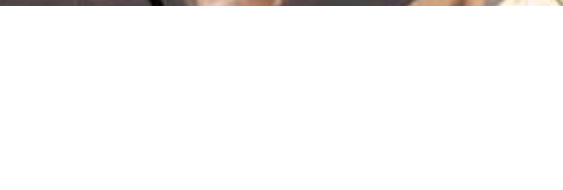
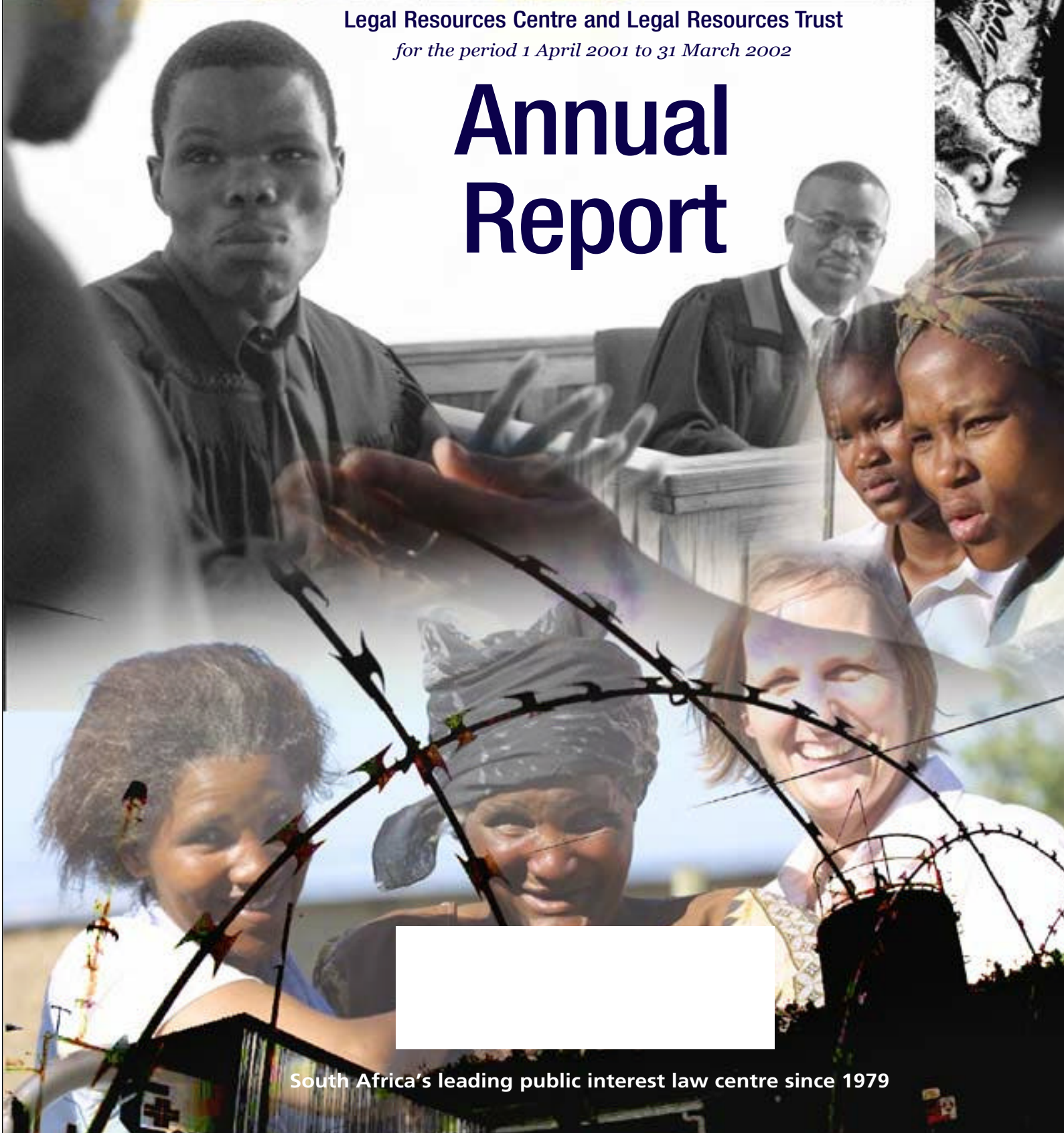




Legal Resources Centre and Legal Resources Trust
for the period 1 April 2001 to 31 March 2002

Annual Report



South Africa's leading public interest law centre since 1979

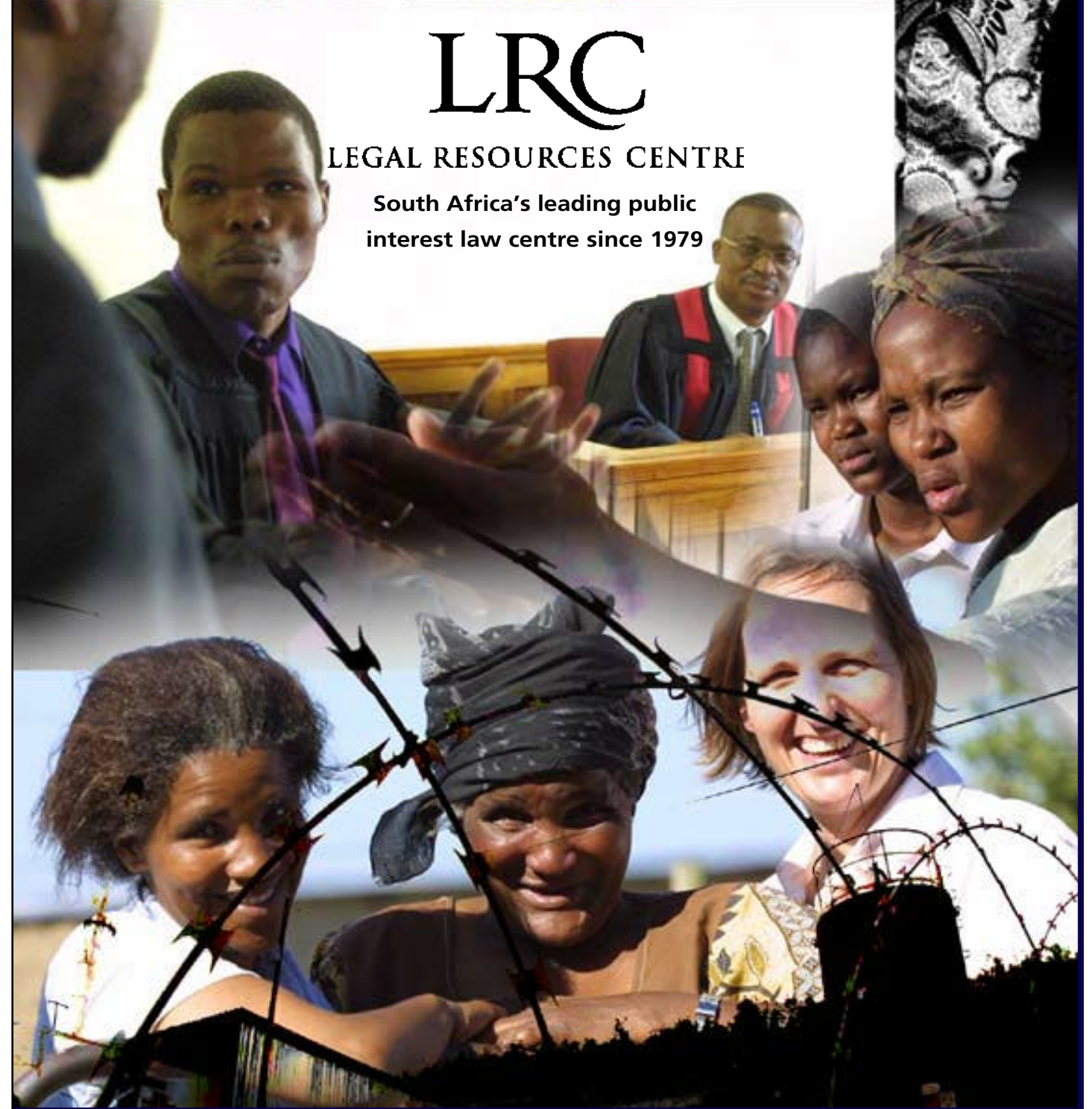


Annual Report

LRC

LEGAL RESOURCES CENTRE

South Africa's leading public
interest law centre since 1979



ALUTA CONTINUA:
President Nelson
Mandela visited national
chairperson of the
Treatment Action
Campaign Zackie
Achmat, at his home in
Muizenberg in mid-2002.



Selflessness: The Treatment Action Campaign vs the SA Government

The HIV/AIDS pandemic in South Africa has been described as ‘an incomprehensible calamity’ and ‘the most important challenge facing South Africa since the birth of our new democracy’, and government’s fight against ‘this scourge’ as ‘a top priority’. It ‘has claimed millions of lives, inflicting pain and grief, causing fear and uncertainty, and threatening the economy’.

These are not the words of alarmists but are taken from a ministerial foreword to an earlier Department of Health publication.

THE Constitutional Court judgment¹ forcing government to take immediate steps to implement a reasonable program to prevent mother-to-child transmission of HIV/AIDS was widely interpreted as a victory not only for children, but also for the independence of the judiciary and the integrity of the South African Constitution.

The government had for several years been on the receiving end of mounting national and international

1 The Constitutional Court ruled that government had a constitutional obligation to give effect to the right of access to health care services, as entrenched in Section 27 of the Constitution. In terms of Section 27 (2), government is under a constitutional obligation to take reasonable legislative and other measures to progressively realise the right of all South Africans to have access to health care services, including reproductive health care.

criticism for its perceived tardiness in addressing the HIV/AIDS pandemic. Now, the Constitutional Court seemed to have taken a giant stride to put the matter right.

In a unanimous judgment the court ordered government *without delay to*: Remove restrictions on the availability of the drug nevirapine to pregnant women and their babies; actively facilitate the use of the drug; make provision if necessary for training of counselors based at public hospitals; and take reasonable measures to extend testing and counseling facilities throughout the public health sector.

At a broader level the case was also about macro policy on HIV/AIDS that goes beyond mother-to-child transmission, said Geoff Budlender of the Legal Resources Centre’s Constitutional Litigation Unit who represented the Treatment Action Campaign since the case began in the Pretoria High Court in 2001.

