

# Human Rights

*For all* 1988-2008



**Celebrating 20 years of  
the Legal Assistance Centre**

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Acknowledgements: This publication is due to the generous  
funding of Africa Groups of Sweden.



Legal Assistance Centre, 2008.



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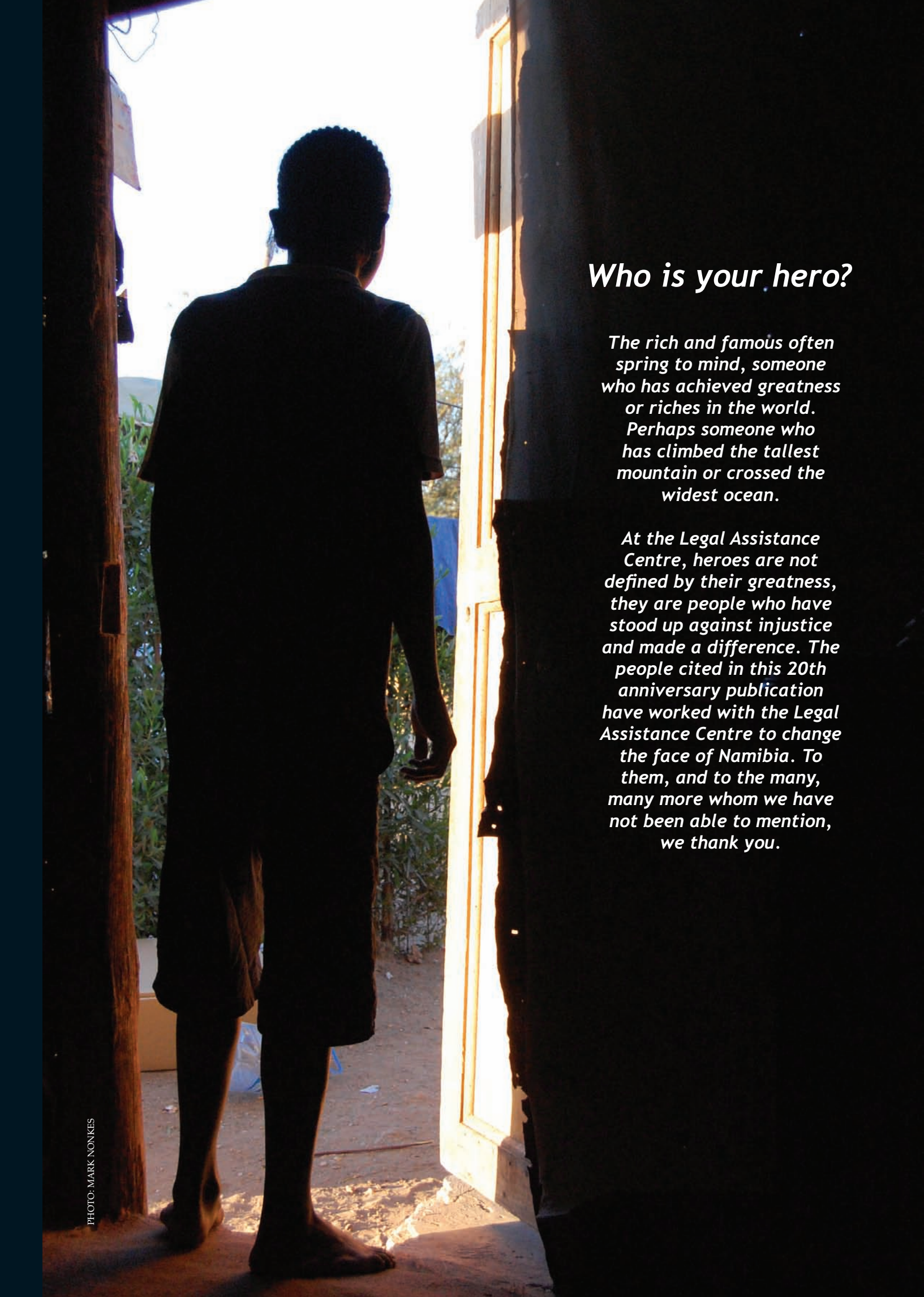
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the LAC website

Printed and bound by Solitaire Press in Windhoek.

First printed October 2008





## Who is your hero?

*The rich and famous often spring to mind, someone who has achieved greatness or riches in the world. Perhaps someone who has climbed the tallest mountain or crossed the widest ocean.*

*At the Legal Assistance Centre, heroes are not defined by their greatness, they are people who have stood up against injustice and made a difference. The people cited in this 20th anniversary publication have worked with the Legal Assistance Centre to change the face of Namibia. To them, and to the many, many more whom we have not been able to mention, we thank you.*



# Putting a face on human rights

People who stand up for their human rights are examples of the freedom guaranteed to all Namibians upon the country's Independence

## 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.*

In Legal Assistance Centre (LAC) workshops, participants' initial reaction to the concept of human rights is one of confusion.

Despite the LAC's 20-year commitment to creating and maintaining a human rights culture in Namibia, the non-profit organisation continues to encounter people who are unaware of the basic rights and freedoms to which all humans are entitled. Yet, as people learn more about the rights that protect them, their initial reaction is quickly transformed into one of empowerment.

In this publication, you will meet a cross-section of everyday Namibians who, with the help of the LAC, stood steadfast for their human rights and helped effect change in Namibian society. For some, their stance has led to law reform or court judgements enforcing their rights. For

others, standing up for their human rights raised the profile of important national issues – such as land rights.

As the LAC celebrates 20 years, it acknowledges these brave Namibians who stood up against adversity and injustice.

Since its beginning, the LAC has been the leader in the fight for human rights in Namibia. From standing up against the gross violation of human rights under the apartheid regime, the LAC of today has transformed into an organisation that fights for human rights in a multi-faceted approach that is pro-active instead of reactive.

As a public interest law centre, the LAC strives to take on cases that will make a difference for a great number of people – often changing the legal landscape or making significant progress towards improving human rights. Some of the people you will meet in this publication, such as Lotta Frans on page 12, are good examples of this type of impact litigation.

***“Human rights are the basic rights and freedoms to which all humans are entitled.”***

The LAC also works directly with the Government to improve Namibian laws to better incorporate human rights. For example, LAC research is used in drafting new laws, and LAC input is sought in reforming laws. One example of how the LAC helped influence Namibia's laws on domestic violence can be read on page 5.

The LAC also believes that a population educated and knowledgeable about their human rights will lead to a reduction in the abuses that are routinely carried out. In workshops across the country, the LAC is helping improve communities and transforming lives. On page 4, you can read how a LAC workshop helped improve hospital services for people living with HIV and AIDS.

The LAC's success is due, largely, to the generous donors who continue to believe in the non-profit organisation's work. The LAC looks forward to a continued partnership as it fights to create and maintain a human rights culture in Namibia.

The people who attend LAC workshops, who participate in LAC research and who are represented in court by LAC lawyers continue to inspire the staff at LAC. They are our everyday heroes.



Throughout its history the LAC has led several marches and protests to raise awareness and lobby Government about various human rights issues.



# Fighting for your rights

The Legal Assistance Centre has been dedicated to creating a human rights culture in Namibia since 1988

By mid 1988, Namibia was firmly under the iron fist of South African apartheid rule, and the long and bitter armed struggle for the country's liberation was raging. Especially in northern Namibia, torture and assault, intimidation, arbitrary arrests and detentions without trial, and the destruction of property, livelihoods and lives, were daily realities. Human rights abuses were routine and went unpunished. The rule of law was non-existent.

This horrific situation inspired the establishment of Namibia's only public interest human rights law firm—the Legal Assistance Centre (LAC). After months of discussions with workers, students, and church leaders, as well as numerous fundraising efforts, a Windhoek lawyer, Dave Smuts, founding Director and now Chairperson of the LAC, opened the doors of the LAC in Ongwediva on 9 July, 1988.

The LAC's lawyers and paralegals were suddenly flooded with cases involving human rights abuses. Hundreds of summons were issued against the South African Government in the first few days of the Centre opening. The LAC's lawyers, acting for families of the tortured and detained, began to make inquiries at police stations and detention centres around the country. For the first time in the brutal history in Namibia, the South African Government had to account for its atrocities in its own courts.

As people became aware of the LAC, the demand for its services grew, and soon after the first two offices in Windhoek and Ongwediva opened, the LAC established its presence in Tsumeb, Walvis Bay, Rundu, Gobabis, Mariental, Katutura, and Opuwo. Despite death threats and the apartheid Government's attempt to close the LAC, the lawyers and staff soldiered on—rapidly transforming a legal landscape that had previously been unchallenged. Those who had in the past suffered in silence began to have a voice. The legal system was now being used as an instrument of justice as opposed to a tool of oppression. A culture of human rights was taking a tangible form.

