

Parliamentary involvement

We helped to organize a parliamentary meeting to address the increase in rhino poaching. Members of Parliament came to listen to the grievances of the tribal traditional authorities, conservancy committee members, community members, NGOs, the Namibian Police, the Office of the Prosecutor-General, the Ministry of Environment and Tourism and the private sector. Everyone spoke with one voice against rhino poaching. In addition to this meeting, we were able to establish a stronger working relationship with the Parliamentary Support Committee. This Committee has resolved to address the poaching crisis with the new President, Cabinet and Parliament.

Serving on the Northwest Wildlife Security Working Group

We serve as legal advisors on a joint committee consisting of the Ministry of Environment and Tourism, the Namibian Police, Save the Rhino Trust, Integrated Rural Development and Nature Conservation, conservancies and tour operators. We advised that joint patrols should be deployed to engage all authorities due to the concern of inside involvement. This advice has been implemented.

Serving on the Kunene Rhino Protection Unit

A multi-stakeholder anti-poaching initiative was established in December 2014. The LAC was asked to assist in patrolling in the Palmwag Concession Area. The information gathered throughout the year by the LAC team was used to identify potential problems. Information obtained while serving on this unit was delivered to the Prosecutor-General and Namibian Police Inspector-General. Our team was the only team reporting field observations to these two critical parties.

In July 2014, the Pupkewitz Foundation donated a field vehicle in support of these activities in the Palmwag area.

Assisting the Office of the Prosecutor-General

The LAC's assistance to the prosecution services in the reporting period consisted of providing information on wildlife crime and serving as an expert witnesses at trial, if necessary.



This information gathering in turn has led to continuity between field data and records on potential organised wildlife crime activities. Ultimately this information is used to link the entire chain of criminals from the ground up through the Prevention of Organised Crime Act.

As a result of our efforts to raise awareness on wildlife crime with the prosecutors and magistrates, the Office of the Prosecutor-General selected Wildlife Crime as a key topic of discussion at the Annual Prosecutors' Conference in December 2015.

Interpol meeting

Our team addressed an Interpol Workshop in September 2014. This meeting served as wildlife crime training for police officers and officials of the Ministry of Environment and Tourism. Interpol was keen to continue to work directly with our project.



Media involvement

Prior to the LAC project, the media were excluded from the sharing of information regarding wildlife crime. Since our project came to fruition, the media have become more involved in addressing the wildlife crime issue. The better media coverage has made the public aware of the clear and present threat, and has placed pressure on conservation organisations to respond to the crisis.

Global March for elephants and rhinos

As part of a global effort to raise awareness on wildlife crime, LEAD was instrumental in organising a march in Namibia in September for World Animal Day 2014. Some 40 countries and 136 cities marched on the same day. Our march was the only one held in Namibia. More than 200 people from all walks of life marched in Swakopmund. Children (including the child pictured on the right) took the lead, sending a strong message that these animals must also be protected for future generations.



Climate change

LEAD gave input in a climate change workshop on 6 November, in which the Desert Research Foundation of Namibia – the designated authority for the Climate Change Adaptation Fund in Namibia – briefed stakeholders on progress and procedures. The effect of climate change has increasingly become a cause for concern in Namibia.

Mining and the environment

LEAD successfully negotiated with the mining company B2Gold to commission SLR Environmental Consulting (Namibia) (Pty) Ltd to prepare an Environmental Support Document and Environmental Management Plan regarding the drilling of two exploratory boreholes within Ntja Jaqna Conservancy in Otjozondjupa Region. LEAD facilitated a compensation agreement between the conservancy and B2Gold, which gives the conservancy compensation as well as some participatory and consultative rights, and obliges B2Gold to comply with the Environmental Management Plan. In November 2014, LEAD organised an unannounced inspection visit together with members of the conservancy, to see if B2Gold and Gecko Drilling were complying with the agreements signed with the conservancy. To a large degree they were complying, with only minor weaknesses, which were discussed constructively.

Upon being alerted to suspicious mining exploration activities being conducted in the rhino sanctuary north of the Brandberg Mountain in Erongo Region, enquiries were directed to the Ministry of Mines and Energy, which resulted in the exploration company being ordered to vacate the area.

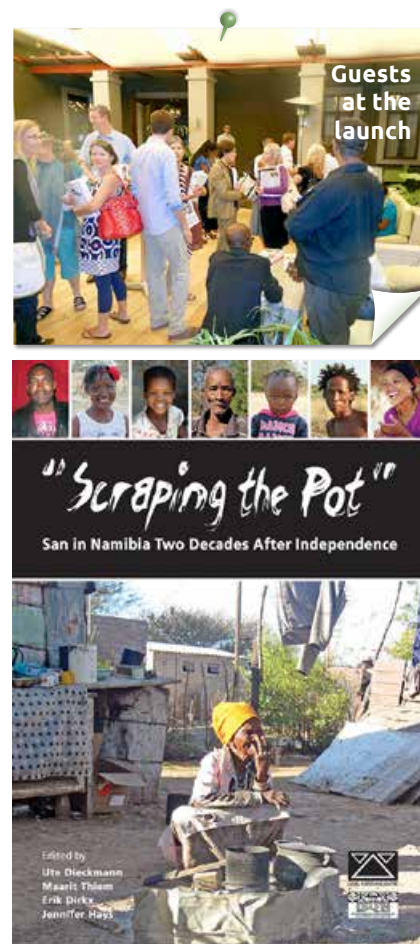
Launch of extensive research report on San in Namibia

In April 2014 the LAC launched the report entitled *Scraping the Pot: San in Namibia Two Decades After Independence*. A key objective of this extensive study of San communities was to gather and collate information to improve the situation of the San. The release of the report has already achieved the following results:

Follow-up reports

On the Ombudsman's request, LEAD reviewed and gave input on the *White Paper on the Rights of Indigenous Peoples in Namibia*. The Ombudsman has accepted most of the changes proposed by LEAD and plans to launch the White Paper in the near future.