There has plainly been a very significant shift, Budlender said, six months after the Constitutional Court pronounced on the matter. **The case played an important role in moving government towards a more rational position on HIV/AIDS more generally – it now seems likely that there is going to be a treatment programme with anti-retroviral drugs, which only a short while ago the Minister of Health reportedly described as ‘poison’.**

Budgets have been increased and state rhetoric questioning the existence of the virus has decreased. South Africa now reportedly has the largest programme in the world for the prevention of mother-to-child transmission of HIV. *Evolving* is the word the Constitutional Court judges used to describe government policy in respect of the pandemic. Yet government’s response to the judgement was mixed. Several provinces interpreted the court’s injunction to move *without delay* very loosely, or initially ignored the court order altogether.

The Treatment Action Campaign (TAC), through the LRC and through its own investigations, established that three provinces were not complying with the court order: Mpumalanga, Limpopo and the Eastern Cape. Mpumalanga was described as the ‘worst offender’. Six months after the judgement, the TAC asked the Human

Rights Commission to urgently investigate what the TAC described as contempt of the Constitutional Court order by the MEC for Health in Mpumalanga. At about the same time, the TAC (again represented by the LRC) initiated contempt proceedings against the MEC in the High Court.

Even though Mpumalanga’s MEC for Health may, see things differently the TAC’s charismatic national chairperson is prepared to stake his life on the matter.

Raised by his mother, a shop steward in Solly Sach’s old Garment Workers’ Union, Achmat cut his teeth in youth politics. In 1977, aged 15, he tried to burn down his school. Later that year he was arrested again, trying to get to Steve Biko’s funeral. He has not stopped fighting since.

As a 16-year-old he was jailed for three months for *inciting violence*, barely emerging in time to lend a hand with the consumer boycott of *Fattis & Monis* products. At 17, for his role in organizing the 1980 schools boycott, he found himself back behind bars. At 18, at the funeral of Hennie Ferris, he was among the first group of people to openly fly the ANC flag since the 1960s.



It was revolution, and I was involved full-time from 1980-1990. I spent most of this time underground, doing trade union and youth work.

He was a member of the Wilson Rowntree Boycott Support Committee, secretary of the Mitchell's Plain Youth Movement, an organiser for the South African Municipal Workers' Union, a staunch United Democratic Front comrade. He also happened to be gay.

Over the years, certainly throughout the 1980s, I never regarded my sexual orientation as an issue in the same league as other issues. Then, in 1990 I was diagnosed with HIV. I don't often tell people that I went into denial for a long period, until 1997.

It was then, while working at the Centre for Applied Legal Studies at the University of the Western Cape, that he became active in HIV/Aids prevention work.

The formation of the vociferous and effective Treatment Action Campaign (TAC), which Achmat chairs, coupled to his resolute refusal to take anti-retroviral drugs until they are available to all HIV positive citizens – however poor – was to thrust him to the forefront of a new struggle.

It is a struggle to stem a tide of preventable deaths with legal medicines that are available to the South African government at no cost. It is a struggle that has seen the TAC drag the government to court, and win, and a struggle for which Achmat could yet pay the ultimate price.

The Department of Health says there will be three to four million deaths by 2010. Let's assume that four million people will die if government doesn't do anything, but if it intervenes now two million will die. The combination of commitment to the fight, together with the actual saving of lives, will mitigate the impact of mass death in communities. And it will mitigate the social and economic impacts.

Imagine that number of people dying simply because they could not afford medicine. What would that do to people's value of life? You can already get killed for your cell phone. Remember, we come from a period in which 17 million people went to jail because of pass laws. What did that do to the rule of law, and people's perceptions of themselves? It is

not difficult to understand why we live in a state of lawlessness and crime.

This is the first struggle I've ever been involved in that has the support of all people, across the board, across racial lines – from the street sweeper to the scientist and serious capitalist.

But his body is getting weaker.

While 2001 ended on an exhilarating note with a successful application to the Pretoria High Court for an order compelling government to make anti-retroviral drugs available, Achmat was to find 2002 exhausting.

I registered to do my Masters in law at the University of Cape Town and managed to finish the first semester. Then things got hectic and I had to defer my studies.

I spent pretty much 80 percent of my time on the TAC; my basic problem is that I am now only performing at 30 percent of my capacity. I used to be able to read 300-400 pages a day, two books a week. Now I can barely read a book a month.

I think my life has too much meaning now, you know, life itself means something to me. I don't get to sleep properly because of it. Every week we are burying comrades. The week that Madiba came to visit we buried three people in Guguletu.

When the battle is won Achmat plans to complete his law studies **at a pace that will allow me to rebuild my strength**. Then he plans to write a novel based on **all the people I know – and there are quite a few of them**.

Achmat, who has publicly refused to take nevirapine until it was freely available to all South Africans living with HIV/Aids, however poor, continues to refuse the medicine. Physically he is not nearly as strong as he was; spiritually he is prepared for a protracted fight.

Most of us in the TAC leadership want this thing over – at least the policy issues, you know, government committed to treating people and things like that – by the next election (2004). We realize that the implemen-

Selflessness: The Treatment Action Campaign vs the SA Government

tation of actually treating people will take much longer, probably five to eight years.

But we, at least, require government's commitment. As soon as government agrees to implement proper anti-retroviral treatment programs in all provinces I will take my medicine. Even before they start allocating the medicine, as long as they are committed to the process, I will take nevirapine.

Achmat said the TAC viewed the law as a critical adjunct to mobilizing people around issues and campaigns.

It's a way of taking potentially serious conflicts that can result in violence and containing them. It also helps to set

rules by which you can check the powers of officials and authorities.

In the TAC we feel we know what we want to do. We conduct our own research and subscribe to all the best medical journals. You must learn about it to fight it effectively.

We are not ordinary disempowered clients hoping that our lawyers will resolve all our problems. From our experience in the anti-apartheid struggle we know their limitations and we know their strengths. Even if you lose a case you may still be able to use it, said Achmat, a part-time law student, himself.

CONSULTATION: Lawyer Geoff Budlender and HIV/Aids treatment activist Zackie Achmat on Muizenberg beach.





COMPENSATION CAMPAIGNERS: Beulah Rollnick and Paula Howell see to it that injured workers receive the compensation to which they're entitled.

Tenacious Twosome: Governance & Administrative Justice

ENGAGING THE WORKERS' COMPENSATION SYSTEM

Sipping coffee with doughnuts would be a far better option to the average clerk in the Compensation Commissioner's Office than to field a call from the likes of Beulah Rollnick or Paula Howell – undoubtedly the scourge of the Compensation Commissioner's office in Pretoria.

Besides handling workers' claims, the thrust and focus of their attention is the overhauling of the entire system!

Rollnick, 76, is a grandmother from the northern suburbs of Johannesburg who doesn't bake for her grandchildren or play bridge. Howell is a law graduate from Britain. Together – one in a full-time capacity, the other as a two-day-a-week volunteer – they run the Legal Resources Centre's Worker's Compensation Project, out of the LRC's Pretoria office.

Charles Pillai who directs the Pretoria Legal Resources Centre. *Beulah is tenacious. She nags them to deliver and is passionate about her work. She worked for the Black Sash for many years and is a real stalwart of the Struggle. She lives in Johannesburg and drives to*

Pretoria daily. She is the first staff member in the office every day.

Pillai's assessment of Howell is equally glowing: *Paula has been a volunteer for more than three years who dedicatedly comes into the office and does wonderful work in this area. - She is not admitted to practice in South Africa. She did similar work in England working in the sphere of insurance and work-related injuries. Our system is similar; the difference is that our system is inert.*

Pillai is proud that his is the only Legal Resources Centre office to run a dedicated Workers Compensation Project.

His description of the state of South Africa's workers compensation structure as inert is infinitely more sensitive than Rollnick's. *The lack of delivery and disorganisation is absolutely appalling, to say the least, she says.*

When an employee is injured at work the employer is required to complete a report and send it, together with a medical report, to the Compensation Commissioner's office. While the employee waits for her claim to be finalised s/he is paid 75% of salary by the employer – who will recover the money from the commissioner. After three months the Commissioner assumes payments to the employee if s/he is still unable to work.

Should the claim process is delayed beyond three months – usually because an employee has failed to file an accident report – a worker is likely to face serious consequences. S/he would no longer be eligible to claim payment from an employer but could also not qualify for any disability payment from the State. S/he will also be denied access to rehabilitation that could assist his return to work.

The Compensation Commissioner's office receives about 200 000 claims per year and more than 90% of workers compensation cases that Rollnick and Howell take on are more than a year old – most are more than three years old! Even when the issues are straightforward clients have to wait six months or longer in order to be assigned a claim number and many of these cases can take three years to settle.

I have two 12-year-old cases, which are not very complicated, says Rollnick. We've held meetings with



the commissioner, but the only time she opened her mouth was to drink coffee. You can't get through on the phone, and they don't respond to faxes.

Rollnick says as a public interest law firm, the Legal Resources Centre was helping to improve the lot of workers injured on duty. The only way we can do it is from the top; the commissioner's office must change its way of doing things. With the way it works now I don't know how any worker injured on duty can access anything at all.

Howell worked for the Free Representation Unit in London before coming to South Africa in 1997 when her husband got a job with the Overseas Development Institute in Pretoria. She soon heard about the Legal Resources Centre and offered to lend a hand. In the UK we don't have a compensation system. We have a national insurance system that covers injuries and disabilities.

By all accounts, including their own, Howell and Rollnick complement each other perfectly. While the former concentrates on the legal matters and conundrums, the latter's knowledge of the system and procedures is second to none. One prepares court papers while the other chips away relentlessly at the bureaucracy. *Beulah is very patient with them. I would blow my top,* Howell says.

The work is so important in the sense that we are not just involved in litigation, we are in the process of trying to change the system. This involves liaising and lobbying with everyone from government to trade unions and Nedlac, she says.

Few would wager against this formidable team!

COMMUNITY CARE: Notobile Raji of Umanyano Lo Mama in Khayelitsha cooks lunch daily for about 150 children in Khayelitsha.



A woman's bold journey into establishing a sustainable self-help community project

USING THE NPO SYSTEM - WITH IMPUNITY & EFFECT

The Non-Profit Organisations (NPO) Legal Support Project aims to promote good governance and accountability within the non profit sector by providing legal support for the establishment and servicing of non-profit organisations.