As Independence drew near, the liberation fighters returned on 1 April 1989. But the brutality of the South African Security Forces continued unabated. In a matter of days, the Security Forces killed several hundred liberation fighters. LAC lawyers conducted a thorough investigation of these extra-judicial killings and reported them to the United Nations (UN). The UN intervened, and nine days later, the killing stopped.

The LAC also played an important role in



Windhoek Lawyer Dave Smuts (fourth from left, founding Director and now Chairperson of the LAC) opened the LAC in Ongwediva on 9 July, 1988.

the release of political prisoners in the days leading up to Namibia's first free elections. An overwhelming majority of Namibians had never voted before. The LAC provided voter education services and monitored the election campaign and the election process itself.

**Following years of struggle,** the day of 21 March 1990 came as one of pure joy. It was then that Namibia hoisted its flag over a free, independent, and democratic nation—with a bill of rights paralleled by few in the world.

The LAC took up the challenge to give substance to the rights and responsibilities newly acquired through Independence and promptly published a simplified version of the Bill of Rights and translated it into several Namibian languages. The Centre also published a guide to the Labour Act of 1992—one of the most important pieces of legislation in independent Namibia—and trained union officials to deal with labour disputes in the context of the new law. The LAC's staff also provided valuable input to many new laws debated by Parliament, such as the Married Persons Equality Act, the Social Security Act, the Land Reform Acts, the Maintenance Act, the Combating of Domestic Violence Act, the Combating of Rape Act and the Children's Status Act.

Over the following years, the scope of the LAC's work widened to incorporate education, research, law reform, affirmative action, gender law,

children's rights, conservation, and land and environmental issues. Through its work, the LAC continues to play a crucial role in the building of a constitutional democracy.

Aware of its duty to work towards the protection of the most vulnerable in society, the LAC provided its services in the health sector in the context of the HIV and AIDS pandemic. In a landmark case, the LAC's lawyers successfully challenged the Namibian Defense Force's (NDF) recruitment policy, and consequently, HIV-positive people may no longer be excluded from the NDF. The LAC's work in the area of HIV/AIDS offers a human rights approach to the pandemic that is highly valued and deeply needed.

As a testament to the LAC's work, in 1990, Dave Smuts received an award from the international human rights organisation, Human Rights Watch, in recognition of his work at the LAC. In 1997, Andrew Corbett, the Director at the time of the LAC, accepted the prestigious UNICEF Maurice Pate Human Rights Award on behalf of the Centre. In 2004, current Director Norman Tjombe received the Freedom of Expression Special Award from the Media Institute of Southern Africa.

**Today, the LAC** continues to expand its work, with emphasis being placed on the socio-economic rights of Namibians. As it celebrates two decades of existence, the LAC has stood up to the challenges posed by a new constitutional democracy and will continue to do so. The LAC is truly an institution of human rights on duty.

***“For the first time in its brutal history in Namibia, the South African Government had to account for its atrocities in its own courts.”***

# Injecting human rights into health care

Through AIDS Law Unit training, people living with HIV/AIDS are speaking out for their rights and building a better health care system in their community

Rundu is a place where secrets can be hard to keep. In this picturesque community lying on the Kavango River in northern Namibia, nearly everyone knows everyone.

For people living with HIV, news about their status travelled fast. People living with HIV felt like they were a public spectacle when they went to get treatment at the local hospital. For a long time, the room dedicated to treating HIV patients was described as

a very open, public setting.

After they came from the hospital, people were shunned in the streets, called names and gossiped about. In their homes, they were isolated.

"People with HIV were afraid to go and get their

medication because everyone could see who was HIV positive at the hospital," says Leticia Hausiku, an HIV activist in Rundu.

For people infected and affected by HIV, stigma and discrimination can lead to a gross violation of human rights.

"What makes people with HIV feel shame is the way the community understands the message. They think the only people to get HIV are those who sleep around. And when you're positive they think you are just a dirty

person, something that is rotten and that needs to be thrown away," explains 25-year-old Hausiku.

In Namibia, hundreds of thousands of people live with HIV and AIDS. Namibia is ranked with one of the highest HIV prevalence rates in the world, and HIV attacks young people in their prime. With one in every four people aged 25 to 29 living with HIV and AIDS, Namibia's young people have been a driving force in changing attitudes, Government policies and cultural beliefs to adapt to the new reality of HIV.

**To empower and enable people living with HIV and AIDS,** the Legal

Assistance Centre's (LAC) AIDS Law Unit, has worked hand in hand with support groups such as Tusano throughout the country. Through human rights training, once-marginalised people are taking back their

***"I'm free to move around, I'm free to speak out, I'm free to tell anybody what is the right thing for me regardless of my status."***

**Leticia Hausiku**

voices as they learn how the Namibian Constitution applies to their lives and how specific laws and policies guarantee their rights to equality, confidentiality and freedom of expression.

"This gave me a very big understanding that I'm free to move around, I'm free to speak out, I'm free to tell anybody what is the right thing for me regardless of my status", says Hausiku.

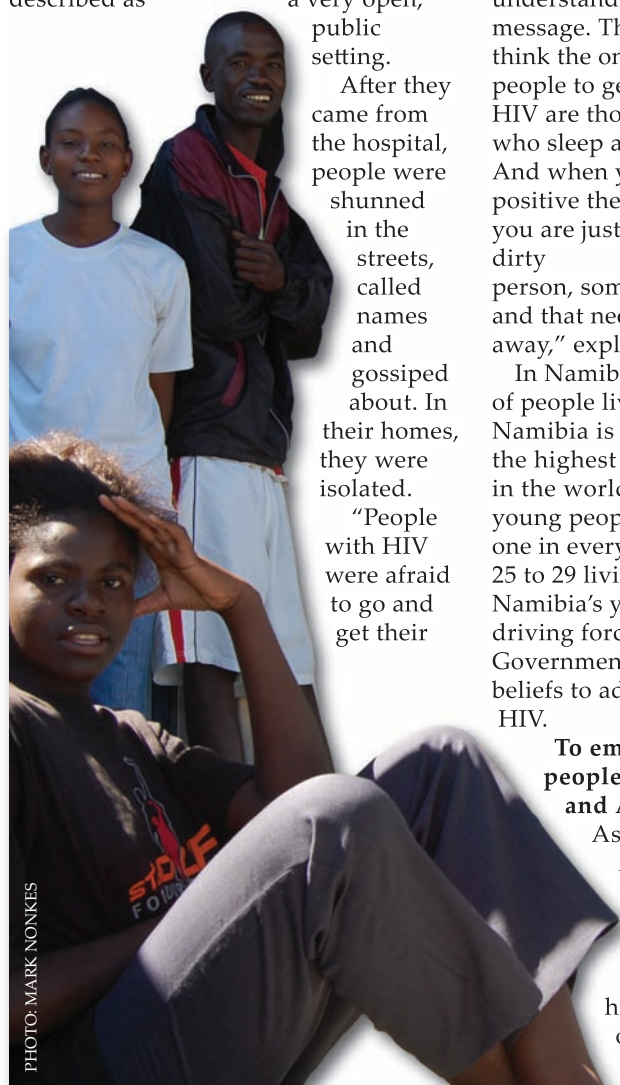
The AIDS Law Unit is committed to ensuring people living with HIV and AIDS secure equal rights and live a life free of stigma and discrimination within society, families, communities, workplaces and in accessing Government services.

"In our training to support groups, we encourage people living with HIV and AIDS to stand up for their rights and to speak out when they are not treated as equal citizens of Namibia," said Amon Ngavetene, Coordinator of the AIDS Law Unit.

It was in this vein, using their right to speak out, that the Rundu Tusano club and the LAC approached the town's hospital. People living with HIV argued the location of the clinic was breaching their confidentiality as they were disclosed to the community by simply waiting for treatment. During the meeting with hospital officials, Tusano raised their concern and were heard.

The hospital moved the HIV treatment centre to a more discrete area, providing people living with HIV and AIDS with the comfort that their status could remain confidential as they received treatment.

"This is just one small example of how young people are helping change Namibia's response to HIV," Ngavetene said. "While there's a long road to ending discrimination in regards to HIV and AIDS, informed HIV-activists in every corner of the country are helping create positive change."



Through human rights training, young people like Leticia Hausiku, Frieda Lutangu and Joseph Haikera are banding together to fight stigma and discrimination surrounding HIV/AIDS.

## ADVOCATING FOR PEOPLE LIVING WITH HIV/AIDS

During the early 2000s, the AIDS Law Unit became a major player in advocating for free antiretroviral (ART) drugs for HIV patients. Realising that HIV often attacks the lowest income earners in society, the AIDS Law Unit called on Government to provide equal treatment to all

Namibians, despite their economic status.