The academic journal *Anthropological Forum* asked LEAD to write a review on a special issue dealing with Humanity and the San, and also to write an article on San in tourism in Namibia for the academic journal *Anthropology Southern Africa*. Both reviews have been submitted and have received positive feedback.



Crop cultivation in Bwabwata National Park

A consultant anthropologist was contracted to conduct research on crop cultivation and alternative livelihood options of residents (Hambukushu and Khwe) in the Bwabwata National Park (BNP). She has finalised her report.

San Council

In 2014 LEAD supported the Namibian San Council to hold two workshops. In sum, the workshops have:

- given the Council a better understanding of its role and mandate as an advocacy body of San in Namibia;
- given the Council a better sense of the concept of accountability, and of the necessity of community consultation, record keeping, and establishing friendly and continuous relationships with coalition partners and decision-makers;
- provided the Council with advocacy tools;
- increased the activities undertaken by the Council;
- facilitated crucial steps towards the Council's formalisation as a representative body;
- encouraged strategic thinking on San development issues;
- increased internal communication and support; and
- encouraged the feeling of ownership of San development and responsibility for it.



Xoms |Omis Project

The managing director of the Gondwana Collection (a group of 14 lodges in Namibia) asked the Xoms |Omis Project (administered by LEAD) to provide 22 panels on the Hai||om cultural heritage and their indigenous knowledge of Etosha for a 'bush walk' between the Etosha Safari Lodge and Etosha Safari Camp. All panels were submitted and feedback is awaited.

Ancestral land rights

To prepare an application for ancestral land rights in Etosha, community consultations were held in February 2014, followed by a meeting with expert witnesses in March. In addition, the life histories of 49 community members were gathered, which will form an integral part of the particulars of claim and argument in court. Research and consultations continued throughout the year, including research in the National Archives on some laws which applied to Namibia during the period of German colonisation.

LEAD obtained the voters lists for the regions in which Hai||om San are living today, which might help to ascertain the number of Hai||om in Namibia. In addition, a strategy session was held with lawyers from the Legal Resources Centre in Cape Town to draw on their experiences in bringing an ancestral land claim.



LEAD visited the Hai||om communities in Otavi, Tsintsabis, Tsumeb, Farm 6, Ondera, Oshivelo, Namutoni, Halali, Okaukueyo, Ombika and the resettlement farms south of Etosha to collect signatures for the class-action application, identify representatives, work on the affidavits of the main applicants and discuss the case again with the chief of the Hai||om Traditional Authority (TA). A second field trip was undertaken (Tsumeb, Tsintsabis, Otavi, Outjo, Otjiwarongo) to meet with Hai||om communities to discuss the case, get signatures and help communities decide on representatives for the case. This included a meeting with the Hai||om chief and other senior TA representatives.

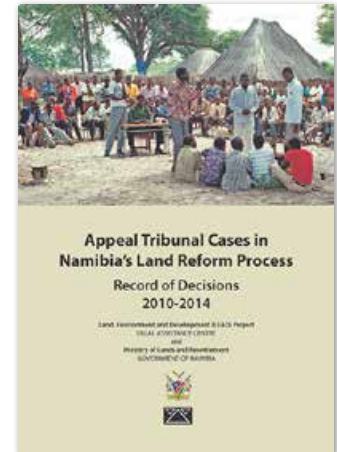
Flexible land tenure

The regulations under the Flexible Land Tenure Act passed in 2012 are still not in place. The purpose of the Act is to provide affordable land tenure rights to poor households. LEAD gave input to the Regulations Committee, and gave a presentation on Namibia's Flexible Land Tenure System at the World Bank's Land and Poverty Conference held in Washington in March 2014. In addition, LEAD was tasked to make a submission on redistribution and the Flexible Land Tenure System, and presented it at the National Land Reform Forum (NLRFF) meeting on 25 July 2014. In November 2014, members of LEAD attended a two-day workshop on the Flexible Land Tenure Project/System in Namibia. The workshop was held in anticipation of the implementation of the Flexible Land Tenure project, which essentially aims at assisting informal settlers within local authority boundaries to secure their land rights in the form of either a starter title or a

land hold title. At present LEAD is focusing on working with informal settlements in the Windhoek and Oshakati local authority jurisdictions. LEAD has also been contracted to conduct awareness-raising interventions and training on the Flexible Land Tenure Act in 2015, and the Ministry of Lands and Resettlement has tasked LEAD with finalising the regulations.