The activities of the NPO project include advising NPOs on the type of institutional and legal entity they could establish to achieve their aims and objectives; assisting NPOs to establish an appropriate legal entity; addressing problems relating to the legislative and administrative framework; and lobbying for a more enabling environment for NPOs.

NOLUTHANDO Nduzilwana grew so angry hearing about the abuse of girls and young women in her community that she set out to do something about it. Although she had no business training or experience in setting up and managing projects, Mrs Nduzilwana



PRECIOUS STUFF: Co-ordinator of the Umanyano Lo Mama project, Noluthando Nduzilwana, in a Khayelitsha vegetable garden.

established an organisation called *Umanyano Lo Mama* (Women Unite).

We started a soup kitchen at my home after hearing about the number of rapes of our young girls. I came to the church and asked what we could do as women. Our children are left alone at home while their mothers go to work, and the rapists take advantage of that. So we tried to organise ourselves as women, to get the girls off the street and to feed them. Things grew from there, Nduzilwana recalls.

She lives in Khayelitsha, in AA Section, Town Two. It is one of the poorest communities in the Western Cape.

Because we are among the poorest of the poor, we soon realised that there wasn't enough money in the community to support the project. It made sense for us to start producing our own vegetables to feed our children.

We went to ask Chuma Primary School if we could use a piece of their land, and also approached the Church of Nazareth. Both the school and church agreed, and the church allowed us to use its hall. That is why we have a two-hectare food garden at the school, and another one-hectare garden at the church.

The women still buy some ingredients such as salt and soup mix, raising the money to do so through the sale of vegetables to members of the community. They grow everything else themselves. There is an abundance of

cabbages, spinach, carrots, potatoes, onions and beetroots – all of it grown organically.

We grew up in the Eastern Cape farming organically at home. We saw no reason to change our methods. We have even started our own compost heap.

The women received some financial assistance from the Eco Action group at the University of Cape Town, and the Department of Health contributes to the feeding scheme.

Today the organisation comprises six women volunteers and four fathers who help with the gardening. They provide 150 children with a healthy meal every day.

Indeed a good news story about people with limited means taking responsibility for each other but is the enterprise sustainable?

We started in 1998 and struggled for the first three years to develop a proper constitution and to register ourselves as a non-profit organisation. We did not have the necessary skills because none of us had worked for any project before. We realised we were busy with very important work and that the demand for our work would grow, but we did not really know how to manage it.

I was speaking to a friend telling her about our problems and she told us about a place in Cape Town we might approach, called the Legal Resources Centre. I went there and met Ricardo Wyngaard and told him our problems.

It was he who helped us draft our constitution in a proper manner, and get it registered. The first time I went there I was so worried about money but he said I should not worry about money, he would do it for nothing. You cannot know how relieved we were.

Ricardo Wyngaard, an attorney, is co-ordinator of the Legal Resources Centre's Non-Profit Organisations Legal Support Project. We speak to him and fellow-attorney and project member **Thamsanqa Mbatha**.

The goal of the project is to promote good governance in the non-profit sector. We do this through various activities, one of the most important being to offer legal support and advice, Wyngaard says. We focus on organisations that fall under our mission statement to eradicate the negative effects of poverty and inequality.



MOUTHFUL: 18-month-old Asemahle Mabongo is one of the children nourished by the Umanyano Lo Mama project.

A woman's bold journey into establishing a sustainable self-help community project

These are organisations directed at welfare, humanitarian aid and public benefit.

Much of the project work is working with clients who approach us as Mrs Nduzilwana did. But we also contribute towards training workshops and disseminate information on our website.

Neither Wyngaard nor Mbatha particularly miss court work.

I used to work for an organisation which represented people threatened with eviction. Although that was exciting in its own right, my current work is very stimulating. It's also essential knowing we can render services to organisations that deliver such invaluable services to their communities, Wyngaard says.

Adds Mbatha: When I started I thought I would give community work two years of my life. But the more you do it, the more apparent your results and the more satisfied you become.

As at 31 March 2002, the Cape Town office of the Legal Resources Centre held 59 client service files relating directly to the establishment, registration, tax exemption and/or support for good governance of non-profit organisations.

The NPO Project also functions in all the LRC offices nationwide.



SHE WHO LAUGHS LAST... Mambamba Melitafa (centre) was one of the original four applicants in the country's first successful class action, on behalf of her epileptic daughter Nombulelo (left). With them is Sarah Sephton of the LRC in Grahamstown.

The Eastern Cape Provincial government's disastrous compilation of its social welfare list.

PRESUMED DEAD UNTIL

In their bungled though well-intentioned attempt to amalgamate former bantustan and current provincial lists of welfare grant recipients, the Eastern Cape Welfare department with the stroke of a pen and click of a PC mouse declared the living, the dead, and the disabled, abled.

They caused consternation among the most needy across this impoverished province and their bungling led to extreme hardship.

This bureaucratic expediency was also to lead to the first successful class action in South Africa – a legal precedent piloted by the Legal Resources Centre in Grahamstown.

The case of Ngxuza and others versus the Permanent Secretary of the Eastern Cape Welfare Department and another was to find its way ultimately to the Supreme Court of Appeal. In his judgment on behalf of a full bench – Judge Edwin Cameron said:

The class the applicants represented is drawn from the very poorest within our society – those in need of social



UNFAIR: Mzwandile Ngxuza, whose fingers were chopped off in a mining accident in 1960, had to beg for food for four years after his disability grant was inexplicably cancelled.

assistance. They also have the least chance of vindicating their rights through the legal process.

Their individual claims are small: the value of the social assistance they receive – a few hundred Rands every month – would secure them hardly a single hours consultation at current rates with most urban lawyers. They are scattered throughout the Eastern Cape Province, many of them in small towns and remote rural areas. What they have in common is that they are all victims of official excess, bureaucratic misdirection and unlawful administrative methods.

The court described the Welfare Department's actions as savage, and dismissed with costs the appeal by the department against the High Court decision that Mr Ngxuza and others could bring a class action on behalf of thousands of other pensioners who were in a similar position.

After the first democratic elections in 1994, South Africa was divided into nine provinces. Some of these new provinces were required to incorporate portions of, or entire former bantustans. The Eastern Cape Welfare Department had the unenviable task of assembling a single data base of provincial welfare grant recipients while at the same time verifying that recipients indeed qualified for a grant.

As many of the people lived in far-flung areas with poor communications, the department decided it was impossible to contact all recipients individually. It decided to cancel all the grants, and then rebuild the list from re-applications. It might have worked, but it seems that the department under-estimated the scope of the undertaking. They were inundated with re-applications. They could not cope, and decided to start afresh.

At the same time people who were no longer receiving their disability grants began flooding into the offices of the Legal Resources Centre in Grahamstown, many of them sent there by the advice offices in their communities.

There were queues of people here, most of them to talk about the cancellation of their disability grants. It got so bad that we had to procure a standard form to create a uniform data base. The record we eventually sent to the Appellate Division contained volumes and volumes of paper. There's a rule that you should only put material to the Appeal Court that is essential to the appeal. We thought it was important that the judges got a sense of the scope of the problem, said director of the Legal Resources Centre, Grahamstown, Johan Roos.

One of the many cases turned out to be extraordinarily significant. In papers relating to the case of Ngayithini Jim Bushula – whose disability grant had been cancelled – the department admitted that it had adopted a strategy of canceling all grants and then awaited re-applications. This admission was crucial and led to the birth of the class action.

The four initial applicants were obviously deserving people who needed their grants reinstated. We called them in and said they had good cases, and that the Constitution gave them the right to apply to the courts in their own rights as individuals, or on behalf of a class of prejudiced grant recipients, Mr Roos said.

We spent many hours explaining how the process worked, and that they had a choice to go on their own. The time we spent with them was an excellent investment. They chose the class action route.

In court, the reaction of the Welfare Department (and some newspapers) was to question how these peasants could constitute a class. What did they know of Constitutional issues? Were they not just pawns in the hands of the LRC?

The Department went behind our backs and offered the four applicants money on condition that they withdrew on behalf of the class and themselves. To their eternal

credit, and in spite of their great need for the money being dangled before them, the four stood firm.

The Eastern Cape Division of the High Court granted the relief the four applicants sought, and granted most importantly granted them legal standing to represent the class.

The Legal Resources Centre then set out to compile an accurate list of people whose names had been unlawfully removed from the list of grantees. The Department produced a list of about 33 000 people, and the Legal Resources Centre placed advertisements calling on those whose grants had been terminated to come forward. By the end of 2000 more than 10 000 such people had identified themselves, and the Department's list had swelled to more than 40 000 names. The list included seven living people, who were listed as being deceased.

This information was placed before the court, with the Legal Resources Centre team asking for more time to contact everyone. The Department, meanwhile, appealed against the Grahamstown judgement – and lost!

The Department at this stage approached the Legal Resources Centre to discuss a settlement. There were people, the Department said, who would benefit from the class action although they were not fully entitled to receive a grant. Was there not another way to satisfy the judgement of the court?

The parties agreed that panels should be constituted to assess grantees individually, and that progress reports on the assessments would be submitted to the court at three-monthly intervals.

By the end of 2002 about 20 000 people had been reinstated on the list, although the Legal Resources Centre was unhappy with the manner of the Department's assessments and reporting.

Said Mr Roos: *We are now proposing going back to court for another, very detailed order on how to conduct the assessments, and the issues that must be covered in the Department's reports. The matter is due to be heard in January 2003*

The Eastern Cape Provincial government's disastrous compilation of its social welfare list.



SLOW-MOVING: Lorenty Nomala with her husband Soyikiso Zatu, in Fort Beaufort. Stricken by arthritis, Nomala was told by the Department of Welfare that she'd been 'found to be not disabled' and no longer qualified for a disability grant.

The case of a woman disabled by arthritis and an inadequate bureaucracy.

FILLING IN FORMS! : DISABILITY GRANTS

Lorenty Nomala was 10-years-old when she began working as a child-minder for a affluent white family. She never attended school and cannot read or write. With the passing of time she was promoted to helping in the kitchen. About 30 years later, her knees began to weaken.

I went to the hospital, where a doctor tested my blood. When I got the results of the test I was told I had rheumatoid arthritis.

