



# **LEGAL ASSISTANCE CENTRE**



## **Annual Report 2015**

*Fighting for human rights in Namibia since 1988*



# Introduction to the LAC

## Vision

*Namibia is a human-rights-based democracy founded on equality, justice and dignity.*

## 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.*

## Main Activities

The Legal Assistance Centre (LAC) carries out its mission through three main activities, namely:

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

through four major units:

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.

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# Director's Foreword

In 2015, Namibia turned 25! This milestone year in the country's life heralds a quarter of a century of democratic rule underpinned by a progressive Constitution. Our Government has taken many positive steps, and we take note of these. However, we cannot ignore the fact that so many people in our country do not have much to celebrate at this time, because they are living in poverty. In the words of Mary Robinson, then UN Commissioner for Human Rights, poverty is "the greatest denial of the exercise of human rights". And poverty, like everything else, does not exist in isolation; it is a result of a lack of education, a lack of economic empowerment, and an inability to assert one's rights to the basics – shelter, food, healthcare and education – which every person needs to live a life of dignity. We all need to feel counted, and a life of poverty negates this need.

In 2015 the LAC continued to support empowerment of the powerless, by means of educating people as to their rights and how to access them; research and subsequent support to policy makers; advocacy with stakeholders; and advising and representing people who had/have a rights-based claim. At all times it is remembered that no area of our work can be done in a separate compartment or in isolation, hence our different units work together, creating a synergy of human rights interventions which hopefully will have a bigger impact, and all units also work with government and other partners to maximise the changes that our work can make.

Also in 2015, the LAC took time to consider its impact and to plan for the years ahead. Ideally, the LAC should become an obsolete organisation, no longer needed, but this does not seem likely in the near future. It appears that the services of this sole public interest human rights law firm in Namibia will still be required in the foreseeable future. Our new strategic plan addresses four focal issues: inequality; socio-economic rights; the rule of law / access to justice; and emerging rights issues. We believe that addressing these areas will enhance our potential to improve the livelihood conditions of many.

In a change from the past, this annual report highlights only a few of the LAC's activities in 2015, rather than being exhaustive. Readers are welcome to contact us directly for more detailed information on the work of a specific unit. We also welcome input from stakeholders as to what we can do better. I hope that you will appreciate this synopsis of our work, and that you will join us in our quest to ensure that "Namibia is a human-rights-based democracy founded on equality, justice and dignity."



One focus in 2015: Distributing LAC materials at various events. Right: The LAC won the prize for the best stall at the NGO Expo.



# Gender Research and Advocacy Project (GR&AP)

## The passage of the Child Care and Protection Act

One major milestone for Namibia in 2015 was the passage of the Child Care and Protection Act. For over 20 years, GR&AP has worked on this law – most recently assisting the Ministry of Gender Equality and Child Welfare with public consultations, research and drafting – and engaging in advocacy with key stakeholders including Members of Parliament, to explain and promote the Bill. The culmination of this long process came in May 2015 when the Bill was passed by Parliament and gazetted. During 2015, we continued to work with the Ministry to finalise the regulations and forms which must be in place before the Act can be brought into force. We have also begun to prepare various educational materials which will be released as soon as the Act is operational.

### Why is the Child Care and Protection Act important?

1. Child protection to date has been governed by an outdated law inherited from South Africa which is unsuitable to meet current challenges in Namibia.
2. The new Act brings Namibian law in line with the nation's international commitments under the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.
3. The Act is the first Namibian law to make the best interests of the child the key consideration in matters concerning the child, and the first to recognise the importance of child participation.
4. The Act provides for new structures to monitor child protection – such as a National Advisory Council composed of experts from different sectors, and a Children's Advocate within the Office of the Ombudsman.
5. The Act provides mechanisms for the care and protection of children which are appropriate to the reality of families in Namibia – such as acknowledging kinship care (where extended family members care for children) and the existence of child-headed households.
6. The Act covers many topics that are neglected by the current law, such as –
  - social grants for children;
  - vulnerable witness provisions for children's court proceedings to make them less traumatic for children;
  - mechanisms for leaving an unwanted baby in a safe place as a means to combat baby-dumping;
  - assistance to victims of child trafficking;
  - safeguards to regulate intercountry adoption; and
  - new criminal offences with strong penalties to address problems such as the sale of alcohol to children, child trafficking and the exploitation of children.