Communal land

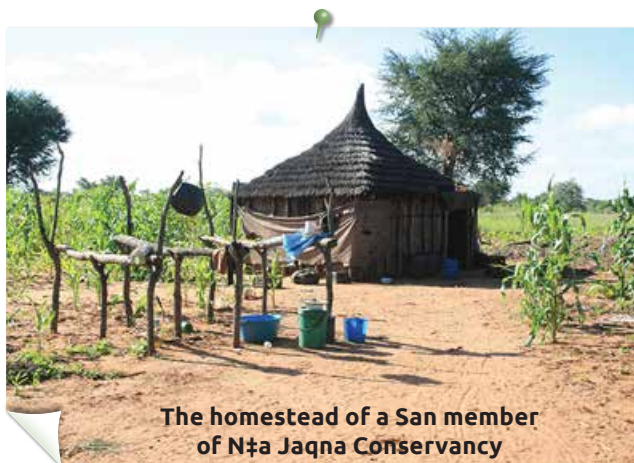
LEAD is currently working on an assessment of the training of communal land boards conducted in 2013 to ascertain whether the training has actually built their capacity. In addition, the Ministry of Lands and Resettlement appointed three members of LEAD to serve on the Appeals Tribunal when required. During the period under review, LEAD was involved in nine appeals, and compiled an Appeals Tribunal Study Report for the Ministry.



LEAD conducted an awareness workshop on the Communal Land Reform Act with rural communities at Kayova village in Kavango East Region and Bamunu Conservancy residents in Zambezi Region in April 2014. The team also wrote an article on the subject, titled "Raising awareness of land rights necessary for rural Namibians", which the Institute for Poverty, Land and Agrarian Studies (PLAAS) published on its blog on 23 April 2014 (<http://www.plaas.org.za/blog/raising-awareness-land-rights-necessary-rural-namibians#sthash.pPsOXGWe.dpuf>.)

Conservancies

Following appropriate court action, eviction orders were served on 36 respondents in Nꞛa Jaqna Conservancy due to their illegal cattle grazing in the conservancy which is inhabited mostly by the marginalised San community. Opposition has been entered in a number of the orders, and after answering papers were drawn up, the matter was set down for case management in the High Court. Grazing has become an even more valuable commodity given the severe drought experienced in the region in 2012/13, and its availability has a direct influence on livelihood concerns. The hearing took place early in 2015.



The homestead of a San member of Nꞛa Jaqna Conservancy



A fenced-off area near Omatoko village in Nꞛa Jaqna Conservancy



Human Rights and Constitutional Unit

(HURICON)

Democratic rights

Third amendment of the Constitution

The year under review saw Namibia's fifth Presidential and Parliamentary Elections, and the LAC was one of many civil society organisations monitoring the process. We became concerned when the Government proposed amendments to the Constitution with limited consultation with parliamentarians and the public. Civil society responded strongly, with the LAC taking a lead role as part of a coalition of civil society organisations calling on the Government to consult more widely. Sadly, despite protests on television, on radio and in print, and a demonstration at Parliament, the amendments were rushed through.



The Namibian newspaper published two opinion pieces by Dianne Hubbard (GR&AP Coordinator), headed "The Constitutional Amendments: Where are the women?" and "How much consultation is enough?", on 8 and 19 August respectively.

Our advocacy in this area is an example of the interlinkages between LAC units and projects, with HURICON and GR&AP working together in this area.

Voting

A second area of concern with democratic rights arose when the Electoral Commission of Namibia (ECN) announced that only certain registered voters who travel outside of Namibia at the time of voting would be permitted to vote. We brought an urgent application on behalf of a Namibian student in the UK. In response, and prior to the case being heard in court, the ECN backtracked, stating that there was no such decision to restrict voting, and that registered voters abroad could vote at foreign missions. The case was withdrawn and our client and colleagues were able to vote.



.....

“ I simply mail to express sincerest gratitude to all of you for ensuring that I and many others like me get our rightful opportunity to vote abroad. I have since received various communications of persons abroad who were able to cast their vote only after the ECN's reversal. This is certainly due to all of your altruistic acts in promptly responding to our plight. May you continue to unwaveringly defend that which is just and right! We shall join you in the fullness of time. ”

– Feedback from the client

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Legislation

The Research, Science and Technology Act 23 of 2004 has been an ongoing concern of the LAC for some time. The Act and its regulations appear to restrict research more than to promote it, with the wording appearing to violate both the letter and spirit of the Namibian Constitution, and the very idea of democracy and the free marketplace of ideas, characterised by the freedom of speech, thought and debate which helps to sustain any democracy. Even the school project of a primary learner would fall within the ambit of this legislation. In partnership with the Free Press of Namibia (PTY) Ltd and the Institute For Public Policy Research, we have been engaging with government on the problems with the Act. In 2014 civil society met with delegates of the National Commission on Research, Science and Technology to discuss civil society's concerns. The Commission expressed a vague intention to revisit the law and regulations, but asked civil society to work with it on research plans and funding in the meantime. However, civil society groups in attendance agreed that we must boycott the activities of this body as a matter of principle until such time as it is not operating under an unconstitutional law – particularly given that we first expressed our concerns back in September 2012 before any planning for this body got underway. It was also decided that given our failed attempts at discussion with government, we must proceed through a court application. Final drafts were completed in 2014 and the application will be ready for launching in the first quarter of 2015.