Her condition deteriorated and as a result she was no longer able to work. She could barely walk – and her farm worker husband was growing old. They left the farm where she and her parents had been born and they moved to Fort Beaufort some hundred kilometers away.

Fortunately their former employers bought them a house in Chris Hani township. They had just voted for the first

time in their lives and Mrs Nomala application for a disability grant had been approved.

Then, quite inexplicably, the State payments stopped. –. Without any notice her name was struck from their list.

A flurry of letters from the Legal Resources Centre in Grahamstown to the Department of Welfare eventually elicited the response that Mrs Nomala's disability grant had been reviewed and she'd had been 'found to be not disabled'.

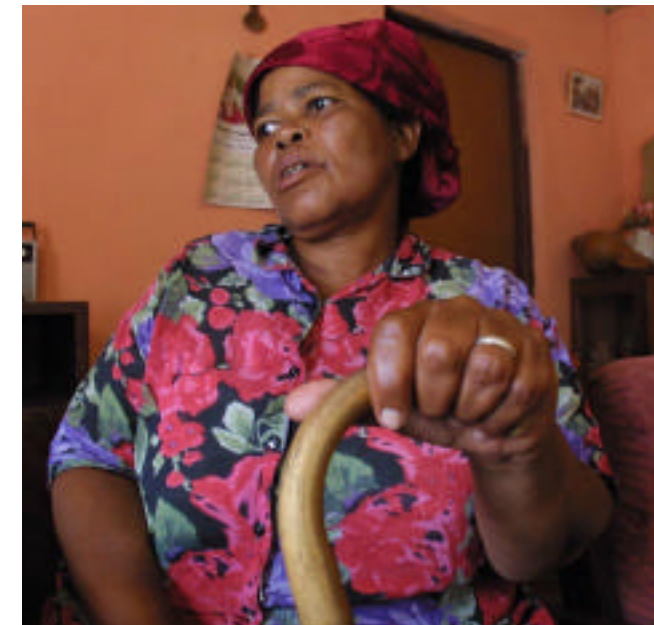
She approached the court for relief. A sentence in her affidavit reads:

I submit that the suspension or cancellation of my disability grant was unconstitutional and hence unlawful because in addition to being a serious assault upon my dignity it infringed my rights to: Lawful administrative action; reasonable administrative action; procedurally fair administrative action; access to social assistance; and protection from arbitrary deprivation of property.

Not only was she disabled, but **as a result of my disability, I am unable to earn a living through work of any sort.** The decision to cancel her grant was taken in bad faith, and the Permanent Secretary of the Welfare Department had failed to apply his mind to the matter.

Johan Roos, Director of the Legal Resources Centre in Grahamstown explained that this was not a class action but a public interest case:

The Welfare Department used a standard form when giving reasons for rejecting claims for disability grants. It was a standard form with various boxes which applicants had to indicate a reason for their claim , One of the boxes was labeled 'not disabled', and others' included 'insufficient information' and 'condition treatable'.



In Mrs Nomala's case, they sent her a rejection letter with the form, having ticked none of the boxes. We had been questioning the process. These were not reasons; they were conclusions! They did not indicate any reasons for arriving at their conclusions, Mr Roos said.

Mrs Nomala applied for an order to be given proper reasons. She applied for an order that the actual standard form they were using contained no proper reasons; and she asked the court to compel the department to stop using the form and to devise another way of operating.

What they could have done in response to her application was simply to supply Mrs Nomala reasons for her case. Two advice offices joined Mrs Nomala as co-applicants seeking public interest relief.

The order was granted in June 2001. Mrs Nomala is relatively content for now, but Mr Roos termed the judgment **less of a victory than we thought**

They have revised the reasons, but these are still unsatisfactory. They discovered a KwaZulu-Natal judgement saying all that was required was a medical report. So now they claim to give you, with your rejection letter, a medical report. This is still sometimes done over the counter.

We need to consolidate what we have achieved here. We are going back to court. We are busy drafting the papers, he said.

Said Mrs Nomala: **I feel much better that the case has been sorted out. My big problem now is the arthritis. When I am seated I cannot easily get back onto my feet. I can no longer walk without a stick, but I can only thank the Legal Resources Centre.**

TACKLING THE MAINTENANCE SYSTEM: Candidate attorneys in the LRC's Durban office, Raphael Mthembu and Taryn Powis, have maintenance defaulters in their sights.



A glance at the experiences of candidate attorneys battling the Maintenance Court system.

THE MAINTENANCE COURT EXPERIENCE :

The primary objective of the Women's Rights Project is to ensure substantive equality for women in South Africa.

This requires ensuring that the Bill of Rights and supporting legislation represent more than just paper rights for women.

To achieve this, the Project has developed a 3 year plan encompassing 6 focus areas i.e **Maintenance, Violence against Women, Employment Equity, Women in common law and religious unions, Women and Land, and African Customary Law .**

Maintenance may well be one of the less appealing of the six focus areas, but it is nonetheless a priority because the administration associated with this right has come to be one of the most insidious barriers to women attaining full equality.

The ineffective administration and enforcement of maintenance rights entrenches the poverty of women by

preventing them from accessing maintenance rights to which they are legally entitled.

It may not be the cut and thrust of high powered court work, but the Maintenance Court work undertaken by Legal Resources Centre in Durban is vital in beginning to rectify the almost total breakdown of the maintenance system in South Africa.

*Maintenance is a common law right, attorney **Sharita Samuel** explains. What the legal system has to do is find effective mechanisms to enforce that right. So we have the Maintenance Act as the vehicle to enforce rights. But the legislation must be implemented by the Maintenance*

Courts – this is where the problems begin.

Samuel is a women's rights lawyer and was one of the founding members of the Legal Resources Centre's Women's Rights Project. Given her tenacity, she is precisely the kind of lawyer maintenance defaulters never want to meet.

When you pass and implement an Act you need to invest resources to implement its provisions. This Act required staff in every court to be adequately trained in order to enforce the provisions of the Act. Yet, in this day and age we found there had been no training of maintenance officers. In fact, the Director of Prosecutions decided that maintenance clerks no longer needed the legal qualifications of prosecutors. We found there were many administration clerks acting as maintenance officers on the back of one-hour workshops. This is alarming, considering that they have little or no knowledge of civil and criminal proceedings, and often haven't even read the act or the Constitution.

We also encounter obstructive and negative attitudes. Some of the administrative clerks have no interest and even less commitment in seeing these matters through. The average time from lodging a complaint at a Maintenance Court to actually receiving any money is two years – which is obviously far too long.

Comparative studies with Canada and Australia reveal just how ineffective our system is. Clearly there has been insufficient investment in the administration of the relevant laws. We need inter-departmental co-operation so that if a person is in arrears with his maintenance he should not, for example, be able to buy a house, a car, or even an expensive cellphone.

Section 28 of the Constitution says that in every case involving a child, the best interests of the child must take priority - that is just not happening in our country.

These are issues that mainstream lawyers do not often engage in, and of course these clients cannot pay legal fees. The fact that the legal aid system has also rejected them means that there are very few channels to enforce their rights. The intervention of the Women's Rights

Project in this area of the law is therefore crucial to the women we serve.

Samuel is the only Durban staff member who works in the Women's Rights Project; a project encompassing a broad spectrum of work and she obviously cannot intervene personally in every matter that crosses her doorstep.

The breakdown of the maintenance mechanisms set up by the State is public knowledge. We cannot transform the system since it's tied up to management within the Department of Justice and resources that are allocated in accordance with the national budget, nor can we turn away the women and children that are victims of this breakdown, she says.

The high volume of maintenance cases required the assistance of further staff and she drew in the candidate attorneys who now play a vital role these cases. The work of the Women's Rights Project on maintenance is an example of how different projects within the LRC can form strategic partnerships to provide effective services to our clients. It has proved to be a wonderful training opportunity for candidate attorneys.

All candidate attorneys want to get to court as early as possible and as often as possible to gain experience. However, as we are an organisation working in test case litigation – mainly involving High Court and Constitutional Court work – there are few opportunities for candidate attorneys to appear. The Women's Rights Project, and our constitutional approach to maintenance work in particular, is a good way to get them into the Magistrates Courts to hone their skills. It requires them to appear in court formally, in their gowns, to abide by the rules, and to research and prepare arguments.

We do tend to attract a special kind of candidate attorney and they often succeed in their cases. With supervision they obtain orders they need to execute, and are responsible for seeing their cases through from start to finish. This is excellent in developing their courtroom skills and thereby building up their confidence.

Maintenance from a constitutional perspective formed a large component of the Women's Rights Project work



WOMEN'S RIGHTS: Candidate attorney Taryn Powis, in action in an Umlazi court.

during 2001. It was the second phase of our strategy and required engaging in as many individual cases as possible and obtaining first-hand data and knowledge of the problems in the system which would then enable us to identify the cases for our test case litigation.

The breakdown of our maintenance system is a national problem and so closely linked to socio-economic equality for women that it would be short-sighted to ignore it..

It is very difficult to understand why maintenance officers or the entire department of justice for that matter cannot see that a woman with three children, who earns R600 a month and gets nothing from the children's father or the state, is in urgent need of assistance, she says.

Testimony:

TARYN POWYS

Candidate Attorney

Coming from a single-parent home I really appreciate the work of the *Women's Rights Project* and am proud of the role that I have played. In working at the Maintenance Court. The work has been challenging and rewarding. It has provided effective training and my contribution has ensured that many applicants obtain the relief they sought from fathers who often evade their parental responsibilities.

The maintenance court system does, however, have numerous flaws which need to be addressed. The Department of Justice has appointed court officials to implement the Maintenance Court Act 99 of 1998. These court officials do not receive adequate training in implementing the provisions of the Act. Consequently, more often than not, we have to assume responsibility for advising applicants on which forms need to be completed and what procedures to follow to secure maintenance payments.

Working with the Women's Rights Project has been most satisfying especially knowing that one is making a difference in the life of a child.



UNITED WE STAND: Sheritha Madanlal, with her children Sasha-Mohan and Ader, and Sharita Samuels of the Legal Resources Centre.

A blind mother battles the social welfare system

HUMAN DIGNITY: SOCIAL WELFARE

Blindness and poverty made Sheritha Madanlal to suffer a little more. She was presented with an inhuman choice for a single parent -: place your children in foster care so they can qualify for social assistance, or have them starve.