Attaining a key goal: informing children



Using all opportunities to inform people



Working with law courts to tackle GBV

## Annotated statutes and regulations

The rule of law is crucial to democracy, but this is a nonsensical concept unless the public is able to know with certainty what the law says. Because of Namibia's complex history, its legislative landscape is a complicated mix of laws inherited from South Africa and "South West Africa" sitting alongside Namibian laws enacted since independence. Pre-independence laws remain in force until repealed or declared unconstitutional, but their terms are buried in various government documents which are not easily accessible. To assist the public to know what laws are in force, GR&AP has for many years regularly updated a document called *Namlex*, which lists all laws and their amendments by topic and explains how various South African statutes became applicable to Namibia. *Namlex* is available to the public on the LAC website.

For the past two and a half years, GR&AP has been taking this information to the next level. We have been engaged by Namibia's Parliamentary Support Programme (with funding from the European Union, via the Konrad Adenauer Stiftung) to prepare the first comprehensive annotated versions of all the legislation in force. The goal is to make the laws available free of charge to the public via the Internet. Each annotated statute will be linked to scans of the official gazetted versions of all the original laws and their amending acts, so that the public can view the authoritative sources of the law as well as the convenient annotated version which meshes the original law and all its amendments into a single document. We next supplemented the statutes with annotated versions of their accompanying post-independence regulations, and guided the work of another contracting party to do the same for the pre-independence regulations – these initiatives again being carried out on contract to the Parliamentary Support Programme. The final result is an accurate and accessible database of all the laws of Namibia.

## Gender-based violence (GBV)

Despite government and public concern, GBV is not yet abating in Namibia. In 2015 our ongoing interventions in this area included:

- two comics and an animation on the linkages between domestic violence and HIV;
- a training guide for clerks of court to facilitate implementation of the law on domestic violence;
- outreach and advocacy on the linkages between GBV and the use of corporal punishment on children;
- "roadshow" visits to magistrates' courts for discussions on GBV-related challenges and ways to improve court responses; and
- advocacy on various GBV issues, through radio interviews, newspaper articles and inputs to key policy-makers on strategies.

## Other activities

Every year GR&AP produces and distributes publications, assists clients and provides information to the public through print and broadcast media. In 2015 we –

- distributed over 56 000 copies of new publications;
- assisted more than 260 clients; and
- provided information on radio 23 times, on television 27 times and in print 8 times.



# Human Rights and Constitutional Unit

## (Huricon)

### Summary of Activities in 2015

Huricon took up and settled at least 30 human rights cases in 2015. These included cases of medical negligence, police assault, illegal property transfers in which minor children were involved, and inheritance disputes involving violations of woman and children's rights. In addition, we provided legal advice to the daily intake of clients on a wide range of matters, such as refugee status, citizenship, domicile, motor vehicle accidents, divorces, children's rights, contract law and labour law. A major milestone for Huricon in 2015 was the settlement of the last of the 146 civil claims stemming from the Caprivi High Treason trial ongoing since 1999. However, we still face a big task in finalising our other long-ongoing case, involving forced sterilisation. In 2015, Huricon initiated two new test cases: we are challenging the constitutionality of the Research, Science and Technology Act 23 of 2004 (see next page); and, in view of recent vaccination-related deaths of minors, we are questioning the protocol in place (or not in place) for state-administered vaccinations.

Advocacy, outreach and training activities in 2015 included, among others:

- grassroots outreach in informal settlements around Windhoek where serious human rights violations were too obvious to ignore;
- the compilation of a manual on the right of access to water and sanitation in a dry country such as Namibia;
- training of 150 police officers on the role of the defence lawyer and human rights in criminal proceedings;
- a presentation to the new women parliamentarians on the rule of law, particularly in relation to the separation of powers and how laws are made in Namibia;
- participation in the "Red My Lips" campaign in April and May to help highlight the issue of sexual harassment;
- an interview at the request of the German National Radio station on the cases of forced sterilisation; and
- an interview at the request of a journalist from Finland on the human rights issues that the LAC addresses and Namibia's human rights response to HIV/AIDS.



Children using the rubbish dump as a toilet because the toilet facilities provided by the municipality are locked and unavailable for the public.



Apart from the strain of having to collect water from a public tap, water is wasted through leaking taps and the long walk home with inadequate containers.

## **Access to water intervention**

The LAC's Access to Water intervention continues, with various activities undertaken in 2015, led by Huricon. The purpose of these activities is to obtain information at ground level about the status of this right, while at the same time imparting information and assistance.