In another matter concerning the interpretation of the law – the case of PP Visagie vs The Government of the Republic of Namibia – the client has asked the High Court to interpret the constitutional provision that grants persons whose rights under the Bill of Rights have been violated, the ability to hold the State liable for compensation in respect of the damages suffered. The question is whether the State is vicariously liable for the actions of a judge whom it has appointed vis-à-vis the necessary autonomy of legal office. The matter was heard before a full bench in April 2014, whereafter the judges requested supplementary notes. Judgement has been reserved and is awaited.

The state of healthcare in Namibia

Forced sterilisation cases

For several years the LAC has been involved in the representation of clients who were forcibly sterilised without their consent and/or knowledge. In the High Court hearing, the judges found that there was no proper consent, but they could not agree that this

was due to the clients being HIV positive. This judgement was very important as it recognised the problem that many indigent people are voiceless when it comes to their medical care – a problem which can be exacerbated in Namibia by language barriers between patient and doctor. The Government appealed and the matter was handed over to the Supreme Court. The appeal hearing in the Supreme Court took place in March 2014. In preparation for the hearing, counsel prepared heads of argument with input from LAC lawyers. Judgement was delivered in November 2014 with the Supreme Court dismissing the appeal. The defendants (Government of Namibia and Minister of Health and Social Services) are now engaging legal opinion on the compensation due.

Medical negligence cases

HURICON is currently dealing with a number of medical negligence cases, a few of which are summarised hereunder.

- A client lost her baby following negligent handling of her case by hospital staff. The matter failed at mediation and is referred to trial.
- A 13-year-old girl was wrongly administered anti-retroviral drugs (ARVs), which led to a severe allergy. The extensive physical effects necessitated reconstructive surgery. She also suffered severe psychological trauma. Once the LAC has received the medical documents awaited from government, a decision will be made as to action.
- Another client lost her baby boy during labour due to inadequate medical assistance. The matter failed at mediation. All witness statements, expert statements, discovery affidavits and bundles have been filed. The matter will proceed to trial in 2015.
- A client underwent surgery at a state hospital, during which time she sustained a huge burn on her back, as a result of which she could not work for one year. Although mediation proceedings failed, there is an indication that the defendants (Government of Namibia and Minister of Health and Social Services) may wish to settle the matter.
- During an operation, cottonwool was stitched into a client's wound, which resulted in sepsis. Although mediation failed, defendants (again Government of Namibia and Minister of Health and Social Services) have indicated they may settle the matter depending on the contents of the medico-legal report. The report cannot be finalised without access to the Government's medical records, and the Court has requested an explanation as to their delay in providing same.
- A client who was illegally detained in a state mental institution for seven-and-a-half months won the case on appeal. The Government agreed to settle in the sum of N\$450 000, and has paid the client. The Ministry of Justice and the Ministry of Health and Social Services shared the costs equally.

Assisting service providers

HURICON continues to assist employees of the Ministry of Health and Social Services whom the Ministry sought to evict from government housing without a proper eviction order. We referred these matters to mandatory mediation in the High Court, and thus far one of them has been settled.

Holding the police accountable

HURICON is dealing with the matter of a mother who was in custody awaiting trial on charges of shoplifting, and whose 4-year-old son died after being assaulted by an inmate

sharing their cell at Wanaheda Police Station in Windhoek. We have arranged for her to attend five sessions with a clinical psychologist with a view to bringing a civil claim for the emotional shock caused by her son's death. Summons has been served and the matter has been placed on the case management roll. Indications are that government will defend the matter to test the legal principle involved. We have also contacted the Office of the Inspector-General of the Namibian Police with a view to establishing the current status regarding children in custody with their parents, as well as what contingency plans have been put in place to ensure that such a tragedy does not occur again. This is another example of how the LAC units and projects interlink: GR&AP has been working with government on the Child Care and Protection Bill, and we discussed with government the drafting of a provision on the procedures for holding children in police cells with their parents.

HURICON acted on behalf of 12 clients who were illegally detained at Rundu Police Station for a period of five days and four nights, during which time they were interrogated for hours and were not given food and proper bedding. The Government offered settlement sums after we instituted action on the clients' behalf.

HURICON favourably settled a matter of police assault.

Additional litigious matters dealt with by HURICON in 2014 relate to the assault and torture of a client by members of the Namibian Police during an investigation into alleged stolen livestock, and the assault of a minor by three City Police officers which later resulted in his death. In the latter case, and in terms of the Limitation of Legal Proceedings Act of 1970, a notice to take action against the Windhoek Municipality (under which the City Police resort) was to be served within three months after the incident. An application before the High Court must now be launched in an attempt to show good cause why the notice was not served within the time period prescribed in the Act.

During the period under review, HURICON settled another 12 Caprivi torture cases to the clients' satisfaction. A further nine Caprivi matters have been placed on the court roll in addition to six matters in which the plaintiffs are now deceased. It is envisaged that 2015 will finally bring to an end, via settlement or otherwise, the claims of over 160 clients which originated from the alleged secessionist uprising in Caprivi Region in late August 1999, and in respect of which the criminal trial is still ongoing in some cases.

Assisting service providers

HURICON also continued with basic human rights training of police officials attending the Israel Patrick Iyambo Police College in Windhoek for training to become detectives.

Other litigation matters

A matter currently in case management relates to a minor boy who was electrocuted by open electrical wires in front of his house in Oshakati.

HURICON gave legal advice to refugees at Osire Refugee Camp who are facing possible deportation.