"Ultimately in 2003, we, along with numerous other non-Governmental organisations and churches, were successful in calling for free ART," says Amon Ngavetene.

In recent years, the AIDS Law Unit

has repeated its call on Government to improve its role in confidentiality and HIV, helped draft the National Policy on HIV and AIDS, fought to further end workplace discrimination and stood up on behalf of the thousands of orphans and vulnerable children being left behind from the pandemic.





PHOTO: JOHANNES BERNDALLEN

THE PHOTO IS AN ILLUSTRATION

The LAC has helped to reform laws to make domestic violence a crime in Namibia.

# A crime behind closed doors

**The children are screaming loudly  
Mama is bleeding severely  
Papa got mad heavily  
Chaos ruins the household**

from *So Cry the Abused Mother and Child* by  
Petrus Haakskeen  
(LAC, 2003)

Twenty years ago there was no such thing as domestic violence. It was a crime with no name, a crime that happened behind closed doors, and when it happened, neighbours just looked the other way. After all, what happened in the home was private. Ruth\* was one of the many victims to suffer at the hands of her partner. But she was afraid to ask the authorities for help because her partner had threatened to burn down the house where she and her children were living if she made a complaint.

The Legal Assistance Centre (LAC) has been able to help Ruth and the many other victims of domestic violence by turning the crime with no name into a public issue. The Gender Research and Advocacy Project (GR&AP) began working on proposals for law reform in this area in 1998. In 2000, a conference organised by GR&AP brought experts from South Africa to give input on domestic violence legislation. GR&AP contributed to the drafting of the

domestic violence bill in 2001 and increased public support for the law reforms through numerous advocacy activities, including a highly-publicised demonstration at the opening of Parliament in 2003. When the Combating of Domestic Violence Act was passed in mid-2003, GR&AP continued to work in support of the victims of domestic violence by providing training on the new law to service providers, and by producing an easy-to-read guide to the new legislation for the general public in seven languages. The new law did not create any new crimes, but it put an official name to crimes that were occurring day after day in Namibia but were not being recognised.

**The input GR&AP has made** on the Combating of Domestic Violence Act has given victims of domestic violence a choice of options that are simple to implement. Having lobbied to make the Combating of Domestic Violence Act one that would really help people, the LAC was able to tell Ruth about the options she now had. She could apply for a protection order, ask the police to

give the perpetrator a formal warning or lay a charge. She could even apply for a protection order and police intervention at the same time if she was particularly afraid of retribution from her partner.

But while the law provides support to people who are ready to seek help, the true causes of gender-based violence are deeply embedded in the Namibian culture and many people continue to suffer behind closed doors. Change is often the most successful when communities stand together and support each other, and through numerous workshops, GR&AP have helped communities achieve this goal. As a result of these workshops and training programmes, hundreds of people in remote regions have had access to information about domestic violence.

**Taking legal action** in a domestic relationship can be extremely frightening. Therefore GR&AP has combined successful lobbying for a number of options to be provided in the Combating of Domestic Violence Act with direct community liaison. It has only been through the combined effort of advocacy, law reform, and community education that real change has been made in this area.

\* Her name has been changed to protect her identity.

***“The LAC played a fundamental role in turning the crime with no name into a public issue.”***



PHOTO: TONY FIGUEIRA

# “God gave us this land”

In the late 1990s, Chief Hikuminue Kapika led the OvaHimba people to stand up against a proposed dam that would have flooded their ancestral land

Since 1995, the Legal Assistance Centre (LAC) has been helping the OvaHimba (Himba) community, a pastoral tribe of about 25,000, negotiate with the Government about the proposed Epupa Dam on the Kunene River. The dam, at almost 600 feet high, would permanently alter a unique desert ecosystem, flood the spectacular Epupa Falls, and force the relocation of many of the Himba, disrupting their traditional way of life.

Thirty or 40 years ago, this might have been a familiar story of development at the expense of indigenous people, but the world has since become a different place. With guidance from the LAC, the Himba have

been led by an unlikely actor, Hikuminue Kapika, to voice their objection to the proposed dam.

Hikuminue Kapika, the traditional chief of the area that includes the Epupa Dam, is one of 15 Himba chiefs, and one of four whose lands border the Kunene River.

Over 80-years-old, he speaks only Herero, the language of the Himba, and lives in Omuranga, a mud, stick

***“In November 1997, the police raided a meeting between the Himba and their LAC lawyers held at Omuramba, Chief Kapika’s village.”***

and thatch settlement of a few hundred people, with no electricity.

When the Feasibility Study to build the dam began in 1995, little consideration was given to the Himba. Their land became a safari-style camp, complete with expensive four-wheel drive trucks and helicopters, and several dozen engineers and other experts who went to work every day, literally passing through Himba villages, or homesteads, gardens, or graveyards, without engaging the people and trespassing on various kinds of “private” places, traditionally guarded by particular Himba families.

The LAC began representing the Himba people in 1995. Although only 1000 Himba lived on the land where the dam was to be



built, almost the entire tribe has at least some reserve grazing rights for their large herds of cattle, as the affected land contains the most reliable source of water and grass. Since cattle have great value, these grazing rights are among the most valuable assets of a Himba community; without the cattle, it is believed the community will disappear. The immediate issue was the obvious legal question of who owned the land. While this issue of land ownership was of the utmost significance, it became apparent that there were other issues as well. The quality of the Feasibility Study was called into question and the enormous environmental damage that would be caused by the dam raised a number of potential legal questions in the areas of environmental law and administrative law.

In 1997 and 1998, the discourse on development in the context of the Epupa Dam became increasingly polarised and politicised. Kapika and the Himba people opposed the dam with bold and loud statements, with a simple theme repeated over and over:

"God gave us this land. It is our land. You cannot build your dam here. Go away." Meanwhile, the Namibian Government

announced that the dam would be built, no matter what the Feasibility Study concluded.

At this point, prominent politicians entered the fray, denouncing "foreign" agitators for "using" the Himba to oppose the dam for their own selfish reasons. In another speech, politicians accused the LAC and the lawyers of the Himba of being unpatriotic and interfering in Namibian development by representing foreign interests. The LAC, in fact, maintained a neutral position regarding the building of the dam. The LAC's involvement was due to its mandate that it was a human rights organisation with a focus on marginalised communities. Therefore the LAC had a responsibility to the Himba people to advise them on their rights and to assist them in their negotiations with the Government.

In November 1997, the police raided a meeting between the Himba and their LAC lawyers held at Omuramba, Chief Kapika's village. Their pretext was that the meeting was in violation of a South African-era statute that prohibited large public meetings without a permit. The LAC argued in court that the statute was unconstitutional and was not applicable to a meeting between lawyers and their clients. The Centre sought an injunction against the local Chief of Police to prohibit him from interrupting future meetings with their clients. The injunction was granted, and the judge declared the colonial-era law that the police relied on

unconstitutional. The broader implication of this ruling was an affirmation of the right to assemble in public and that public meetings did not require police permission.

When the Feasibility Study was presented at a well-attended meeting in Windhoek in February of 1998, it was met with harsh criticism from the Himba and their supporters. In turn, some Government officials increased their attacks on the Himba by calling them "backward" and "primitive". The case even made international news.

The Himba were not intimidated by this hostility and matched the increasing level of rhetoric. Chief Kapika proclaimed that if the dam was built "we will all gather there and they will have to build the dam on top of us."

He and Chief Paulus Tjavara went on a tour of Europe, getting good press and good crowds in Germany, Sweden, Norway and England. Kapika addressed crowds of environmental activists and additionally went to the foreign offices and leading banks in each country to ask them not to fund the Epupa Dam. Not only was his visit well covered by the press, but a number of foreign officials promised not to finance the dam. Such promises were a powerful victory.

Since then, the Government has remained undecided on going forward with the Epupa Dam and the OvaHimba continue to maintain their traditional lifestyle they have lived for centuries, still herding tens of thousands of cattle in Kaokoland.

The Himba people were led by a man who spoke only the Herero language but who managed to travel across Europe to stand up for the rights of his people. The LAC provided support, guidance and information, but it is because the Himba people stood up for their rights, that they remain on the land "God gave us".



PHOTO: TONY FIGUERA



# Taking

PHOTO: MARK NONKES





# on torture

In response to the attack that left eleven people dead, the Government rounded up more than 300 rebel fighters and suspected civilian sympathisers. “The police punched and kicked me before shouting that I was a rebel,” remembers Martin Shiponga,\* a school teacher and father of four. “Soon other police officers joined the attack, also kicking, punching and whipping me.” Shiponga says he was beaten again at the police station. Reports of others captured were equally brutal: people were systematically punched, hit with rifles and whipped with sjamboks.