When the letter came informing her that the R35 per child monthly maintenance grant she'd been drawing was being phased out, she had already exhausted all Maintenance Court avenues of raising child support from her former husband. In 10 years of trying she had managed to squeeze just R150 from the man. He consistently told the court that he was unemployed.

She tried begging, and borrowing food from neighbours. In desperation she sought the assistance of the LRC in Durban.



With the assistance of the LRC, she asked the Durban and Coast Local Division of the High Court to review, correct and set aside the province's decision to stop paying social relief to her children. She asked that the province be ordered to issue relief to the value of R160 a month pending final determination of the case.

Despite being famished my children are being refused the issue of food vouchers especially contemplated for their circumstances. Except for being told that the benefit can be given only for one month, the true reasons for refusing the issue of the voucher are not known, Madanlal described the dispute in founding documents.

At home the staple diet of the children at present is tea and bread. Teachers at their school arrange for extra lunch to be brought by well-off children to be served to poor children including mine. Over weekends and school holidays the children do not have access to this lunch except when my relatives bring some food.

I fear that if this situation continues the children will suffer permanent impairment to their physical, intellectual and emotional development. I submit that the children require adequate and sufficient food to enable them to lead fulfilled, meaningful and dignified lives, she said.

It was suggested to me that instead of attempting to obtain relief for my children I should give them up and place them in foster care. The thought of resolving in this manner what is essentially a problem of poverty is repulsive to me.

As for my children, they are gripped by the fear that our family may break up. I have however reassured them that placing them in foster care is not an option I will consider...As a last resort I sought the assistance of the Legal Resources Centre.

Ms **Sharita Samuels**, of the Legal Resources Centre in Durban advised Madanlal to apply for a little known benefit called social relief of distress. Madanlal's application for relief of distress was duly approved and she collected R160 worth of food vouchers to feed her children in September 2001. She was also informed that this was a once-off payment as the law did not envisage any relief for children over the age of seven. Her children Sasha and Ader were at this stage 10 and 12-years-old, respectively. She returned to Samuels.

The state's unwillingness to assist her children was contrary to the Constitution, and at odds with provincial and national legislation as. Faced with this pending litigation, the respondents – the Member of the Executive Council for Social Welfare and Population Development, and the Social Services' assistant director in Chatsworth – agreed to pay.

'Since they have been issuing the R160 food vouchers I am financially independent again. It is not a lot of money, but when you have little it is a huge help.'

Shelter – A Fundamental Right?

A STORY OF THE RELEVANCE AND COMPLEXITY OF PERSONAL CIRCUMSTANCE AND THE LAW..

While many applauded a bold judicial attempt to add a human touch to the country's new eviction policy, others reacted with horror and alarm.

Instead of simply following precedent and granting an eviction order against **Jimmy-Rogers Bonginikosi Jika** in the Eastern Cape Division of the High Court, Mr Acting Justice Clive Plasket re-wrote case law. The effect of his June 2001 interpretation of the Constitution and the *Prevention of Illegal Eviction From and Unlawful Occupation of Land Act* was to render evictions illegal unless all the relevant circumstances of those to be evicted had been considered.

Plasket's judgement evoked howls of protest from estate agents who said it would be impossible to dislodge squatters who were unlawfully occupying clients' properties. The Democratic Alliance quickly set to work on a private member's bill in a bid to undo the perceived damage. The Bill was to be tabled in the provincial legislature early in 2003.

The judgment was upheld by the Appellate Division, following an initial appeal to a full bench in the Eastern Cape.

Mr Jika had bought a house in Port Elizabeth but had fallen behind on the payments. The house was repossessed by the bank and sold to a Mr Charles Alfred Bekker and his partner. They took transfer of the property in May 2001 but Mr Jika refused to vacate the premises.

Bekker and Bosch approached the South Eastern Cape Local Division of the High Court for an order evicting

Jika, The judge refused to grant the eviction order because the applicants had failed to take the Jika family's personal circumstances into account.

In its preamble, the *Prevention of Illegal Eviction From and Unlawful Occupation of Land Act* provides that special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognized that the needs of those groups should be considered.

Judge Plasket was of the view that the Act was one of a basket of new statutes designed to give effect to fundamental rights enshrined in the Constitution.

Mark Euijen, a lawyer from the Legal Resources Centre in Grahamstown became involved in the case after Bekker lodged an appeal against the Plasket judgement.

The big bogey, Euijen says, is that property owners will be unable to vindicate their property. Squatters can move into your Plettenberg Bay holiday home and say they have nowhere else to stay. But the Act is clear that if the defendant has no defense in law the court must grant the eviction. All the Act does is ameliorate evictions, possibly allow a month or two's grace. It does not ultimately deplete the right of property owners to own property.

The bogey fears are completely unfounded. A full bench of this (Eastern Cape) division found that if you cannot tell the court why you should not be evicted you will be evicted just as quickly as you would have been prior to the Act. But if there are compelling factors, these will be considered.

Euijen appeared as *amicus curiae* in the case for the Human Rights Commission, whose instructions were to defend the correctness of the judgement.

Director of the Legal Resources Centre, Grahamstown, Johan Roos, said.

We wanted to help standardize the eviction process, It was at this point that we alerted the Human Rights Commission to the fact that the issue was to be argued. The HRC decided to go against Bekker, and instructed us to represent them.

Evictions have a particularly painful resonance in South Africa where the forced removal and resettlement of millions of people into ethnic areas was the cornerstone of apartheid policy. Landowners and the State had an arsenal of enabling legislation at their disposal to deal with people who were unwilling or unable to depart voluntarily. In those days a landlord who wanted to evict a tenant for non-payment of rent simply approached the court for an order.

Section 26 (3) of the Constitution provides that no one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances.

Notwithstanding the provisions of Section 26 (3) and the legislation passed, pursuant thereto, in 1998, when confronted with a similar case, the Witwatersrand Division of the High Court ruled that a property owner did not have to consider an occupants personal circumstances because the Act only applied to squatters. This ruling was followed by judges i – until the Jika judgment.

The paradox in the judgment of the WLD is that squatters were being afforded better rights than tenants, bond-holders and other people who have obtained occupation legally, Euijen said.

Johan Roos added :

We argued before the three-judge bench. The appeal was dismissed but each judge wrote a different judgement. So Bekker lost, but we did not get exactly what we wanted either.

This case then went to the Appellate Division, together with a similar matter being handled by our Durban office known as the Ndlovu case. The court directed the Bekker and the Ndhlovu cases to be heard together. The

judges found 3:2 in favour of Jika.

COMMUNITY LEADERS: Aubrey Buthelezi, Michael Mbatha and Alex Buthelezi on the ancestral land they once lost at Esibongweni in KwaZulu-Natal.



Reclaiming Footprints: Esibongweni Communal Property Trust

A STORY OF DISPOSED LAND, OF A PEOPLE DETERMINED TO RECLAIM ANCESTRAL SOIL, AND OF A RELENTLESS LAWYER.

It is an old story: White missionaries arrive as if from nowhere to civilize the natives. They teach the natives to pray with their eyes closed; when they open them they have lost their land and their possessions. A threadbare, overused myth? Perhaps not.

Local histories across the colonized world reveal that this is precisely what occurred. **Esibongweni**, adjacent to the White Umfolozi River in KwaZulu-Natal suffered a similar fate, following the arrival of missionaries of the Lutheran Church from Germany.

Forty years after being run off their ancestral land the community is to return after successfully claiming land through the national land restitution process.

There is much to celebrate but much hard work lies ahead. Aubrey Buthelezi, head of the Esibongweni Communal Property Trust, is deeply conscious of the

fact that it is much easier to own land than to manage it sustainably for the benefit of a relatively large community. This is particularly challenging considering that the community had been debilitated-- when the fabric of the community, its very cohesiveness, had nearly been undone.

Buthelezi and a few of his trusted committee members spent much of 2002 taking soil samples, auditing the availability and location of water on the land, and obtaining advice from agricultural researchers on how best to proceed. Some of the land is suitable for cropping, some for game farming, and some for residential purposes. They are also considering fish farming, organic vegetable gardening, and bee farming.

Do you know that Esibongweni (meaning thank you) used to be the Buthelezi clan's place? I was myself born on this farm 52 years ago. The farmer later named it Vlakhoek., We were living here peacefully, leading traditional lives with our cattle and our crops, but then the white farmers started to arrive. We stayed together with them but then they started putting up boundary fences; and then the missionaries came.

The missionaries said they wanted to buy the land which, although we were living here, had at some point been registered as the property of a Mrs Snijman. The missionaries said the people had to pay for the land and so, because black people were not allowed to buy land from the whites, we used the Lutheran Church to buy it. We called it Esibongweni. Our parents paid the purchase price because the church said it had no money.

Years later after their forced removal members of the community heard that the church had raised the money from Germany. This, however, was not so, **Our old people remember the that Minister had nothing; we lent him our plough and helped get him started.**

After the purchase things proceeded relatively smoothly for a while, until the late 1950s. Then apartheid legislation, in this instance aided and abetted by the church, began to bite.

It was around 1956 that the church started evicting people with letters, People asked what was wrong the church

simply said that they should sign six-month labour contracts to work for the church; or they should leave The pastor, Mr Fedderke, was fierce. We called him Mthathazela, which means 'fast move'. Not many got along with the Pastor and the community later learned the Babanango magistrate used to visit the pastor telling him that unless black people worked they would have to leave as the area had been declared white. Black people had to be registered as ordinary farm workers, although we owned the place; the pastor never told us that. He never informed the people why he was doing what he did.

Some people resisted and that's when the pastor started serving them with eviction letters. A lot of our people lost their livestock and left their fields with ripening crops and just walked away.

Stripped of their rights they were forced to move and scattered themselves across the hills of KwaZulu-Natal. But the people never lost their memory or their pride.

In 1993 Buthelezi heard then-president FW De Klerk announce that people who had been forced to leave

ONCE WAS A CHURCH: Aubrey Buthelezi at the ruined church at Esibongweni.





GREAT RIVER: Chairperson of the Esibongweni Communal Property Trust Aubrey Buthelezi at the White Mfolozi River which borders their land.

their land should apply for its return, so he led a delegation to Pretoria to discuss Esibongweni. Restitution, however, was easier said than done.

In 1994, swept up in the euphoria of a changing South Africa, some former residents decided they would re-take ownership of Esibongweni and moved onto the land illegally.