Access to water

In 2014 HURICON also focused on the right to water, through case study research on access to water in an informal settlement in Windhoek. The research included site visits and interviews with inhabitants, and a comparison of the situation in Namibia with international standards. The findings will be reported in 2015.



A HURICON lawyer speaking with people in Okahandja Park in Windhoek. Some are living there legally and others are illegal squatters. The toilet pictured in the photo has been locked because it does not work, and has not worked for three years. The Municipality does not provide any services in this area; instead the community tries to keep the area clean.



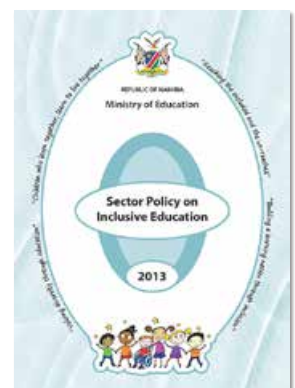
A street in Katutura, Windhoek. Income disparities have a drastic effect on basic human needs. The brick house on the left has electricity, water and sanitation facilities, whereas the shacks opposite have no such facilities, so their inhabitants have to collect water from water points and use community toilets – which are broken.



In contrast, the newly constructed High Court in Oshakati has an ornamental stream flowing through it, in spite of the fact that many of the area's inhabitants have to walk – in many cases long distances – to water points every day to collect a mere five litres of water per household at a time.

Right to education

HURICON is in the process of identifying potential issues to be raised with regard to the right to inclusive education for people living with disabilities. In 2013 the Ministry of Education adopted a new Sector Policy on Inclusive Education (the published policy document is pictured on the right), but the reality on the ground is often very different.



Mediation matters

One of the LAC lawyers received mediation training and is now an officially accredited mediator. This is because, according to new legislation, namely Rules 38 and 39 of the amended Rules of the High Court, a number of litigious matters must be referred for compulsory mediation before conventional litigation is contemplated, and conventional litigation can proceed only if mediation has failed. This is a bold new step for Namibia, which we believe will bear positive fruits for access to justice in the future.



Gender Research and Advocacy Project

(GR&AP)



Scenes from animations (conversions from comics) produced by GR&AP in 2014 – see page 19 for details.

Research

In 2014 GR&AP conducted research on lesbian, gay, bisexual and transsexual (LGBT) rights in Namibia, which incorporated intersexuality and other gender identities which depart from what many societies tend to perceive as the “norm” of heterosexual males and females.

The purpose of our research, supported by the US Embassy in Namibia, has been to assess the current legal protections available – and unavailable – to LGBT people in Namibia. The research covered the following areas: constitutional law; international law; crimes which target LGBT people; protection for LGBT people against discrimination and abuse; health issues; sex change; labour issues; refugee status in Namibia for persons being persecuted for their LGBT status in other countries.

Four pamphlets on key topics were produced from research information:

1. Family
2. Health
3. Labour
4. Protection.

The pamphlets have been translated into Oshiwambo and Damara/Nama.



We also conducted public dialogue on current legal conditions for the LGBT community, and presented and discussed key research findings, with five communities – in Swakopmund, Windhoek, Gobabis, Keetmanshoop and Okahandja. At the start of each workshop it seemed that many participants had given up hope because of their perception that nothing can be done to stop people from violating their rights, but by the end, all of them realised that there are legal protections available to them. Still, despite this positive change, it appeared that, in Namibia's homophobic environment, a long time could pass before LGBT persons have sufficient confidence to demand protection of their rights.

All materials on this topic will be available for distribution in early 2015 and discussions around LGBT rights will continue.

Advocacy

Addressing gender-based violence

One of our main areas of advocacy in 2014 was addressing gender-based violence (GBV). Some of the advocacy activities conducted are as follows.

We gave a presentation on withdrawal of GBV cases at the Second National Conference on GBV organised by government. Participants included the President (who gave the opening speech), the Prime Minister, politicians, UN representatives, high-ranking officials in government and private institutions, and almost 1 000 members of the public from various regions in the country. We followed up our presentation with a letter to the Office of the Prime Minister summarising our recommendations on case withdrawals and our concerns that the family law reforms included in the GBV Plan of Action are not being implemented. Whilst we endeavour to participate in national activities, we remain sceptical that high-level conferences are the best strategy to address GBV at this stage, being of the view that priority should be given to community-based interventions and work to improve the response of front-line service providers.



Newspaper coverage of the event included an article discussing the speeches made by President Pohamba and the LAC representative.

“The Legal Assistance Centre's Yolande Engelbrecht called on the Ministry of Gender Equality and Child Welfare to build more homes for women and children.

“The withdrawal of GBV cases is on the increase because most of the women have no other choice than to go back to the boyfriends or husbands. They have nowhere else to go. We also call on traditional leaders to be strict and fair when it comes to these cases. They should not be paid to dismiss GBV and rape cases,” Engelbrecht said.”

– Nomhle Kangootui, “President ashamed by gender-based violence”, *The Namibian*, 3 July 2014 (www.namibian.com.na/indexx.php?archive_id=125169&page_type=archive_story_detail&page=1)

We worked with the Association of Diplomatic Spouses (ADS) on practical activities to address GBV. (Based on suggestions and information we provided, ADS re-decorated the client reporting room at the Katutura Woman and Child Protection Unit, and put together 500 toiletry bags to be given to victims of violence. These bags contain soap, cream, a comb, underwear, Vaseline etc.)