The topic of "Access to Water" was discussed twice (February and March) on the NBC National Radio station. In addition, Huricon undertook three field visits to the informal settlements around Windhoek to gather information from the residents on the challenges they face in accessing water. At the same time, information was given to them outlining their rights.

In October, the Water Division of the Southern African Development Community (SADC), under the auspices of the SADC Infrastructure and Services Directorate, held a SADC Water Week under the theme "From Vision to Action", which Huricon attended. The purposes of the Water Week were to support and interact with the SADC member states on the management of water resources and to look at drawing up the Regional Strategic Action Plan IV.

## **Research, Science and Technology Act application**

Following extended consultations in 2014, the LAC, together with the Free Press of Namibia and the Institute for Public Policy Research, launched an application against the President of the Republic of Namibia and 3 Others, requesting the striking down of the Research, Science and Technology Act of 2004. It is contended that this Act is unconstitutional in that it limits research due to the onerous requirements to obtain a research permit, and its definitions of "research" and "research institute" are too broad. All parties opposed the application. The Respondents filed answering papers, whereafter the Applicants filed a reply. This matter will be heard in 2016. In addition to the main application, an application for a protective costs order was filed. This comes from the new rules of court and can be utilised in cases where there are constitutional questions asked which have not been addressed before. The idea is to protect applicants from massive costs orders against them should they not be successful in their main application. Indications are that the application for a protective costs order will be granted.

## **A milestone change for Huricon**

The end of 2015 saw the end of Huricon as a separate LAC unit: Huricon and the AIDS Law Unit have been merged to form the Social Justice Project, whose core focus will be socio-economic rights of all kinds, and challenging violations of such rights, in the interest of maintaining the human rights culture of our justice system. There is no denying the importance of this litigating engine of the LAC. Huricon has changed a great many lives, by empowering people whose voices would otherwise have gone unheard, and by affording justice to victims of human rights violations who could not otherwise access the formal justice system. Having achieved great results, the Huricon team will now, with even greater enthusiasm, carry the rule of law forward through the Social Justice Project. We predict that this new LAC project will make the organisation's litigation work more visible to the public and all stakeholders addressing emerging violations of human rights, thereby fuelling the attainment of the LAC's vision and mission.



# **Land, Environment and Development Unit**

## **(LEAD)**

### **Illegal fencing, illegal grazing and mining activities in conservancies**

LEAD is representing the Nǃa Jaqna Conservancy in Otjozondjupa Region in a case of illegal fencing. The case was submitted to court in 2014 and judgement is awaited. It is anticipated that the court will order the removal of the fences. This case may serve as a precedent for other communities facing similar challenges. Illegal fencing prevents communities from accessing areas required for their livelihood, and the problem is exacerbated by the ongoing drought in Namibia.

LEAD also remains actively involved in finding a solution to an illegal grazing matter in the Nyae Nyae Conservancy. In this regard, LEAD has worked closely with the Namibian Police to bring criminal charges against illegal cattle grazers in terms of the Forest Act 12 of 2001. Meanwhile, LEAD has succeeded in interdicting illegal cattle grazers in the Sorris Sorris Conservancy in Kunene Region.

A matter brought to LEAD in 2015 involves a new EPL (Exclusive Prospecting Licence) allocated to B2Gold in the Nǃa Jaqna and Nyae Nyae Conservancies. It was the EPL holder, namely B2Gold, that brought the case to LEAD, which indicates that this particular EPL holder is aware of the importance of engaging with local communities in prospecting activities. This awareness is due mainly to LEAD's role in negotiating with B2Gold on behalf of the Nǃa Jaqna Conservancy over the last few years.

### **Anti-poaching campaign**

LEAD remains strongly involved in the campaign against poaching of rhinos and elephants in Namibia. Poaching of these endangered species is still on the increase in Africa, and Namibia is clearly not protected from this onslaught. By the end of 2015, Namibia had lost 80 black rhinos and approximately 260 elephants due to poaching. LEAD believes that the threat posed calls for reconsideration of the framework affording protection to these animals, including the legislative framework. In this regard, LEAD is pursuing the following activities and objectives:

- a) Promoting and supporting the inter-agency Wildlife Crime Task Force, with the main aim of helping to improve the coordination of investigations and prosecutions.
- b) Reviewing wildlife legislation, with the aim of making it more effective.
- c) Raising community awareness of the negative impact of wildlife crime on Namibia, by means of raising awareness in the schools in the affected areas.