We told the foreman who we were, what we were doing, and that we did not intend to harm anyone. The foreman told the farmer and the farmer called the Babanango police and the next thing the people were being arrested.

It was at that point that the Legal Resources Centre's Durban office got involved. The case was initially handled by Thulani Nkosibut was subsequently taken over by Pushpa Naidoo, a lawyer at the Durban office.

Reclaiming Footprints:
Esibongweni Communal
Property Trust

Buthelezi says that they were at first sceptical about Naidoo's ability to help their cause. As a young Indian woman they were unsure of what she would know of the African traditions of KwaZulu-Natal? The scepticism proved unfounded.

Today Esibongweni has been restored to its rightful owners. The State paid about R1.5 million for a total of 2094 hectares but the challenge, now, is to make it work.

We are not scared to say that we want help, Buthelezi says. We don't want to make a mess of this. We have been given an opportunity to rebuild our community, and that is what we intend to do.

We do know that it will not be easy, but I think we have the energy. Come, let us show you the graves of our fathers, he says.



SHOCKING CONDITIONS:
People forced to live in an old training institution in Arcadia have divided classrooms into living units with scrap cardboard. They have nowhere else to go.

Nowhere to go - Leah Mkhize

A TYPICAL SOUTH AFRICAN STORY OF DISPOSSESSION, URBANISATION, EVICTION, HOMELESSNESS AND HOPELESSNESS.

THE Constitutional Court judgement of 2001 which obliged government to provide shelter for people in desperate need, people with 'no roof over their heads' (the so-called Grootboom case) was hailed as a victory in the transformation of the South African society.

Sadly, the impact of the judgment appears not to have crossed the Jukskei River. In Pretoria, the local authorities have been attempting since 2001 to evict a group of homeless people living on public land (a disused school) in Arcadia - a stone's throw from the Union Buildings.

Two years after the City launched an urgent application in the Transvaal Provincial Division of the High Court to evict 'all unlawful occupants' from the premises in Edmund Street, more than 100 indigent people are still living there.



SEEKING DIGNITY: Leah Mkhize with three-year-old son Costa, at the Mvelaphanda Progress Centre they presently call home.

Our children are getting older and we don't want to stay here, Leah Mkhize tells us, but we have nowhere to go.

The premises are barely habitable, comprising a pair of old prefabricated classrooms and a kitchen partitioned with cardboard into single and family units. There are insufficient ablution facilities, and to add to their discomfort the municipality has cut off the supply of electricity and water.

It is not the kind of place to lead dignified lives, but residents depend on their proximity to the city to eke out pitiful existences as collectors of paper for recycling, as car-minders, as odd-jobbers. Their children attend schools in the city. They are part of the city, but there is nowhere for them to live.

It really is symptomatic of the kind of problems we see in all our cities in respect of homelessness, says Director of the Legal Resources Centre in Pretoria, Charles Pillai.

There is presently a shortfall of three million housing units in the country. People want to move to urban areas to seek their fortunes. It's a natural occurrence. But local governments, while meant to be at the heart of delivery, simply don't have any plans to accommodate the people.

According to Pillai: *The court in the Grootboom case said government must take reasonable steps to ensure that people in desperate need, who have no roof over their heads, are planned for in terms of housing. These are the people most desperately in need, who must be taken*

care of first. In the Mkhize case we are challenging the municipality to show us its plan, and they have simply not responded for the last 18 months.

The story of the Mkhize family is a typical South African story of dispossession, urbanisation, eviction, homelessness and hopelessness.

When Leah met Khathyiphi Mkhize in the 1980s she was working on a farm and he for the Boulevard Hotel as a contract labourer under the notorious apartheid pass law system. They dreamed of a better life together, and she was soon pregnant with Constance, the first of their five children.

But in 1990 he was retrenched from his job after 10 years service, losing his accommodation in the hotel staff quarters in the process. He moved in with his family at his sister-in-laws place in Soshanguve, and put himself through a woodwork course while he hunted for work.

Eventually, in 1997, he got work planting trees in Onderstepoort, the family moving into a room nearby. All went reasonably smoothly until the day their white neighbours slaughtered one of their cows and then lobbed a teargas canister into the room.

We still don't know why they did that, Leah says, we were paying our rent and we did not fight with anybody. It was a Sunday. They had killed one of our cows, and at about 8pm my husband was busy talking to a friend when something came crashing into the room. We saw smoke filling the room; I was busy breast-feeding my child.

It was terrible and we thought we were going to die. When we tried to get out we discovered that the back door had been locked. I rushed the children out the front and went back inside for my husband. He was groggy and confused, and I led him out.

Then I went to the white people's house to ask them to call the police. I told them I needed to know what was in the gas because it had made us all sick. They refused to call the police and told us to go back to bed. The white

woman gave us some milk and biscuits for the children. I pleaded with her to call a doctor, but she said we should rather go to sleep.

We were too scared to go back into the house. We just sat in the bush until about 4pm the following day, then we left that place and went onto the street. The youngest child was vomiting so we tried to get a taxi to take us somewhere, but we only had R20.

When night came we arrived at the police station in Pretoria North. But they could not help us either. They told my husband he must find a place for us to stay. We just stood in the road wondering what to do. Then we began walking around looking for a church.

Late that night, a Roman Catholic priest gave them R30, some bananas and directions to a shelter for the homeless. It was the beginning of a new life of urban uncertainty.

In September 2000, desperate to generate the means to support his family, Mr Mkhize initiated the Mvelaphanda Progress Centre, a registered non-profit body aiming to improve the lives of people in similar predicaments to his own. He began talking to government departments about providing training to unemployed people.

In the course of trying to establish the centre, Mkhize came across vacant premises in Edmund Street. He applied to use the premises and was notified the application was receiving attention. Personal circumstances found the family back on the street and they moved into the premises that were under application – so did many others.

It is too dangerous on the streets, Mrs Mkhize says. We have all kinds of people staying at the centre: Zulus, Sothos, foreigners – even some whites. We cannot leave people suffering on the street. They come here and get a place to sleep.

Not that life in the centre is idyllic. Since she's been there, Mkhize has seen two people killed by gunfire, another two killed in a fire, and a fifth knocked down by a truck after he rushed into the street to escape violence inside the centre.

The government must find a better place for the people, says 16-year-old Constance. So that when our parents

die we children have a place which is our home. We did not plan to live here. My father wanted to use this place for his project to give people skills. But now we have nowhere to go.

Constance is articulate and confident. She attends the local Afrikaans-medium school and school fees are R2 600 per annum, which the family breaks its back to afford. They are presently terribly in arrears but her parents know that education is their children's ticket to a better life.

This is not the better life that we all dreamed of, Leah Mkhize smiles resignedly before disappearing back into the bowels of the centre.

When the municipality brought the eviction case it named Kethayiphi Mkhize as first respondent arguing that he'd applied to use the premises to run a project, not for accommodation purposes.

Attorney at the Legal Resources Centre **Asmita Thakor**, acting for the respondents in the matter, said:

The municipality should provide an alternative place in the city. These families are entrenched in the city, they work here and their children go to schools here.

We believe the council's policy of subsidised housing is discriminatory in that it is only available to those earning steady incomes. In the Grootboom case the court said that the State has to have a plan to house people in desperate circumstances, like the Mkhizes.. From what we have seen in this case, there is no plan. We have asked the municipality where and when they plan to accommodate our clients. The Constitution obliges them to put plans and programs in place, and implement them. But we have only met a deafening silence.





UNMOVABLE:
Wilson Mani will not accept a pittance as compensation for losing his home.

Wilson Mani

ACROSS South Africa farmers are erecting higher fences and converting from livestock and crop production to game farming. Most farm workers have been forced out and wild animals have been introduced. Retired labour tenant Wilson Mani, 73, refuses to vacate Lilly Valley farm² the place where he was born, - until the landowner provides him with an alternative place to live.

He turned down several offers, first R18 000,00, then R30 000,00 and later R30 000,00 plus a handsome offer to buy his ten cattle from the farmer. He watched them put up the new sign proclaiming Lilly Valley, the Kwantu Private Game Reserve, and he watched them bringing in the animals, two by two. His family remains terrified to step outside – but remain they will until another place can be found.

The farmer brought an urgent application in the Grahamstown Magistrate's Court in March 2001 to evict the long-term and short-term occupants of his land. He said the farm had been sold and the new owner planned

² Lilly Farm (or Kwantu Private Game Reserve) is situated in the Albany area of the Eastern Cape Province, close to Grahamstown.



MAINTAINING THEIR SPIRIT: A young member of the Mani family which now shares a farm with a bunch of wild animals.

to convert it into a game farm, explains **Mzu Maseti** of the LRC's Grahamstown office.

We argued that they did not meet the requirement for urgency, and that they could not evict a long-term occupant because they have a right to security of tenure. The Chief Magistrate cautioned the parties to settle.

Then the farmer offered the short-term occupants R16 000 to leave, and he offered R18 000 to people who had lived on the farm for more than 10 years. Mr Mani was the only one to decline the offer. I think if you offered him R100 000 he would still not go. It is the principle of the thing. He needs somewhere to live, where his cattle can graze in peace.

So Mr Mani stayed.

He stayed and watched trucks rumble onto the farm, off-loading rhino, buffalo, elephant, wildebeest, springbok, blesbok, impala, giraffe and zebra. He watched them tear down the church where he worshipped. He watched them erect the fancy thatched entrance with neo-colonial uniformed guards. And he watched them building smart houses to accommodate the anticipated tourist trade..

The owner of the farm, Mr Alan Hart, was always a good man who treated me with kindness. It came to us as a huge shock when he told us he was selling the farm and we would all have to leave, Mr Mani says.

The new owner came last month to speak to me. He wants me to take the R30 000, and he also offered money for 10 head of cattle. I told him I would not sell my cattle, and that all I wanted was a place of my own. I want a place to accommodate my family and my cattle.

Mr Maseti, ~~XXXXXXXXXXXXXXXXXXXX~~[check insertion by Vincent] the lawyer says, finding suitable alternative accommodation for the Manis is much easier said than done. Farmers in the district are not eager to welcome people like him. *We found a place in Salem, but on the day on which we were going to negotiate with the Department of Land Affairs, the estate agent called to say we were too late, the property had already been sold.*

So Mr Mani continues to live in his house, with his family and unless someone has found a suitable piece of land, the chances are he's still living there.