We facilitated a week-long workshop on GBV with community members in Lüderitz.

We developed and tested new forms to complete when applying for a protection order.

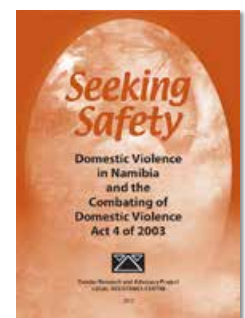
In response to the Cabinet Plan on GBV, GR&AP prepared four articles on the key legal issues raised by Cabinet, for publication as a series in *The Namibian*: bail; parole; longer sentences; and issues which Cabinet did not raise but should have. Two of the articles were published in 2014, and all four were circulated by email to key stakeholders.



Partnerships with government

In 2014 GR&AP organised two 'roadshows' – one about domestic violence, the other about maintenance – visiting magistrates' courts across the country. Our 'roadshows' entail a team of resource persons travelling around the country to hold informal discussions with stakeholders at their places of work about specific issues they face.

The purpose of the first roadshow was to promote discussion between service providers on how courts can improve their response to cases of domestic violence. Findings of the LAC research report entitled *Seeking Safety* (2012) were used as a basis for discussion. The discussion topics included: linkages between HIV/AIDS and GBV; protecting children affected by GBV; service and withdrawal of protection orders; closer co-operation between service providers; after-hours applications; record keeping; promoting linkages between victims of domestic violence; access to counselling services; and dealing with case withdrawals.

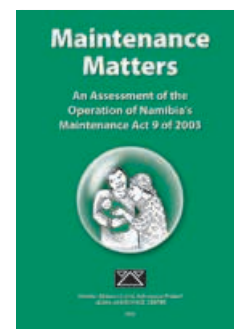


GR&AP staff and discussion participants in the first roadshow



GR&AP staff member Yolande Engelbrecht presenting during the second roadshow

The purpose of the second roadshow was to promote discussion between service providers on how courts can improve their responsiveness to maintenance complaints. Findings of the LAC research report entitled *Maintenance Matters* (2013) were used as a basis for discussion. The discussion topics included: how the courts are dealing with maintenance during pregnancy; maintenance and domestic violence; use of default orders; and retrospective claims for adjustment. It was clear that all courts are still facing a lot of challenges in these areas, and practical solutions were introduced and discussed.



In 2014 we visited the Windhoek, Rehoboth, Gobabis, Okahandja, Otjiwarongo, Otavi, Grootfontein, Opuwo, Kamanjab, Khorixas and Outjo courts. More courts will be visited in 2015. Both roadshows involved magistrates, prosecutors, clerks of court, social workers, police officers, lifeskills teachers and others.

Both roadshows were a great success, with positive recommendations for action flowing from each meeting. Although the roadshows were organised by the LAC, they were realised through partnership with the magistrates' courts, the Magistrate's Commission, the Ministry of Safety and Security, the Ministry of Gender Equality and Child Welfare, and other key stakeholders. We thank everyone involved for their participation and cooperation.

Annotated statutes

One of our ongoing projects is the production of a complete set of annotated pre- and post-Independence statutes for Namibia – a project commissioned by the Parliamentary Support Project. In 2014 this contract was extended to include annotated post-Independence regulations. The annotated statutes and regulations will be available free of charge on the Internet in 2015 (PDFs + Word files).



Examples of the annotated statutes

FOUR OF THE MANY INTERESTING FACTS WHICH WE LEARNT WHILE ANNOTATING NAMIBIAN STATUTES

The score of the Namibian National Anthem is part of the *National Anthem of the Republic of Namibia Act 20 of 1991*

Until the *Married Person's Equality Act* came into force in 1996, no woman was allowed to take part in any tournament as a wrestler or boxer.

Every man in Namibia between the ages of 16 and 60 has a duty to assist the police when requested to arrest or detain a person. Failure to assist could result in a fine or even a short period of imprisonment.

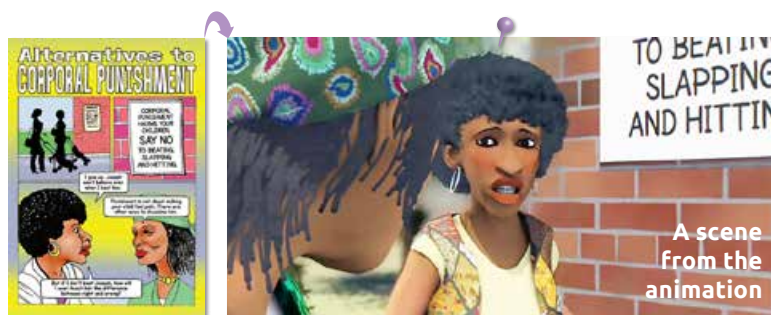
When you get married, the doors of the building in which you are marrying must be open, and a marriage officer is not obliged to marry a couple outside the hours of 8am-4pm.

Child Protection

The most exciting development of 2014 came right at the end of the year when the Child Care and Protection Bill was reviewed by both Houses of Parliament. This legislation, which has been in draft form for nearly 20 years, will make a significant difference to the lives of children in Namibia. Parliament's favourable response to the Bill in 2014 was a major milestone. It is expected that the Act will be passed and gazetted in early 2015 after one outstanding issue is resolved.