Raising community awareness of the negative impacts of wildlife crime by raising awareness in schools in the affected areas.

## White Paper on Indigenous Rights in Namibia

LEAD played a key role in the development of a White Paper on Indigenous Peoples' Rights in Namibia – based mainly on the recommendations put forward in LEAD's report on its extensive study of the San completed in 2014.<sup>1</sup> The Ombudsman handed over the White Paper to the Office of the Prime Minister (OPM) for consideration. The Deputy Director of the OPM's Division of Marginalised Communities has promised to put the paper forward for further consultation.

### Class action application

After working on this class action application for nearly five years, LEAD finalised and submitted the application to the High Court in August 2015. In short, the applicants are requesting the Court to allow them to litigate on behalf of all Hai||om San communities. This is a very technical legal process, but the important aspect of such application is to show the High Court that there is enough reason to support an ancestral land claim on behalf of a specific group, such as the Hai||om. Should the application meet with success, it would contribute to the development of Namibia's jurisprudence by allowing a defined class to bring actions to court.



Another LEAD activity in 2015: Consultations with service providers and communities in informal settlements regarding challenges faced in such communities. Pictured above (from left): a discussion with leaders of the DRC settlement in Swakopmund; and a visit to the Kanaan settlement in Gobabis, where one challenge is the unclean water source used for bathing and consumption.

<sup>1</sup> The report, entitled *Scraping the Pot: San in Namibia Two Decades After Independence*, is available on the LAC website: [www.lac.org.na/projects/lead/Pdf/scraping.pdf](http://www.lac.org.na/projects/lead/Pdf/scraping.pdf).



# AIDS Law Unit

## (ALU)

### Training for key populations

ALU's primary role is to support a rights-based response to HIV/AIDS, which involves, among other things, counteracting discrimination that people living with HIV/AIDS and other key populations face when attempting to access services. ALU does this through training and advocacy. The aims of the training interventions are:

- to provide a platform for participants to internalise and understand their basic human rights as well as the links between human rights, HIV/AIDS and the law;
- to increase the participants' knowledge of how to access public health services without prejudice or stigma arising from their sexual orientation or social status; and
- to impart knowledge on international and regional legal frameworks and how these can be utilised for securing rights.

#### Summary of training interventions in 2015

Region	Target Group	Number of Participants
Zambezi and Ohangwena	Sex Workers	59
Ohangwena	PLWHA	32
Khomas	PLWHA	30
Khomas	Sex Workers	25
Erongo	LGBTI Community	30
Omusati and Oshana	PLWHA	53

Abbreviations: PLWHA – Persons Living with HIV or AIDS; LGBTI – Lesbian Gay Bisexual Transgender and Intersex

#### Samples of feedback from ALU trainees in 2015

- “I learnt a lot about human rights, law and the Constitution of Namibia.”
- “I learnt about not to discriminate and stigmatise PLWHIV and disability people.”
- “I gained more experience on how to live positive / take care of myself.”
- “Now I know where to go when my rights are violated.”
- “I will start to build self-esteem and have self-confidence.”
- “No comment – everything was perfect.”



## Training of trainers from other organisations

ALU maximises potential impact and sustainability by additionally targeting trainers who will then take the message further. In 2015, two such interventions took place:

- In September in Otjiwarongo, Otjozondjupa Region, a total of 18 project officers and coordinators were trained in a joint venture with the Society for Family Health.
- In November in Windhoek, Khomas Region, ALU facilitated paralegal training for six community facilitators of the Rights not Rescue Trust.

## Public outreach for HIV/AIDS awareness

In a public outreach exercise, ALU addressed an Awareness Day at the Okuryangava Community Hall in Windhoek, organised by the King's Daughters Organisation. ALU provided basic information about human rights and the law applying to PLWHA and sex workers. The presentation was followed by a Q&A session and a lively discussion.

## Consultation for legislative review

In November 2015, ALU attended a consultative workshop organised by the United Nations Development Programme (UNDP), the Aids Rights Alliance for Southern Africa and the LAC, focusing on the legal environment pertaining to HIV and AIDS in Namibia. The purpose of this workshop was to highlight the gaps in the legal environment and to make recommendations as to how to address these. Given ALU's extensive experience in the field, the unit's input proved invaluable to the process. A comprehensive report has since been finalised and provided to the UNDP.