THIRST FOR KNOWLEDGE: *The children want to learn, the teachers are dedicated, there are sufficient desks - but the condition of the school buildings is not at all conducive to meaningful education.*

In Search of a Place to Learn : Fairleigh Primary School

BATTLING THE SYSTEM FOR A PORTION OF LAND UPON WHICH HOLD SCHOOL.

Sometimes out loud, sometimes in a private whisper, many times in our minds we tell our children:

Look at your mothers and fathers working in the kitchens and the sugar fields earning R200 a month. You have to learn so you can earn and uplift your parents.

Principal of Fairleigh Primary School Mrs **Regina Nonhlanhla Dlamini**, -, speaks to us in her 'Principal's Office', which is actually a cramped room in a house next to the school. Her desk and chair jostle for space on the floor with two massive cooking pots which hold the day's meal of samp and beans, balancing precariously, bubbling vigorously, on little gas stoves.

My father was also a farm worker, in the Richmond area not very far from here. I used to take breaks from school. Depending on the circumstances at home I would go to work, earn some money and then return to school. Right through teachers' training college I had to take a year off,

then return for a year. So I understand what it is like to be poor.

Dlamini believes that equipping farm workers' children with a decent education is equipping them for a better life. She sees herself in the faces of her little charges and is quite passionate about improving their lot. The hard work of her teachers has begun to pay off: pass rates are high and those children who can afford to continue learning leave well prepared for high school.

I am a Christian, and very sensitive to the needs of this community, she says. These people are the poorest of the poor.

This is not a fairy-tale. The teachers are committed; there are enough desks and an adequate supply of textbooks and stationery – but the school facilities are appalling and the conditions in which the children learn are an absolute disgrace.

Fairleigh Primary School, with four educators and 162 children is essentially homeless. It was originally established on Fairleigh Farm, across the road, but when the farm was sold it was forced to move. That was in 1997.

The school then moved to a neighbouring farm belonging to a Mr CJ Dukes, where many of the parents were employed. The school buildings comprise two church halls, a few hundred metres apart. There is no running water, no toilet, no electricity, no telephone, no perimeter fence and very leaky roofs.

The children cannot afford public transport so they walk to school, often in inclement weather, from as far as five kilometres away.

In winter the great cooking pots are moved into the classroom to provide warmth; The summer rains literally wash out classes. Each morning pupils fill buckets at nearby houses to keep the classrooms supplied with water.

Grades one and two are taught in the dilapidated Catholic Church hall, while the other five classes are all squeezed together into the even more dilapidated Old Apostolic Church hall. The school is desperate for premises to call its own – and Dukes would evidently like nothing more than to see it go – but where should it go?

Two kilometres down the road is Eston Primary School with a great number of classrooms, administration block, swimming pool and sports fields. Both Eston and Fairleigh Primary Schools are so-called public schools, but this is where the similarity ends. Eston parents drop their children off at school in cars worth more than the average Fairleigh parent will earn in a lifetime. While Fairleigh parents battle to afford the R20 per year in school fees, their Eston Primary peers pay R560 a month.

The next closest option, about seven kilometres away, is Mabomvini Combined School. This school has decent facilities, and annual fees are just R30, but it's simply too far for most pupils to walk.

This cannot be what the Constitution envisaged. Section 29 (1) (a) affords everyone the right to a basic education. Nor can it be what the drafters of Section 34 (1) of the SA Schools Act had in mind when they wrote:

The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision. Yet, several years of correspondence from the school to education authorities have failed to remedy the situation.

In 1999 the LRC's Durban office embarked on a plan to assist schools which lacked the necessary infrastructure conducive for a basic education. A notice appeared in the editorial column of a local newspaper inviting schools to contact the LRC if the needed assistance. Shortly after the notice appeared the principal –of Fairleigh Primary School approached **Mahendra Chetty**, the director of the Durban office and co-ordinator of the Children's Rights project for - for help, so beginning a new chapter of negotiation and litigation. Alleging that the State's failure to provide adequate infrastructure was unlawful, the school sought a court order forcing the national and/or provincial education departments to provide at least five classrooms, water, electricity, toilet facilities and a telephone without delay. In the meantime the school has largely sustained itself on broken promises.

As far back as August 1999, Dlamini says in court papers,



CONCENTRATION: Teacher Nohlanhla Ndlovu hard at work in the dilapidated Fairleigh schoolroom.

the provincial education department informed the school that it had set aside R300 000 for classrooms, toilets and possibly a staff room. A few months later the school received a letter from the department confirming that funds had been set aside to build a four-classroom school, but the letter also said that the provincial department was experiencing difficulty securing a site.

The Fairleigh parents and educators soon located a suitable piece of land, which the owner was willing to sell but the department made no further progress.

In February 2000 the department announced that it had identified a suitable site and was in the process purchasing the land. However, five months later the department noted that it was still awaiting approval to purchase from its headquarters in Ulundi. In October 2000 the department wrote that the land had been acquired and that construction was to begin in April 2001. In June 2001, the department said it hoped the building project would be completed by March 2002.

In an affidavit signed in July 2002, a desperate Dlamini states: *I am appalled at the inaction and insensitivity of the KwaZulu-Natal Education Depart-*

In Search of a Place to Learn: Fairleigh Primary School

ment ... they would never have allowed that to happen if the school were one in an affluent largely white community. As no tangible step has ever been taken towards improvement of the school, I have been compelled to resort to this litigation.

By the end of 2002 there had still been no progress and Dlamini was concerned that the farm owner may prevent the school from re-opening on his land in 2003. She would continue to teach, even if it meant moving next to the road under a tree, she said.

And one of the things she'll tell her young charges will undoubtedly be **learn so you can earn and uplift your parents.**

Mahendra Chetty, the attorney acting on behalf of Fairleigh School, adds that this case highlights the comments in the Natal Mercury of 29 May 2001 by Mr Mathatha Tsedu, when he lamented on the plight of children attending rural schools and said:

Are we expecting the children from these dysfunctional settings to crawl from under their rubble and become masters who will make South Africa compete with the world? Really? he asked.



LEAD ROLE: Garos Kabinde, principal of Walter Sisulu Primary School in Olivenhoutbosch, among his young charges.

Olivenhoutbosch: A Battle to Learn

THE STORY OF THE TRIALS AND TRIBULATIONS OF A NEW URBAN COMMUNITY TO ESTABLISH A HIGH SCHOOL.

The collapse of apartheid triggered a migration of people seeking better lives in places previously barred to them because of their the colour of their skin.

But their dreams of new beginnings have in most instances been deferred while they struggle to access the rights so eloquently and progressively defined in the country's new Constitution. Basic rights such as the rights to shelter, to dignity, to clean water, to medical care and education are not yet generally within easy reach, particularly for the poor, the vulnerable and the marginalized.

This story concerns one such urban community which gathered at a place called Olivenhoutbosch, southwest of Pretoria in 1994. They began to put down roots. It is



CAUCUS: Oupa Nkwana, manager of the high school in Olivenhoutbosch, Garos Kabinde, principal of the primary school, and Charles Pillai of the LRC.

the story of the trials and tribulations of these people to establish a high school for the development of their children. It is a typical story of our times.

Olivenhoutbosch, named by a deceased white farmer, is strategically placed in the economic hub of the country, down the road from affluent Sandton. It is peopled, largely, by economic refugees from poverty-stricken former bantustans in the east and far north of the country. The size of the community was described at the end of 2002 as approximately 21 000 but growing every day.

Their children had nowhere to learn and the community itself established a primary school. This was initially quite understandable, even acceptable, when the community was newly-established. But as the years passed the lack of action by the education authorities became more and more unreasonable. Eventually it required the threat of litigation to mobilize them to build a secondary school for the community.

The constitutional and statutory provisions that entitle our clients the right to basic education imply that the state

has to do whatever is necessary to make appropriate educational institutions reasonably accessible to all pupils, Charles Pillai, Director of the Legal Resources Centre's Pretoria office wrote in January 2002 to the Executive Council for Education, Gauteng Province.

Apart from our client's constitutional and statutory right to receive a basic education, there are international instruments to which South Africa is a signatory that expressly or impliedly oblige the State to make basic education accessible to our clients...

Pillai's missive was unequivocal. Duly instructed thereto, we hereby **demand that the State takes immediate steps to provide basic education for the learners of this area. Should you fail to do so within 14 days of this letter, our instructions are to seek an order of the High Court compelling you to do so.**

Within four weeks prefabricated classrooms were delivered and erected, which Pillai views as strictly temporary relief. But perhaps we are getting ahead of this story. Principal of the primary school Garos Kabinde provided a context.



When the community started the primary school in 1998, it was not registered with the Education Department. It was only registered in 2000 as the Walter Sisulu Primary School, when I was deployed as the first principal, Kabinde recalls.

It was a school catering for Grades One to Seven and the challenge was enormous. The educators were not registered so among my first tasks was to start negotiating with the Department to secure their employment. There were about 460 learners then. Now we have 822 primary learners, and another 350 learners at the high school.

The problem was what happened to the learners after they completed Grade Seven. The level of unemployment in the area is high and most people cannot afford to send their children to distant schools. The community recognized this problem, and had been crying out to the Department since 1998 to fill this need.

By 2002 the situation had become chronic. Kabinde says. We had started to negotiate for classrooms to accommodate Grade Eight learners in August 2001, and the Department promised to supply them. But they did not materialize.

We had said we would accommodate last year's Grade Seven learners in Grade Eight at the Primary School. But as soon as we started Grade Eight, we were approached by other senior learners seeking places.

Before we knew it, we had to accommodate another 300 extra learners in Grades Nine to Eleven.

We could not physically accommodate all these people, so we took them to the local creche where they took their lessons sitting on the ground for the first term.

Following receipt of the Legal Resources Centre's 'letter of demand' to the Education Department,

smart prefabricated classrooms were delivered, fencing erected and the Steve Tshwete Secondary School was born.

The high school is relatively well-equipped with 10 classrooms, a staff-room and office, and there is running water, a toilet block and electricity. Some of the classes are overcrowded, but then this was intended as a temporary facility; or was it?

It is termed a temporary school, with mobile classrooms, Kabinde offered but our understanding of temporary may be different to that of the Department. We thought three to five years, but now understand that temporary could be from 10 years to indefinite.