Continued beatings, electrical shocks, humiliation tactics and death threats followed the arrests. The victims’ injuries were ignored and they were denied medical treatment. Meanwhile, equally cruel reports came from those in jail: people were denied food, legal representation and bail. “On the day of my arrest, I was not given food. The only drinking water was from the toilet bowl,” Shiponga recalls.

Since its inception, the Legal Assistance Centre (LAC) has been dedicated to ensuring that human rights are maintained –and this includes making sure that law enforcement officers take responsibility for their actions. In the early days, when Namibia remained under South African apartheid rule, the LAC represented hundreds of people who had been brutally victimised by the militant regime. Upon Independence, the LAC renewed its role as the protector of victims of torture and represented dozens of clients who had been terrorised by local police officers and the military.

In the Caprivi uprising of 1999, LAC lawyers were the only ones to come to the aid of prisoners and those who had endured brutality at the hands of the police and Namibian Defence Force. LAC Director Norman Tjombe, at that time a

human rights lawyer, was part of the team who travelled to the region in north-eastern Namibia. “It was absolutely chaotic. You didn’t find normal life. People were afraid to go out of their houses. In fact, the LAC and the police were the only people on the streets,” Tjombe remembers.

According to the human rights watchdog Amnesty International, torture appeared to be used widely against those detained in connection with the Caprivi uprising, even though international human rights laws prohibit the use of torture at all times and in all circumstances. More than one hundred detainees, including those who were released without charge, have said that they were tortured or subjected to other ill-treatment by police, army and state security officials during their interrogation and detention as a means of obtaining information and eliciting confessions.

Amnesty International was also concerned that many of the defendants –at least seventy, according to sources –charged in connection with the Caprivi uprising may be prisoners of conscience, arrested solely based on their ethnic identity, their membership of certain organisations, or their actual or perceived non-violent support for the political opposition in the region.

In this fight for justice, the LAC has acted on behalf of the more than one hundred Caprivi uprising suspects. The LAC argued that it was the Government’s duty to provide Legal Aid for the Caprivi trial clients. The motion was won in the High Court and when the Government lawyers appealed, it was also upheld in the Supreme Court.

In 2008, the LAC is working on behalf of 127 claimants who are demanding civil compensation or reparation from the state for allegedly perpetrating torture. The main violations for which the Government is being sued

are unlawful arrest and detention, assault and torture, and failure to take victims to a doctor for medical treatment.

One of the first claims in the Caprivi saga to be handled by the LAC was that of Geoffrey Mmwilima, a former opposition Member of Parliament, who claimed compensation. Mwilima sustained a broken jaw and severe lacerations which he maintains resulted from being whipped and kicked by police. His case was settled out of court along with four others. The settlements did not include any admissions of liability on the part of the Government and the terms of the settlements were not made public. Progress is slow and so far, only sixteen cases have been settled.

“The repeated delays in court proceedings have meant that most of the clients have been in jail for nine years and most haven’t yet been found guilty. The whole thing is a bit of a nightmare,” says Lynita Conradie, the LAC’s advocate who continues to argue on behalf of dozens of the inmates who seek compensation for the abuse of power during the Caprivi uprising. “The LAC is committed to continuing to search for justice on behalf of these clients. We will continue to work tirelessly to ensure that the violation of human rights, even to alleged treason suspects, is not allowed in Namibia.”

Martin Shiponga is one of the few people who have been awarded compensation for the suffering he endured and greatly appreciates the role the LAC has played. “After discovering the importance of law in protecting rights and freedoms and the possibility of seeking redress, I asked my son to study law,” Shiponga said. “He is now a fourth year law student.”

\* His name has been changed to protect his identity.



**W**e are suffering!" This is the first thing Dorina\* says when interviewed about her life as a sex worker. But does Namibia want to hear that she is suffering, or are sex workers an invisible group in this country? Even clients have contempt for the very sex workers they frequent, putting the women at serious risk of abuse from their customers.

Sex work is a controversial issue. Morality and national pride seem to be the justification for the continued marginalisation of sex workers. But the life of a sex worker is not one many women would ask for, so how can they be judged by their profession?

**Dorina was forced to turn to the streets** to survive following the death of her grandmother when she was just sixteen years old. With no other caregiver to provide food, clothes or money for school fees, she could see no other option.

It was not an easy choice and certainly not one based on the financial reward. ***"Customers don't always pay, and when they do, it is barely enough to buy food."***

Customers don't always pay, and when they do, it is barely enough to buy food. The going rate for sex on the streets of Windhoek is N\$30, but Dorina admits that when she is hungry, she has had sex for as little as N\$10. For N\$10 Dorina is at risk of contracting HIV/AIDS if she is forced to have unsafe sex, not to mention the risk of violence at the hands of her clients. This is no carefree career choice.

On more than one occasion, Dorina has been forced to have sex with the police for free in order to avoid being arrested. She says it is not uncommon for men to drive her out to the veld for sex. After the act, they beat her, refuse to pay, and leave her to walk home empty-handed. She displays scars she has gained from being stabbed by her clients with knives and broken bottles. Once after being robbed and beaten by a client, Dorina went to the police. They threatened to arrest her and dismissed her claim of being victimised.

The Legal Assistance Centre (LAC) has been at the forefront of advocacy for the decriminalisation of sex work, even though this stance is not widely supported by the general public. However, the LAC believes that removing the criminality from sex work will empower sex workers to better negotiate safe sex practices and to protect their human rights, and allow for more effective interventions to reduce the spread of HIV through this channel.

In 2002, GR&AP published a major piece of research on commercial sex work entitled *Whose Body Is It?: Commercial Sex Work and the Law in Namibia* — the first national study of sex work ever carried out in Namibia. This was accompanied by a television documentary, *Not A Life You Ask For*, commissioned by GR&AP based on some 30 interviews with sex workers in

# Not a life you ask for:



PHOTO: JOHANNES BERNDALLEN

The LAC maintains a position that decriminalising sex work will p

Windhoek and Walvis Bay. The research allowed sex workers to communicate their concerns in their own words. Just like Dorina, they were eager to tell their stories so that "people would understand how hard it is for us."

**Dorina's story is not unique.** Recent follow-up research conducted on behalf of the LAC has shown that in a sample of sixty-two current or ex-sex workers in Windhoek, fifty-six per cent of the women had been beaten by their clients, fifty per cent had been forced to have sex without a

condom and forty-four per cent had experienced trouble with the police. One woman reported being held in prison for two weeks without trial, whilst another reported having sex with a police officer who, after their encounter, did not pay and took her to the police station to be arrested.

***"Resorting to sex work is often a desperate choice when there is no other option."***



# Sex work in Namibia



THE PHOTO IS AN ILLUSTRATION

ll protect human rights, health and dignity of some of the country's most vulnerable citizens

Due at least in part to the advocacy work of the LAC, sex workers are beginning to achieve greater recognition as a vulnerable group in need of support. For example, in 2005, the National Council's Standing Committee on Gender, Youth and Information investigated the plight of sex workers and pointed to some of the advantages of decriminalisation, stating that "many social scientists and reputed academics across the globe strongly believe that sex work should be legalised" and that bringing this trade

aboveground would facilitate efforts to monitor and protect the health of both sex workers and their clients.

**The issue of sex work will not go away.** Sex work is widely believed to be on the rise, with the age of sex workers continuing to decrease. Resorting to sex work is often a desperate choice when there is no other option. The illegality of sex work in Namibia has not prevented its presence. Instead it has

***"The issue of sex work will not go away."***

marginalised sex workers, putting them at risk of abuse and HIV infection. Sex work often incites considerable moral debate. But morality should not stand in the way of the human rights, health, and dignity of a country's citizens. While people in Namibia continue to debate the morality of sex work, the LAC will continue to work towards law reform in this area in the hope that these women can be at last accorded the basic human rights they deserve.

\* Her name has been changed to protect her identity.



# Overcoming inherited injustice

Throughout its 20-year history, the LAC has been dedicated to reforming Namibia's inheritance laws. A recent victory helped move the process forward

Depending on the angle, the picture of Lotta Frans is dramatically different. In one picture, he is a 25-year-old champion of change: a man who dreams of farming and a fighter for the future. In another picture he is a man robbed of an inheritance, a father of three who lives in a meagre house and is a victim of outdated, discriminatory laws.

When Frans' father died in 1991, he did not leave a will. According to the Namibian law of the day, when a father died without a will, children born outside marriage were not allowed to inherit. "The entire system is riddled with discrimination as under Namibian law, there are three different laws on inheritance without a will, based on the race of the deceased. There's one law for blacks, another law for Bastards and a third law for white, coloured or any other race," explains Norman Tjombe, Director of the Legal Assistance Centre (LAC). "The Lotta Frans case is a good example of how an outdated and discriminatory law of inheritance adversely affects people."