# Outreach in 2015

## Celebrating 25 years of independence, a new President and a new Parliament

The LAC celebrated Namibia's 25 years of independence, a new President and a new Parliament through the following activities:

- **Competition on Facebook:** We invited people to post photos of LAC publications in use. The prize was copies of our publication *Advocacy in Action* and two camping chairs donated by Cymot.

### Feedback from the public

"Well done for the great competition idea! Here's hoping you get loads of great pics."  
"Brilliant idea ... Typically LAC. Thanks for sharing. I am working in Sierra Leone at the moment. I love your ideas and try to apply them – but don't actually use the LAC materials out-of-country."

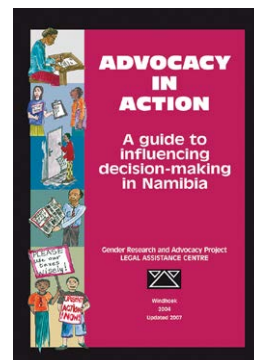
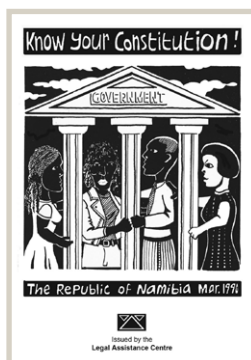
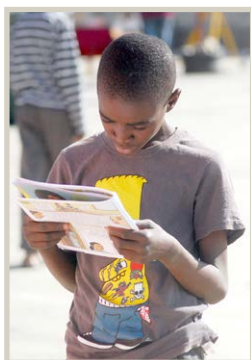
### Comment from the winner

"Oh Wow! Really that is such a surprise to win a prize. I am that person who NEVER wins anything despite buying a whole book of raffle tickets etc.!"

- **Updating our 1990 publication, *Know Your Constitution***, and printing 200 copies for giving to the public and all new members of Parliament.
- **Handing out copies of the Constitution itself to the public on Independence Avenue.**
- **Giving copies of *Advocacy in Action* to all members of the new Parliament.**

### *Know Your Constitution* – feedback from donor

"It is a very good summary of the important points of the Constitution and is updated with the latest amendments."



... and in the office, staff wore their cultural clothes.



The LAC won the JP Karuaihe Trust Human Rights Excellence Award for its outreach during Namibia's celebration of 25 years of Independence.

## Other outreach activities

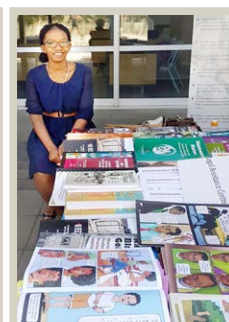
- March: We participated in the march against xenophobia.
- April: The Director attended the Commonwealth Lawyers Conference in Scotland, UK, as the Namibian representative on the Council of the Commonwealth Lawyers Association. She delivered a presentation on "Making Human Rights Equal – the Namibian context." She was accompanied by a Council member of the Law Society of Namibia.
- May: The Director met with Adv. Thuli Madonsela, South Africa's Public Protector.
- July: The LAC participated in the 2015 NGO Expo, and won the prize for the best stall – a repeat of the 2013 result.
- July: The LAC was represented at a conference on corporate social investment where LAC materials were provided for display. This is part of the increased focus on considering alternative forms of support and sustainability for the LAC programmes.
- November: The LAC took part in a bookfair at the Polytechnic of Namibia. Materials that were not distributed were given to the Polytechnic Library.
- December: For Human Rights Day we released an animated message. This is the first time that the LAC has prepared such a message, and consideration is being given to making this an annual event, albeit not always in the form of an animated message.



RSA Public Protector, Adv. Tuli Madonsela (centre), with LAC Director Toni Hancox (left) and Natasha Tibinyane from Misa Namibia.



Against xenophobia



Materials at Bookfair



Reaching children



Human Rights Day animated message

## Moving forward ...

In the latter part of 2015, the LAC underwent a strategic planning process. A new vision was agreed upon – *NAMIBIA IS A HUMAN-RIGHTS-BASED DEMOCRACY FOUNDED ON EQUALITY, JUSTICE AND DIGNITY* – and it was proposed that Huricon and ALU be merged into one Social Justice Project, due to their joint interests in health rights. This merge was implemented in January 2016 (see page 9). All workplace policies and processes were reviewed for approval in 2016. The planning session allowed for reflection on the successes and challenges of the past, and for an in-depth discussion on what the LAC's future focus should be so as to maximise the organisation's impact.