Alternatives to corporal punishment

We converted one of our comics on alternatives to corporal punishment into a short animation, which was launched on NBC TV's *Good Morning Namibia*. It can be viewed on YouTube, or downloaded from the LAC website, or provided on a DVD.



Encouraging accountability in schools

Another ongoing project has been the production of materials to assist learners, parents and community members to hold schools accountable for meeting current policy standards. This project was carried out on behalf of the Ministry of Education with support from UNICEF and the European Union. In 2014 we finalised the production of four comics, four posters and two animations. All of these materials will be available for distribution by partners in 2015.





AIDS Law Unit

(ALU)



Participants in one of ALU's Key Populations training sessions

Training

In 2014 ALU provided training to a range of groups, including members of the LGBTIQ (lesbian, gay, bisexual, transgender, intersex and questioning) community, and people living with HIV/AIDS, their support groups and Community Healthcare Workers. The training took place in nine regions, namely Erongo, Khomas, Otjozondjupa, Karas, Omaheke, Ohangwena, Zambezi, Oshana and Kavango East. ALU also provided training to Community Health Consultants to help facilitate the creation of a holistic enabling environment for the people whom they assist. The idea is to strengthen the effectiveness of community health outreach programmes by encouraging an understanding of: HIV and the law; the rights of people infected and affected by HIV/AIDS; and the realities that people face in their battle to access services on a daily basis. ALU trained a total of 375 people in 2014. It is important to note that 15-20% of this total are Peer Educators who are expected to take the learning further into their communities.



The training makes it clear to the participants that they are all equally protected by universal and constitutional fundamental human rights. The majority felt that the environment for people living with HIV/AIDS in Namibia is more tolerant than in some neighbouring countries. Participants expressed their gratitude to the donor community for funding initiatives to empower them to access their rights.

The training also provided opportunities to obtain information from participants about the struggles encountered in relation to access to proper healthcare. These struggles have been documented and will be taken into account in future ALU research on health rights. State hospitals and local clinics were said to be the most problematic environments. For example, many participants shared their concern that they were still being treated disrespectfully when collecting their anti-retroviral medication, hence they feel ill at ease when doing so. However, many were of the view that a positive attitude change had begun to emerge, and that this was partly due to the fact that people living with HIV/AIDS are able to assert their rights with the increased knowledge gained through training.

ALU gave the participants a range of information materials covering, for example, HIV and the law, how to write a will, and the issues of rape and domestic violence, and all received copies of the Namibian Constitution and the Namibian HIV Charter of Rights. About 430 copies of each item were given for them to keep and distribute in their communities.

To maximise the efficiency of our outreach and to avoid duplication, the LAC works closely with other organisations working in similar areas. For example, in trainings in 2014, ALU worked with Voice of Hope (an LGBTIQ representative organisation), Catholic Aids Action, Youth to Youth and Outright Namibia, to help ensure that all of the applicable groups were reached.



-
- ✿ I learnt about my rights and I will go back and share with others with the least knowledge.
- ✿ I have learned about the law and human rights.
- ✿ (I learnt about) the different services LAC offers and how and when I can make use of these services as a sex worker.
- ✿ I have learned about advocacy.
- ✿ I have become a new person.
- ✿ I have learned as to how I can make a case as a sex worker.
- ✿ I have learned the way police should behave.
- ✿ I learned about domestic violence that I didn't know before.
- ✿ I would like to thank you from the bottom of my heart for this training.

– Samples of feedback from ALU training in 2014

Assessing healthcare services

In 2014 ALU undertook an investigative visit to Oshikuku State Hospital in Oshakati, where the following concerns were raised:

- “Time management is a challenge when it comes to healthcare workers attending to the patients.”
- “Accessibilities of ARVs at the hospital is quite slow.”
- “Nurses are not behaving in a respectable and dignified manner towards the patients, especially people living with HIV/AIDS.”
- “The hospital hygiene is not up to standard.”
- “Patient does not know their rights, especially those who hardly expressed themselves in English.”
- “Medicine information is not well explained to patients.”
- “People living with HIV do not have nutritional supplement to support their take on ARV medicine.”
- “More information on human rights [is needed for] empowering the voiceless to stand up for themselves when experiencing poor service delivery.”
- “Distance from home to hospital is quite challenging especially during the rainy season.”

The LAC plans to use the information collected to inform future training and advocacy activities.

Research in prisons

ALU continues its work with prisoners, with a focus in 2014 on the food available to prisoners and how this affects the taking of ARV medication.

Advocacy

ALU assisted Rights Not Rescue, an organisation representing commercial sex workers, to present written concerns to the Windhoek City Police about new traffic regulations which the group believes are detrimental to sex workers’ continued livelihood as well as unconstitutional.

2015 and beyond

The LAC, through ALU, will continue to empower key populations in 2015, with the hope of broadening the ALU programme to include training interventions in prisons. Reintegration after incarceration remains a big challenge, and we hope to help meet this challenge through our core training on HIV and the law as well as the many related training components which increase understanding of human rights and what it means to live in a rights-based democracy.

One indication that the efforts of organisations such as the LAC are bearing fruit is the finding of the latest HIV Sentinel Survey that the estimated national prevalence of HIV infection among pregnant women aged 15-49 has dropped from 18.2% in 2012 to 16.9% in 2014.



Public Outreach, Awards *and* Giving Back

Media

The LAC maintained a regular presence on television, on radio and in print media throughout 2014. We continued posting regularly on our website and Facebook page, and also started tweeting in 2014.