In this case, Frans' aunt (his father's sister) claimed ownership of two farms, denying the children access to any part of the estate left behind by their father.

**In a search for justice**, Frans learned about the LAC and brought his matter to the legal team there. "Our father was the main source of income in the house and he was the breadwinner. After he died it got very difficult," says Frans.

The LAC took on the case and argued that preventing people from inheriting just because they were born outside marriage was a violation of human rights, including the right to non-discrimination based on the ground of social status, the right to equality, the

right to dignity, the right to property and the right to know and be cared for by both parents. By fighting this case, the LAC was able to score a victory for human rights and inheritance laws, as the court ruled that preventing children born outside marriage from inheriting was unconstitutional.

**"We will continue to highlight issues of inheritance as the organisation moves forward until the Government overhauls their current legislation and moves to a fair and equal system,"** Tjombe says.

Indeed, the issue of inheritance has been a focal point for various projects of the LAC. Throughout its history, the LAC has provided training on will writing to communities across Namibia, published and widely distributed research on inheritance issues and called for the Government to reform its legislation on inheritance.

In 2005, the Government amended the Estates and Succession Act to cancel the rules on inheritance when there was no will. However, Tjombe still believes that the laws do not go far enough: "The rules are still based primarily on race. The amendment said the rules of the past will still apply in the future. Essentially, it was as if the previous law had not been cancelled."

On its 20th birthday, as the LAC continues to fight for reforms on inheritance law, Frans, who dreams of returning to the land his father once farmed, agrees that progress has been made. "I was happy we won. There are a lot of cases like this but some don't go to court." As he continues to fight for justice by seeking half the value of the estate, Frans is committed to not repeating the mistakes he inherited. "I wouldn't want anything like this to happen to my three kids. I'll definitely write a will."

***"I was happy we won. There are a lot of cases like this but some don't go to court."***  
**Lotta Frans**





PHOTO: MARK NONKES

# Lines in the desert sand

**The San's right to land use is being threatened as the Government proposes to establish small scale resettlement farms**

The San people are among the original residents of Namibia. Known as the nation's poorest and most marginalised minority group, the San have been continually pushed off their land to the fringes of the country by both blacks and whites.

To help people like the San to increase their income opportunities, an innovative programme for people living in communal land areas has been developed. Through the community based natural resource management programme (CBNRM), residents are empowered to manage their own natural resources and receive some economic benefits from them. Several new organisations, including those that had previously worked in sectors other than wildlife or rural development, have joined forces to assist communities in organising themselves into conservancies.

As the main legal advisor for the conservancy movement, the LAC's Land, Environment and Development (LEAD)

project has played a leading role in helping rural communities establish this community-based approach to natural resource management. LEAD has also assisted these communities by drafting and reviewing conservancy constitutions, training conservancy leaders and members on legal documents, and providing legal support for conservancies entering Joint Venture

Agreements with lodge developers and hunting operators. "The San people of the Tsumkwe West Constituency face many development challenges," says Willem Odendaal, Coordinator of LEAD. "They are poor, and like the San in other parts of Namibia, lack regular work. Some subsist with small scale agricultural activities,

such as small livestock or gardening. Few San have cattle." The economic benefits that the San community can draw from the conservancies' activities have given the community new hope of improving their livelihood.

However, in 2005, the Namibian Ministry of Land and Resettlement identified the N̄a Jaqna Conservancy as a potential location to develop small scale commercial resettlement farms. The conservancy covers an area of some 9,120 km<sup>2</sup> of Kalahari woodland and scrublands with some twenty-three settlements, making it one of the largest conservancies in the country. In the proposed plan, the northern part of the conservancy, about one-third of the entire conservancy area, would be developed into a series of 2,500 hectare farms for other beneficiaries.

**Sarah Sungu, a traditional leader in Tsumkwe West Constituency**, lives in Mangetti Dune, a village situated in a former South African army outpost in north-eastern Namibia. "It feels at times this is just a clear violation of our basic human rights," Sungu says as she sits in front of her log home. "We have never asked for these farms, but still it feels like we are forced to accept them."

In several meetings held with Government officials concerning the farms, the conservancy membership, most of whom are San, expressed their concerns about the proposed farms development. With no clear indication from the Government on whether the farms development proposal will go ahead or not, conservancy members feel increasingly shunned by the current decision-making process. "Many San are opposing the farms, because they were never told how these farms will benefit them," Sungu says. Sungu also worries about the survival of her people's cultural future if the development of the farms goes ahead. "If you have farms here our culture will be destroyed," she says. "The land will be fenced off, people will not be able to hunt there, and they will not be able to access the plants that are used for healing or collected in times of drought. Soon the San will have nowhere to go, and we will suffer as a result."

**Seeking help, the conservancy asked LEAD to prepare a legal opinion** on the rights of the conservancy members and share it with the Ministry of Lands and Resettlement, as well as the Ministry of Environment and Tourism. "It is important that the Government listens to all the concerns of the N̄a Jaqna community before they make any decision on the development of the farms. A 'top down' decision-making process, without listening to the concerns raised by the San, will most likely impact negatively on future San livelihoods," Odendaal says. "The work the LAC has performed in assisting the San to set up conservancies and to defend their right to live in these areas fulfills the mission statement of the LAC in maintaining a human rights culture in Namibia."

***"It feels at times this is just a clear violation of our basic human rights."***

**Sara Sungu**



# A solution to poverty



PHOTO: MARK NONKES

A pilot project that provides N\$100 a month to every resident in a small village could lead the way to s

**H**ope is a couple sheets of steel. At least, that's what hope represents for Herlina Smith. As she watches young children play in the sand, the pre-primary kindergarten teacher dreams of hope - of nails and corrugated sheets of metal.

"We need to make the school building bigger. Now, when we suddenly got so many more children, there is almost no room for them in the classroom," she says on a celebratory Tuesday morning.

In Otjivero, a historically impoverished village of about one thousand residents an hour and a half east of Windhoek, hope is alive for nearly

every resident. It's not only steel, it's a bag of maize, a pair of shoes, a year's school fees, paid medical bills or a donkey cart ride.

Since the beginning of 2008, each registered member in Otjivero receives N\$100 per month through the first social assistance grant in Namibia. A pilot project, the Basic Income Grant (BIG) was created to improve people's life by reducing poverty and inequality. Through a concerted

***"It has changed our life a lot, this is really good for us."***

***Paulina Dam***

effort by a coalition of non-Governmental organisations including the Legal Assistance Centre (LAC), churches and unions, the BIG program is the first project to pilot income security in a developing country.

"It provides security that reinforces human dignity and empowerment," says Dr. Claudia Haarman, one of the organisers of the project.

While the owners of the kindergarten saw their enrollment double since the beginning of the payout, BIG has also meant that patients at the medical clinic could now pay for their appointment. Others have ripped down houses constructed of plastic





clients belong to have been advocates for the protection of human rights," says Norman Tjombe, Director of the LAC. When the LAC was founded, it had a close bond with faith-based organisations and worker's unions, and this relationship has continued. With each LAC office initially located on the premise of church property, the LAC fought alongside church leaders to end the human rights abuses occurring at the hands of the apartheid regime.

"It was not without significance that we were located on church property

because there was a real fear that the apartheid-ruling Government would try to destroy the LAC's offices by bombing them, as happened to similar organisations' offices in South Africa,"

Tjombe says. "But the military rulers in the country

**"On the first pay out, the school was inundated with parents paying for their children's school fees and buying uniforms."**

**Dr. Haartman**

still had some respect for churches."

With Independence, the LAC fostered a renewed relationship with Namibian church leaders and various unions through various initiatives, including training, research and advocacy.

With the Basic Income Grant, the LAC has joined among others the Evangelical Lutheran Church in the Republic of Namibia (ELCRN), the Council of Churches in Namibia and the National Union of Namibian Workers in calling on Government to improve every Namibians' life through a monthly stipend. The money, which would be recuperated through the tax system, would redistribute the wealth and even out the huge income disparity between the rich and poor.

"About two thirds of all Namibians live below the poverty line," says

Dr. Haartman. "The reduction of inequality – one of the greatest legacies of Colonialism and Apartheid – is not only a justice issue, but also has been identified as a prerequisite for economic growth and investment in developing countries."

Since January 2008, people in Otjivero have been mobilising their community to ensure that the project works as people sandwich in queue under the town's largest tree waiting for their monthly payout on this Tuesday morning, the same sentiment is repeated.

"It has changed our life a lot, this is really good for us," says village resident Paulina Dam.

"Hunger doesn't live in our house anymore," Joseph !Ganeb echos. "There's not so much to worry about anymore, the kids are now well fed and well dressed."