# Donors to the LAC in 2015

**We extend deepest thanks to our donors for supporting our work in 2015.**

Africa Groups of Sweden (AGS)

Brot für die Welt

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)

European Development Fund

Embassy of Finland

European Union

International Work Group for Indigenous Affairs (IWGIA)

Konrad Adenauer Stiftung (KAS) Parliamentary Support Project

Namibia Law Report

Open Society Initiative for Southern Africa (OSISA)

Society of Family Health (SFH)

United Nations Children's Fund (UNICEF)

United Nations Development Programme (UNDP)

United Nations Voluntary Fund for Victims of Torture

United States Embassy

World Wildlife Fund



# 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](http://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/](https://www.facebook.com/pages/Lac-Namibia/)**

Website link for general contact details: **[www.lac.org.na/about/contact.html](http://www.lac.org.na/about/contact.html)**

Website link for financial details: **[www.lac.org.na/finances.html](http://www.lac.org.na/finances.html)**

Website link for publications: **[www.lac.org.na/pub/publications.php](http://www.lac.org.na/pub/publications.php)**

The LAC Director and Coordinators of the LAC units can be contacted by telephone (061-223356) or at the following email or web addresses:

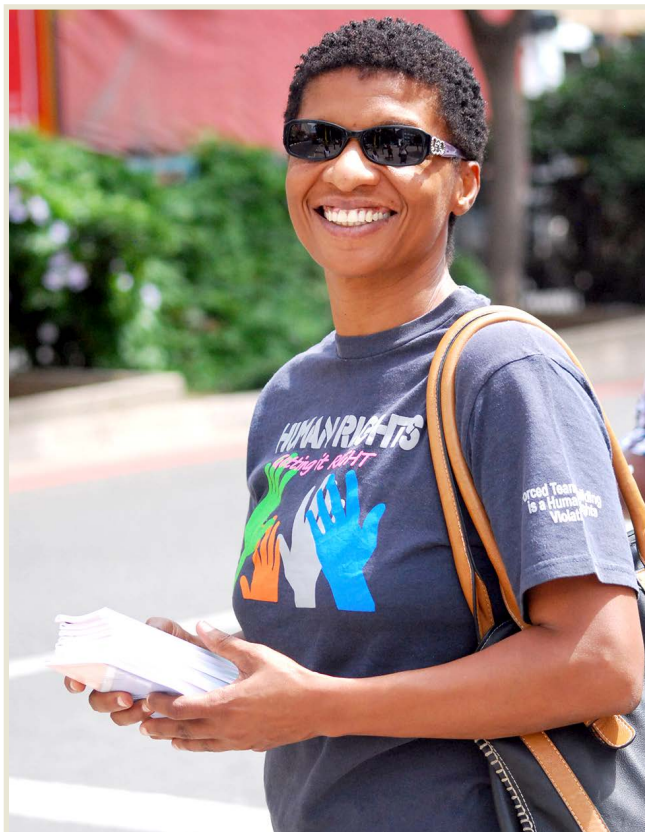
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- **Social Justice Coordinator: Corinna van Wyk**  
Email: [cvanwyk@lac.org.na](mailto:cvanwyk@lac.org.na)  
(Huricon and ALU have been merged to form the Social Justice Project. The following Huricon and ALU web pages will remain in place until the LAC website is updated in 2016.)  
URL: [www.lac.org.na/projects/huricon/huriconobjective.html](http://www.lac.org.na/projects/huricon/huriconobjective.html)  
URL: [www.lac.org.na/projects/alu/aluobjective.html](http://www.lac.org.na/projects/alu/aluobjective.html)
- **LEAD Coordinator: Willem Odendaal**  
Email: [wodendaal@lac.org.na](mailto:wodendaal@lac.org.na)  
URL: [www.lac.org.na/projects/lead/leadobjective.html](http://www.lac.org.na/projects/lead/leadobjective.html)



Citizens happy to have a personal copy of the Constitution



GR&AP staff reviewing their comics on display at an event



Distributing copies of the Constitution in Independence Ave



Staff members with the certificate and wood carving received as part of the JP Karuaihe Trust Human Rights Excellence Award for the LAC's outreach during Namibia's celebration of 25 years of Independence