Assisting clients

In 2014 we continued to assist clients on a daily basis. Clients often have nowhere else to obtain the information they need, and the help we provide can make a huge difference to our clients' lives.

.....
“ That’s so fantastic news – I wished I had contact your organisation a long time ago! Thank you so much for your assistance! ”
.....

– Feedback from a satisfied client

In one case, for example, a client came to us with the problem that the father of her child had stopped paying maintenance. We explained the law to the client – i.e. failure to pay is punishable by a fine or prison sentence, including a weekend prison sentence. The client informed the father who then paid the money that day. This simple example clearly illustrates how individuals can be empowered to enforce their rights when they have the information they need.

Distribution of materials

In 2014 we distributed nearly 80 000 hard copies of LAC publications. Sadly, in recent years the number of hard copies distributed has been dwindling due to a lack of stock. Almost all of our materials are available on the LAC website, but we do not have enough funding to keep all of them in print, despite the consistent public demand for hard copies. We are in dire need of funding to restore our capacity to make hard copies available.



Awards

The LAC was honoured to receive the JP Karuaihe Social Responsibility Award in 2014, for giving back to the community in 2013.



Above left: **LAC Director Toni Hancox receiving the JP Karuaihe Social Responsibility Award from a JP Karuaihe Fund Trustee, Ms Vicky Erenstein-Ya-Toivo**



Above right: **Award recipients with members of the Law Society of Namibia and Trustees of the JP Karuaihe Fund**

Giving back to the community – our social responsibility

In 2014 we continued providing assistance to childcare facilities in need, and took pleasure in providing fruits, cleaning materials, petrol vouchers and rent assistance to the Onyose Trust Orphanage and the Opanganda Daycare Centre, both of which assist children with disabilities.



Yolande Engelbrecht of the LAC (far right) handing over our donation to the children at the Onyose orphanage



Donors to the LAC in 2014

**We extend deepest thanks to our donors
for supporting our work in 2014.**

Africa Groups of Sweden (AGS)

Australian High Commission

Biking for Children

British High Commission

Brot für die Welt

City of Windhoek

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) –
European Development Fund

Embassy of Finland

European Union

Gesellschaft für Organisation, Planning und Ausbildung (GOPA)

International Labour Organisation (ILO)

Konrad Adenauer Stiftung (KAS) Parliamentary Support Project

Open Society Initiative for Southern Africa (OSISA)

Pupkewitz Holdings (Pty) Ltd

Society of Family Health (SFH)

South African Litigation Centre

Thorsten Schutte Film Production

United Nations Children's Fund (UNICEF)

United Nations Development Programme (UNDP)

United Nations Voluntary Fund for Victims of Torture

United States Embassy



Conclusion

As always for the LAC, 2014 was a year of action, but the scope of our work was affected by constraints and challenges.

We are constrained chiefly by the need to make strategic choices, given the ever-increasing challenge of accessing sufficient resources to operate. Constant monitoring of the human rights situation in Namibia is imperative, particularly when the country faces the inception of a new government in 2015, but funding to do this is increasingly limited. In 2014 we saw rushed amendments made to the Constitution, despite strong protest from civil society about the lack of consultation on the proposed amendments. This illustrates the point that ensuring respect for human rights and the rule of law is not a short-term commitment. Uncertainty in the current donor environment and the relatively short periods of commitment of donor funding make it very difficult to plan long-term projects with security. These funding-related factors also pose a challenge for retaining professional staff, and in this regard benefits have to be on a level comparable with the marketplace.



Toni Hancox hands over the keys of the LAC Ongwediva office to the Evangelical Lutheran Church in Namibia (ELCIN) – details below.

Another concern is Namibia's vastness: constant thought must be given to ensuring that people all over the country can benefit from the LAC's work. Sadly, in 2014 we were forced to close our Ongwediva office (the last of our regional offices), due to insufficient resources. We are now attempting to alleviate the resulting isolation by increasing our use of the media and other forms of modern technology, but many of our marginalised communities may not be able to access assistance at these levels.

Despite these challenges, in 2014 the LAC was able to deliver services of consistently high quality, and we continued building on our favourable reputation with our stakeholders.

In 2014 the LAC continued to fulfil its mandate to make the law accessible to those who have the least access, and we reaped success in all of our wide-ranging areas of intervention – from upholding the democratic right to vote, through strengthening legislation to prevent rhino poaching, to continuing the fight to address gender-based violence. The LAC is the only organisation of its kind in Namibia and our work is of vital importance.

We look forward to continuing our work in 2015. The year will bring a new government and the accompanying political changes, which we hope will result in positive change for Namibia. We will continue being vigilant in our mission to create and maintain a culture of human rights, whatever challenges may come – including that of funding.



Getting in Touch

with the LAC

A large volume of information on the LAC's activities (projects, cases, publications, etc), donors and finances, as well as digital versions (PDFs) of most LAC publications, are available on the LAC website: **www.lac.org.na**. (Hard copies of many publications are available at our office: 4 Marien Ngouabi Street, Windhoek.)

We also have a very active Facebook page: **www.facebook.com/pages/Lac-Namibia/**

Website link for general contact details: **www.lac.org.na/about/contact.html**

Website link for financial details: **www.lac.org.na/finances.html**

Website link for publications: **www.lac.org.na/pub/publications.php**

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