While critics worry the payout leads to a higher rate of alcohol consumption, people like !Ganeb patrol the village to see how some members spend the money after the payout. As a grandfather who cares for six children, !Ganeb says he's warned villagers who abuse the money on alcohol.

"What's happening in Otjivero is absolutely inspiring," Tjombe. "They are showing Namibia, and indeed the world, that a Basic Income Grant works and could make a significant difference to the country."

Meanwhile, back at Herlina Smit's pre-primary kindergarten, children in the playground erupt into a fit of laughter. A grin crosses Smith's face – today, the day the payout arrives, her hope of steel and an extension to the daycare centre is one step closer to becoming reality.

For more information on the Basic Income Grant, visit the web site at [www.bignam.org](http://www.bignam.org)

## o solving economic injustice

bags and replaced them with steel. Within the first two payments, two new businesses had sprung up. Meanwhile, existing businesses reported an increase in sales.

**"On the first pay out, the school was inundated with parents paying for their children's school fees and buying uniforms,"** says Dr. Haartman, a leading member of the BIG coalition.

The LAC's involvement in the Coalition that started the BIG is one of examples of its partnership with Namibian churches and unions over the years. "Since the beginning, church leaders, unions and organisations that

## ECONOMIC INEQUALITY IN NAMIBIA

The following statistics about Namibia were compiled by the BIG Coalition:

- In 1998, Namibia had an unemployment rate of 35 per cent. The official statistics by the Ministry of Labour document that unemployment had steadily risen to almost 38 per cent by 2004.

- This distressing situation becomes even more aggravated for younger people as well as for women: unemployment among teenagers and young adults is dramatic. Among 15 to 19-year-olds the

unemployment rate is 65 per cent, and among 20-24-year-olds it is at 57 per cent.

- Poverty in Namibia is prevalent throughout society. According to the latest survey by the National Planning Commission of Namibia, 76 per cent of Namibia's population live below the poverty line.

- Calculated from the National Income and Expenditure Survey, the average person in Namibia spends only US\$ 1.5 per day.



# Reforming rape law

PHOTO: JOHANNES BERNDALLEN

Quality research and recommendations on Namibia's rape law are helping provide support to v

**W**hile the law on rape in Namibia is one of the most progressive in the world, the key question is whether it is being applied effectively in practice to reduce the trauma for rape survivors and to put rapists behind bars. Today, there are currently some eleven hundred reported cases of rape or attempted rape in Namibia each year, which translates to more than three rape cases each day. But only eighteen per cent of these rape cases will ever result in a conviction of rape or attempted rape.

From 2005 to 2007, the Gender Research and Advocacy Project, (GR&AP) of the Legal Assistance Centre, (LAC) conducted a groundbreaking study to assess the effectiveness of Namibia's Combating of Rape Act, which came into force in 2000.

In order to ensure a complete and accurate picture of rape in Namibia, GR&AP collected data from a wide range of sources, including police statistics, police dockets and court registers, as well as interviews with police officers, doctors, prosecutors, legal aid lawyers, magistrates, and rape survivors. Participants from six regions discussed preliminary findings at a consultative workshop to ensure that the recommendations that GR&AP put forward would be practical and relevant. The LAC published the resulting report, *Rape in Namibia*, in two versions: a long, detailed version aimed at people working in the field, and a shorter summary for the general public.

Systematic and detailed assessments like the study conducted by GR&AP ensure that law reforms in independent Namibia are actually serving their intended

purposes. Recommendations from this study have influenced national planning initiatives such as the National Plan for Orphans and Vulnerable Children, Namibia's National Development Plan 3, and the recommendations made at the 2007 National Conference on Gender-Based Violence. GR&AP is also represented on the National Advisory Committee on Gender-Based Violence formed by Cabinet, and it is through this committee, as well as other forums, that continued advocacy on the report recommendations will occur.

An integral component of the rape report was looking at individual cases to assess the implementation of the law in practice. The case of Maria\* illustrates how current procedures failed to provide appropriate assistance to a victim of rape.





## o victims of crime

### Maria's story

Maria, a young San girl, was thirteen years old when she was raped by a member of her community. She visited a medical clinic four days after the rape for an examination but was given little support or aftercare.

She received medication in the form of a single tablet, but had no idea what it was for or what it would do. At the clinic, Maria was told to go to a neighbouring town—located about an eight-hour drive from Maria's village—to report the case at the Women and Child Protection Unit (WCPU). Maria and a 14-year-old friend got a lift with an ambulance to the WCPU the next day.

At the WCPU, Maria waited for an entire day because the person she was referred to was not in the office. When she returned

the next day, someone else finally took her statement. She was eventually seen by a doctor, but at this stage it was too late to collect much in the way of forensic evidence to help prosecute the man who raped her.

Maria and her friend stayed with extended family members in this town, far away from their homes, for more than one month, missing out on school all the while. Maria was afraid to go back home to her small community, where the perpetrator was still walking free because of a lack of police transport to go and arrest him. In any event, there was also no transport to take her back to her village.

Maria was in a state of shock and wanted counselling, but the only local social worker was a man, and she did not feel comfortable discussing her rape

with him. The local hospital said that it could provide counselling services only for persons with HIV. A counselling group based in Windhoek tried to assist, but could not find anyone who could go to Maria, and was reluctant to bring Maria to Windhoek, where she knew no one and had no place to stay. So Maria waited, cut off from school and family in an unfamiliar town.

It was only after the intervention of the LAC and the assistance of the Complaints Division of the Namibian Police that transport was arranged to return Maria and her friend to their home village, and to arrest the perpetrator—almost two months after the rape took place. Maria's troubles were still not over, however. Later, as a result of miscommunication, Maria and her friend were taken on the long drive from their community back to the WCPU in the same car as the perpetrator who had just been arrested. Luckily, the local school principal was attending a meeting in the same town and was able to give the girls a lift back home again without further delay. But it is hard to imagine the trauma Maria must have suffered throughout this chain of events.

And if this case follows the pattern of most rape cases, Maria might have to wait two years or more before the trial of her alleged rapist is complete.

**Namibia's large** physical size and the remoteness of some of its regions provide serious challenges to effective service provision, with people in marginalised communities bearing the brunt of this problem.

**The bravery Maria showed in reporting her rape is immense**, and yet she was failed by the system. The LAC was able to intervene in her case to mitigate some of the problems she was experiencing, but structural changes are required in order to address procedural failures such as those which added to Maria's trauma.

As illustrated by its work on rape, the LAC tries to assist both in individual cases, and in broader policy interventions which can have a wider impact on the public.

In the long term, it is quality research and the resulting recommendations which can provide a springboard for change in Namibia. Namibia now has new rape kits with more user-friendly instructions. The problem of police resources with respect to gender-based violence crimes is under discussion at many levels, as are suggestions for improving the ability of the WCPUs to respond to rape survivors and the effectiveness of medical interventions. Ongoing advocacy efforts, guided by periodic assessments of progress toward more effective implementation of the law on rape, will be necessary to ensure that the criminal justice system continues to improve its assistance to rape survivors like Maria.

\* Her name has been changed to protect her identity.



# Punished for being pregnant



PHOTO: JOHANNES BERNDALÉN

*“All persons shall have the right to education”  
The Namibian Constitution*





The Namibian Constitution states, “All persons shall have the right to education.” So when Utjiua Karuaihe was excluded from school because of her pregnancy, she believed that her human rights had been violated. In accordance with guidelines on pregnancy in the Namibian school system, Utjiua was forced to remain out of school until one year after the birth of her child. With the support of her family and the Legal Assistance Centre (LAC), Utjiua challenged this policy—defending her right to learn.

Research shows that only fifty per cent of children in Namibia complete secondary education. Teenage pregnancy is a major contributing factor to these low completion rates.

As such, it is a critical issue for a country that is trying to meet the United Nations Millennium

**“Research shows that only fifty per cent of children in Namibia complete secondary education.”**

Development Goals of promoting gender equality and achieving universal education, as it is important that children continue beyond primary education if they are to be suitably equipped to

earn a decent living.

For many teenage mothers, the one-year exclusion from school is an insurmountable barrier to the completion of secondary schooling. As the pressures of looking after a child take over, their education comes to an end.

Utjiua’s school argued that a teenage mother should remain out of school for one year because of the need to “maintain high ethical and moral standards,” and to allow effective mother-child bonding to take place. They argued further that their policy was to ensure Utjiua’s best interests:

“Her obvious maternal concern for her baby will impact negatively on her ability to benefit from the morning lessons and her participation in extramural activities and her attention to homework and study duties will suffer as a result of her responsibilities to the baby in the afternoons.”

But Utjiua wanted to go to school. And her family supported that choice. Utjiua’s mother pledged to care for the child while Utjiua attended classes. Her parents even offered to formally adopt the child if necessary to allow their daughter to receive an education. Still, the school refused to allow Utjiua to return.

The LAC recognised that excluding Utjiua from school deprived her of her constitutional—and human—right to an education. Although the school provided many reasons to support their decision to prohibit Utjiua from receiving an education, the LAC saw past these pretexts to the real reason for excluding Utjiua: punishing her for her pregnancy.

In defence of Utjiua, the LAC engaged in a hard-fought legal battle which brought much needed attention to this discriminatory national policy. Ultimately, it was Utjiua’s willingness to fight for her right to education that has contributed to the Government’s reconsideration of their policy. Recently, the Ministry of Education announced its intention to review the policy—approaching the LAC to request assistance with the review process. Together with people like Utjiua Karuaihe, the LAC is changing the face of the nation.

## RIGHT TO EDUCATION WITHOUT BRUISES

When Sonja Gariseb\* sent her son to school she, like every other parent, took for granted that her son would return home safe. Yet, when she had to take her son to the hospital after repeated beatings from a school teacher, Sonja realised her assumptions were wrong.

“I didn’t tell my mom at first, my brother was the one who saw the marks on my back when I was washing,” Victor\* says, years after the incident. Whipped with a hose by a school teacher, Victor was beaten so badly that the welts crisscrossing his back and buttocks lasted for weeks.

“It hurt to sit. We went to the hospital

because I really wasn’t feeling well.” Refusing to accept the abuse the teacher had inflicted,

Victor and his mother called on the Namibian education system to answer for their action.

“Officially, the Supreme Court banned corporal punishment in all Namibian schools in 1991,” says Toni Hancox, Coordinator of the Human Rights and Constitutional Unit (HURICON). “Yet in some Namibian schools, corporal punishment still continued.” The Legal Assistance Centre (LAC) took on the case and the HURICON lawyers represented Victor in the High Court. The LAC argued that the Ministry of Education and the teacher involved should compensate the child for the pain and discomfort he suffered, as well as the impact the incident had on his psychological integrity, dignity and self-esteem. The High Court ruled that the Minister of Basic Education, Sports and Culture, along with the accused, must compensate Victor in damages for a punishment that the judges called inhuman and degrading. “No matter the offense, beatings are not allowed in schools,” says Hancox. “Because the High Court ruled in his favour, this law was reconfirmed.”

**“No matter the offense, beatings are not allowed in schools.”**

**Toni Hancox**

\* Names have been changed due to the client’s age





PHOTO: MARK NONKES

# Human Rights ON AIR

Radio is a key tool in promoting human rights to the people in remote areas

Today, we're talking about domestic violence . . ." the crackling radio announces. At 8:30 A.M., while students in Tsumkwe, an isolated region in north-eastern Namibia, are in school, the adults in the community undergo an education of their own.

In the studio is Beesa Boo, a Legal Assistance Centre (LAC)-contracted Ju/'hoansi interpreter who regularly provides much-needed information on Namibian laws, the Constitution, and human rights through the radio program *Our Rights Today*. "The people don't really know what the law is doing," Beesa Boo says.

**Every month, the half-hour show tackles another topic.** For some, it's their first exposure to the rights and laws that protect them under the Namibian Constitution, the Maintenance Act or the Combating of Rape Act. To the Ju/'hoansi speaking people, the program makes learning easy. With an adult literacy rate of sixteen per cent, radio helps empower and educate through listening instead of reading.

"People need the information," emphasises Beesa Boo, a former school teacher.

Known as Namibia's most marginalised community, the nearly 3,500 San people living in Tsumkwe and surrounding villages are learning about the laws surrounding the issues that the community faces.

"A lack of information regarding Government policies, the services they are entitled to, and the rights they have continues to be a problem in Tsumkwe," says Trine Strøm Larsen, the Project Coordinator of the San Education Project funded by the Namibia Association of Norway (NAMAS).

**As an ethnic group who have historically been the brunt of discrimination,** today's San live in extreme poverty. With an average income of N\$3,263 a year (about \$450 US dollars a year), the San face a high unemployment rate that, in many cases, has resulted in people becoming dependent on Government aid, such as maize meal, and pensions. The unemployment rate has been accompanied by alcohol abuse and domestic violence against women. Larsen, who lives and works in Tsumkwe, adds that a lack of identification documents, such as birth, death and marriage certificates, along with land issues and discrimination, continue to be problematic in the area.

In response, the LAC works towards raising awareness of existing and new laws to empower these people to improve their situation. Already a change in attitude

is evident. "Education is the way of changing lives, of improving lives," says Fransina Hishekwa Ghauz, an LAC-trained community paralegal who lives in the area. "It breaks the cycle of poverty and vulnerability." Ghauz, a mother of 10, says that through the education in the area, more women are beginning to stand up for themselves. "Before, women were not making their maintenance claims," says Ghauz. "Now, some San men are paying maintenance, which never happened before."

**With radio dramas and programs threaded throughout its 20 year history,** the LAC also currently hosts a half hour show in Oshikati regarding HIV and human rights, and airs numerous other radio shows on a regular basis. All the shows are in local languages as one of the most important targets of the LAC is to ensure that information is disseminated in the language in which people are most comfortable, whether it is through the use of local languages on the radio or the translation of the various guides to Namibian laws produced by the LAC.

"I think its very excellent work. People are talking about it," says Beesa Boo before returning to the microphone to deliver his next script. "...and next week we're talking about rape."

**"People need the information,"**  
**Beesa Boo**





PHOTO: MARK NONKES

## Defending workplace rights regardless of HIV status

Through several initiatives, the AIDS Law Unit is dedicated to empowering workers and creating workplaces free of discrimination

There are people who were born to fight. You could say Haindongo Nanditumbe is one of these people. As a former member of the national liberation struggle in the South-West Africa People's Organisation who had received military training while in exile, Haindongo sought to enlist in the Namibian Defence Force (NDF) in 1996. Under the Defence Act, recruits to the NDF were required to undergo a medical examination, which included a test for HIV.

Two weeks later, he was informed by a NDF medical officer that he had tested HIV positive and, as a result, would not be accepted by the force. A comprehensive medical report, completed one month later, showed

that he was otherwise in good health, and the examining physician explicitly agreed that Nanditumbe did not have any medical condition that would be likely to interfere with the proper performance of duty as a Government service official. His HIV-positive status was the sole basis for his exclusion from enlistment in the NDF.

Turning to the legal system to continue his fight, Nanditumbe took his case,

with the help of Legal Assistance Centre (LAC) lawyers, to the Labour Court. Arguing that he had been

unfairly discriminated against based on his HIV-status, Nanditumbe sought to have his application processed without regard to his status.

In the court's judgement, it was ruled that the NDF was guilty of unfair discrimination. However, it also ordered more expanded HIV-related testing as part of the medical examination of recruits and permitted the exclusion from the NDF of applicants who failed to meet certain thresholds on CD4 and viral load tests. In Nanditumbe's case, the court ordered him to undergo these additional tests, and it ordered the NDF to enlist Nanditumbe if he met these requirements.

"At the time, it was anticipated that the ruling in this case could have positive implications for armies throughout the southern African region where HIV prevalence among defence force personnel is a significant concern and HIV-related discrimination remains widespread, including discriminatory policies similar to those challenged here," said Michaela Clayton, former Coordinator of the AIDS Law Unit.

However, a few weeks later, the Namibian Government introduced the Defence Amendment Bill, 2001 which contradicted these recommendations. Under the Bill, the NDF "shall not appoint any person who suffers from a disease or ailment which is likely to deteriorate to the extent that it will impair his or her ability to undergo any form of training required to be undertaken or to perform his or her duties as a member of the Defence Force." The Bill was approved by Parliament in 2001. "As a result, the Defence Amendment Act now appears to require the Namibian Defence Force to exclude people solely because of their HIV status, undermining the human rights advance achieved in this case," said Clayton, now the Director of the AIDS Rights Alliance of Southern Africa.

Undeterred, the AIDS Law Unit continues to fight for the workplace rights of people like Nanditumbe.

Through several advocacy initiatives, the AIDS Law Unit is dedicated to empowering HIV-positive people in the workplace, regardless of status. Focused on creating a human rights based approach by promoting non-discriminatory and enabling environment, the AIDS Law Unit is helping businesses, Government and civil society develop HIV and AIDS workplace policies, training managers, trade unionist, peer educators about human rights, the law and HIV and AIDS.

The Unit is also dedicated to holding workplaces responsible for protecting HIV positive employees and continuing to take legal action where workers rights have been violated.

***"In court's judgement, it was ruled that the Namibian Defence Force was guilty of unfair discrimination."***





PHOTO: MARK NONKES

# Protecting the population through education

As the LAC marks 20 years, it continues to strive towards the goal of creating a nation where every citizen knows their human rights

“Our single most important challenge is therefore to help establish a social order in which the freedom of the individual will truly mean the freedom of the individual. We must construct that people-centred society of freedom in such a manner that it guarantees the political liberties and the human rights of all our citizens.”

Nelson Mandela, May 1994

When the Legal Assistance Centre (LAC) opened, it dedicated itself to helping build a nation that is truly free and truly rich, one where every citizen is knowledgeable about

their rights. Through its various educational initiatives, the LAC has trained thousands of Namibians on human rights, the law and the Namibian Constitution.

In the early years, the LAC was dedicated to building Namibia's legal community by offering scholarships to secondary students who wanted to study law in university. During that time, there was no law program in Namibia and students who wanted to enter the profession had to study in South Africa. “I will never forget that day in August 1992 when I received a letter from the LAC offering

me a full scholarship,” recalls Yvonne Dausab, now a lawyer with the Ministry of Justice. “It was one of the highlights of my personal life.”

The LAC's current Director, Norman Tjombe and previous Director, Clement Daniels, also benefited from the university scholarship program, along with dozens of other now-established lawyers. Today, the University of Namibia offers a four-year program in law and the LAC's law scholarship program has graduated to the corporate sector.

The LAC also initiated a nationwide paralegal training program that offered education to community activists in various towns and villages.

Through training on various laws, such as the Married Persons Equality Act, the Communal Land Reform Act and the Namibian Constitution, community paralegals were able to offer their fellow community members legal advice and inform people on their rights. While the LAC continues to administer the Community Volunteer Paralegal Training Program, the movement has grown into a separate entity, the Namibian Paralegal Association, which boasts 170 active paralegals throughout Namibia.

Today, the LAC offers educational opportunities to communities of all sizes across the country. Some of the programmes currently being offered include:

- educating people about gender-based violence
- educating school principals about the rights of children
- providing legal information to support groups for people living with HIV/AIDS
- offering communal land boards conflict resolution training
- training marginalised community members about their rights.

“We find that people in these workshops are really hungry for information. They want to learn about the laws, their rights and how to protect themselves legally,” says Zeka Alberto, a workshop facilitator and project lawyer in the Land, Environment and Development (LEAD) Project. His sentiments are echoed by all of the other departments.

It is through these initiatives, as well as several others, such as the production of easy-to-use guides to the laws, that the LAC continues to strive to make Namibia into a nation where every citizen knows their human rights and where these rights are respected. The work that the LAC performs in educating the public is central to the successful growth of Namibia into a nation where human rights are upheld. At 20 years, this dream is becoming a reality and the LAC will continue work until human rights become the lifeblood of this nation.



## Standing up for equal treatment

When Michael Mueller and Imke Engelhardt announced their plans to get married in 1996, it was under the unconventional condition that Mr. Mueller would take his wife's surname.

However, after the couple said their "I dos", they were informed that the name-change would not be possible.

Taking on the case, the Legal Assistance Centre (LAC), argued that not allowing a man to change his name, due to the provisions under the Aliens Act, unfairly discriminated between men and women. While Mueller lost the case at both the High Court and Supreme Court, at the United Nations' Human Rights Committee, the Namibian law was ruled in violation of international law.

"The Mueller case, and the international ruling, was a good jurisprudence for spelling out what equality is under the law," says Norman Tjombe, Director of the LAC.



PHOTO: JOHANNES BERNDALLEN

## Leg irons gone

The Legal Assistance Centre (LAC) has long been at the forefront of ensuring that human rights of prisoners in Namibia are in line with international conventions against any forms of cruel, inhuman or degrading treatment of inmates. In 1999 the LAC fought and won a landmark case in the Supreme Court that held the chaining of prisoners in leg irons to be unconstitutional.

Three years later, in 2002, the LAC successfully fought and won another case, earning compensation for sixteen prisoners who, despite the 1999 ruling, had been placed in leg irons for periods of up to six months. Furthermore, the Court brought forth a new constitutional order which obliged the Namibian Government and the Ministry of Prisons and Correctional Services to examine its practices and to measure them against the standards set out in the Constitution.

On the 20th anniversary of the LAC, more than five years after these landmark cases, the LAC continues to support the rights of prisoners by representing several prisoners who believe that their rights have been violated in some way.

# Labour victory

In one of Namibia's most decisive cases regarding labour law, Rohan Meintjies became a symbol of hope for workers throughout the country.

Fired from his job as a restaurant manager without a reason, Rohan Meintjies fought back and served the business with court action that took him from the District Labour Court, to the High Court and, ultimately, to the Supreme Court.

"If the boss didn't like your face or skin colour or just didn't like you he could just fire you like that," Meintjies remembers.

According to the Supreme Court ruling, an employer can not terminate employment without giving reason. As compensation, Rohan Meintjies was awarded for the loss of income.

"Rohan Meintjies case is our most important labour case so far. It helped to strengthen the rights of employees," says Legal Assistance Centre (LAC)'s Director Norman Tjombe.

Throughout its history, the LAC has fought for worker's rights. During the apartheid regime, the LAC litigated on behalf of dozens of workers whose human and labour rights were violated. Upon the country's Independence, the LAC gave input into drafting the first labour law and has continued to advocate on behalf of workers through research into various employment sectors. In recent years, the LAC has worked with Government to assist with the formulation of new versions of the Labour Act.

**"The Rohan Meintjies case is our most important labour case so far."**



PHOTO: JOHANNES BERNDALLEN



The cases the Legal Assistance Centre (LAC) is currently working on are vastly different from those of twenty years ago –but they are still vital to the improvement of the legal landscape in Namibia.

Each of the departments is working on key areas to ensure that a culture of human rights is maintained in Namibia.

The **AIDS Law Unit** is defending people such as Kaalina Ekandjo, who has been discriminated against on the basis of her HIV status. Ekandjo was kicked out of her home after her husband, unbeknown to her, sold the house to his brother. Left in the street with her children, Ekandjo is fighting to return to the place she lived in for 15 years. In this case, which is currently before the court, the LAC is defending Ekandjo's rights to dignity, non-discrimination, maintenance and property.

The case also challenges marital laws in Namibia which are currently different for different people in different parts of the country. "Discriminating on the grounds of race violates article 10 of the Namibian Constitution," explains Amon Ngavetene, Coordinator of the AIDS Law Unit.

Meanwhile, **HURICON (Human Rights & Constitutional Unit)** is working to further establish prisoner's rights. In a recent case, the LAC defended four inmates who were assaulted

in a prison riot. In the judgment, the court ruled that prisons have a legal duty to ensure the safety, dignity and security of people serving prison sentences. "The current situation with the Ministry of Prisons and Correctional Services is presently untenable in that there is not enough focus on the humanity of prisoners and their rehabilitation," says Toni Hancox, Project Coordinator of HURICON.

Looking to the future, the **Land, Environment and Development project (LEAD)** hopes to help strengthen Namibia's environmental legislation. The unit recently acted on behalf of three farmers whose access to groundwater was threatened by a uranium mining corporation's plans to build in the area. The LAC contested the Government's decision to issue water permits before stakeholders had an opportunity to respond, or before an environmental assessment was even completed. However, when the matter appeared in court, the judge ruled there were no laws surrounding water rights in this area. "Namibia's current environmental laws are in desperate need of updating and reform to deal with new threats being poised to the environment," says LEAD Project

***"Though the work of the LAC has made a significant impact on improving the rights of the Namibians, its work is by no means finished. "***



PHOTO: MARK NONKES

Kaalina and two of her children outside her temporary residence in Katutura.

## The future for LAC

### What does the future hold for the Legal Assistance Centre?

Coordinator Willem Odendaal. LEAD intends to monitor the situation closely.

The **Gender, Research & Advocacy Project (GR&AP)**

is focusing on another area of legislation –family law. Over the next few years, the unit will be looking at issues such

as children's rights, the recognition of customary marriage, inheritance under civil and customary law, divorce, cohabitation, and the rights of step-children. "We also plan to continue our efforts to assess the effectiveness of laws that are already in place, such as the laws on domestic violence and maintenance,

***"Namibia's current environmental laws are in a desperate need of updating."***

to see if they are being implemented in a way which accomplishes their intended purposes," says GR&AP Coordinator Dianne Hubbard. "We hope to continue our efforts to raise awareness of laws and law reform issues through radio, film, simplified guides to the law in local languages, comic books, pamphlets and community workshops."

"As the LAC looks towards its future, it is with admiration and gratefulness that we acknowledge our past and present donors," says LAC Director Norman Tjombe. "Without their generous and continued support, the LAC would not be able to operate and continue in its mandate of creating a human rights culture in Namibia."



# Donate to the LAC

Help create and maintain a human rights culture in Namibia.  
Your donation will help those with the least access to the law.

To contribute, send a cheque to:

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