One of the consequences of the school not being registered is that a principal cannot be permanently appointed. Caretaker principal, Oupa Nkwana, said registration was an 'immediate goal'. We cannot access government grants as an unregistered institution, he explained. We want to settle down and get sponsors to properly resource the school. We want to be effective in the education we provide. That is our goal. These children have been disadvantaged for long enough

The year 2003 will see Steve Tshwete Secondary School's first intake of matriculants.

1 Anti-apartheid struggle veteran and post-apartheid cabinet member Steve Tshwete was buried the day parents met to decide on a name for the new school.

NASTY NEIGHBOUR: Sherilee Perreira of Davidsonville, has a mine dump growing out of her backyard.



Deadly Dust : Environmental Justice Programme

THE CASE FOR ENVIRONMENTAL RACISM.

People rejoiced in 1996 when the new houses were built in congested Davidsonville.. The years of watching their names stagnate on municipal housing lists were at last at an end. Even before the structures were complete they began to move in. They called the place Victory Park.

Nobody stopped to think of the implications of living with a giant toxic mine dump literally on their doorstep. Nobody objected that the land used for Victory Park was initially earmarked to form a recreational buffer zone between the existing residential area and the tailings dam complex known as Princess Dump. Nobody seemed to care that the development contravened the Minerals Act that renders illegal any building within 100 metres of a mine.

Then the winds disturbed the mine dust. Not 'dust' as you or I know it, but swirling clouds of toxic powder, so fine that it's able to seep into the narrowest cracks –

and into the deepest recesses of the human lung. August to November are the worst months. It is common for residents to seal their doors and windows with masking tape to keep it out. The dust enters the roof of the houses, settling on the ceilings and then sifting down onto the inhabitants, their food and possessions below. The dust withers plants in the garden and scours or burns the paint on cars.

Dust gets into people's mouths and a fine layer covers their skin. People complain of itchy skin and skin rashes, runny noses and burning eyes. Sometimes the dust clouds get so dense that they block out the sun.

And then there's the rain. Rainwater erodes the mine dump's outer crust exposing the highly erodable belly within. The water flows down the slope into the streets and houses carrying with it sludge which dries out to become yet more dust. Ironically, it often covers the Davidsonville cemetery.

We didn't think of the mine dumps because we were just so happy to get houses, said one of the first residents of Victory Park, Sherilee Perreira, of Cupido Crescent. Her back door is approximately three metres from the foot of the dump.

Later, in meetings, **people began to complain that their children were picking up asthma, strange sores on their skin and ringworm.** When it rains our houses flood. I work nightshift and came home one morning to find my blind grandmother with mud up over her calves. Then the community came together and decided to fight.

This is how the residents of Davidsonville came to join other community-based organisations such as the Kagiso Environmental Awareness Forum in a broader initiative to marshal court action to force government and mining companies to clean up their act.



A gold reef runs from west to east through the greater Johannesburg area. That section of the reef that runs from Krugersdorp to Springs has been extensively mined leaving a large number of slimes dams – also known as mine dumps – in their wake.

The mining belt separates the relatively affluent north, predominantly white from the more disadvantaged south, predominantly black as a major physical barrier and social divide. The prevailing wind in the area is from the northwest



driving the dust toward the poor people of Kagiso (south of Krugersdorp), Davidsonville (southwest of Roodepoort) and Soweto. It's a typical case of environmental racism borne on a foundation of classic apartheid planning: Green open space to the north with the mining industry in the middle to spew its filth toward the polluted, cluttered south. That's Greater Johannesburg today.

That was the situation that the Kagiso Environmental Awareness Forum set out to change in its application to seek relief from dust and run-off water pollution from gold mine tailings dams – an application brought by the residents of Davidsonville, Kagiso and Dobsonville in Soweto –. The Forum approached the Legal Resources Centre to act as their lawyers in an application to force the relevant national, provincial and regional authorities – and mining companies - to satisfactorily rehabilitate their harmful industrial waste.

To understand the problem one must first understand the mining process, **Ellen Nicol**, co-ordinator of the Legal Resources Centre's Environmental Justice Project, told us.

The Miners go deep below ground and bring ore containing a small portion of gold to the surface. The ore is then milled into very fine powder and the fine particles are mixed with certain chemical agents into a slurry. The chemicals separate the gold from the slurry allowing it to be removed. There are but a few grams of gold in every ton of ore and once the gold has been extracted, the vast bulk of the residue is a waste product forming the so-called 'slimes' which must be discarded.

The most common method of managing slimes, is to build slimes dams. -- impoundments into which the slimes are pumped. Once pumped onto the dam the slimes dry out and another layer is added. In this manner the slimes dam is built up and can achieve heights of over 100 meters and the intention is to retain the slimes permanently in this form. These are the gold mine dumps on the Johannesburg skyline.

In recent years mines have been obliged by legislation to plan and finance the rehabilitation of their dumps. Previously, spent mines were simply abandoned to the elements and some of the companies

which created the waste have since ceased to exist.

The Kagiso Environmental Awareness Forum approached the LRC because they wanted to do something about the Luipaardsvlei tailings dam. We had some success with Luipaardsvlei, after launching an application against Luipaardsvlei Estates and the Department of Minerals and Energy. Although both opposed the application we settled the matter on the basis that a phased rehabilitation plan would be implemented. The first Phase was implemented but went no further and we resumed negotiations that eventually led to a revision of a more realistic rehabilitation plan.

It was then, Nicol said, that the community realized that the problem was more complex. The Luipaardsvlei problem had been solved but the community was still covered in dust. they looked across the valley and saw this huge tailings dam created by Wes Wits mining company and the responsibility of Durban Roodepoort Deep.

So we focussed on Kagiso, Davidsonville and Dobsonville which were all affected by tailings dams which are the responsibility of Durban Roodepoort Deep.

We sent a letter of demand in October 2000. By April 2001 we were ready with a draft application. At the time Durban Roodepoort Deep was clearly not planning to be drawn in. They suspected we were preparing a draft. The company employed a new environmental manager and changed its attitude towards its responsibilities. The change in attitude was at least partly due to the fact that they knew we were ready to launch an application.

Since then we have had good relationship with the mine regarding their short-term measures. One of these measures involves ploughing the dumps at a 90 degree angle to the prevailing wind so preventing dust from readily being blown from the the impoundment.

To date the mine has developed a closure plan and they have now agreed to develop detailed rehabilitation plans for each dump which will be submitted for public

comment. We have been working on this for five years now and I am confident that we'll get there in the end.

**Deadly Dust:
Environmental
Justice Programme**



LOCAL ACTIVIST: Newspaper proprietor Hans-Christian Muldal leads Ixopo's resistance to the polluting incinerator in its midst.

Bad Burning : Ubuhlebezwe Municipality

A PARTNERSHIP WITH ENVIRONMENT NGO, TO CHALLENGE TOXIC EMISSIONS.

Little has changed in Ixopo since Alan Paton's famous novel 'Cry the Beloved Country' was written. Apartheid is past, and local governance is now the responsibility of the Ubuhlebezwe Municipality, and poverty still pervades social relations. There are no traffic jams, and the sky is unblemished by industrial smokestacks – except for an incinerator.

The old incinerator, perched on a hilltop above the black township, emits toxic pollutants into the air at more than four times the level considered acceptable by the Department of Environment and Tourism. The incinerator failed to reach the requisite temperature to prevent the release of chemicals such as dioxins, into the environment. It is the largest incinerator in KwaZulu-Natal owned by the Ubuhlebezwe Municipality and operated by Compass Waste Services.

Soon, however, it will emitting its last noxious breath as a result of assistance by the LRC to the environmental NGO, groundWork.

Following a 30-month campaign to close it down which included litigation, the provincial health department



INCINERATOR: De Ndlovu, a worker at the Ixopo incinerator.

announced late in 2002 that it was to halt the incineration of medical waste in the province – as soon as it could identify suitable environmentally-safer, non-combustion alternatives.

According to groundWork, from time to time during the 30-month period, the incinerator either operated without a license or with a provisional permit. Throughout the period the incinerator had not operated at standards required by the permit, yet there had been a substantial increase in the volumes and toxicity of the waste being emitted.

groundWork's Linda Ambler said the organisation had instructed the Legal Resources Centre to sue government and Compass Waste Services as a last resort after a 30-month struggle by civil society to motivate government to close it down failed. The LRC undertook the action in the public interest to protect the health of the surrounding community and broader public.

In an affidavit presented to court, groundWork claimed the incinerator had been poorly operated, that government had failed in its duty to regulate the operations of the incinerator and enforce requirements of the permit, and that the incinerator was accordingly a threat to the surrounding community.

The incinerator was originally built to burn domestic waste generated in the area, but Compass Waste Services took over operations and began burning health care waste at the incinerator as well. The quantities of health care waste grew to such a degree that the incinerator was eventually used solely for burning health care waste, while domestic waste was being transferred elsewhere.

According to groundWork, after Compass Waste was awarded a Department of Health tender to remove and dispose of health care waste from government hospitals the company soon decided it needed a second

incinerator to handle the volume.

However, during the environmental impact assessment process for the proposed second incinerator, civil society succeeded in persuading Compass Waste Services to opt instead for alternative, non-combustion technology. The company had consequently imported and commissioned two world-class autoclaves at its head office west of Durban.

Concerns about incinerators center around numerous scientific studies conducted over many years, worldwide, which have shown that they can emit over 100 chemical pollutants, some of which are human carcinogens, endocrine and immune system disruptors. Health care waste incinerators produce more pollutants and more toxic pollutants than do municipal waste incinerators.

One of the worst pollutants produced by incinerators is a family of chemicals known as dioxins which have been described as the most toxic chemical known to man. Dioxin is the toxic component of Agent Orange which has left a legacy of human suffering in Vietnam. Among other illnesses, dioxins are carcinogenic, depress the immune system and disrupt the reproductive and hormonal systems. Dioxins have been linked to a decline in sex ratios of boys to girls, decreased size of male genitals, spontaneous abortions and a decline in male sperm count.

The primary route by which dioxins enter the human body is through consuming beef or dairy products. Dioxins are emitted into the atmosphere by certain industrial processes (including incineration), they settle on grass, which is consumed by cows. Humans then consume either the meat or milk. Dioxins are passed from mother to child through breast milk. The concentration of the pollutant increases along the food chain.

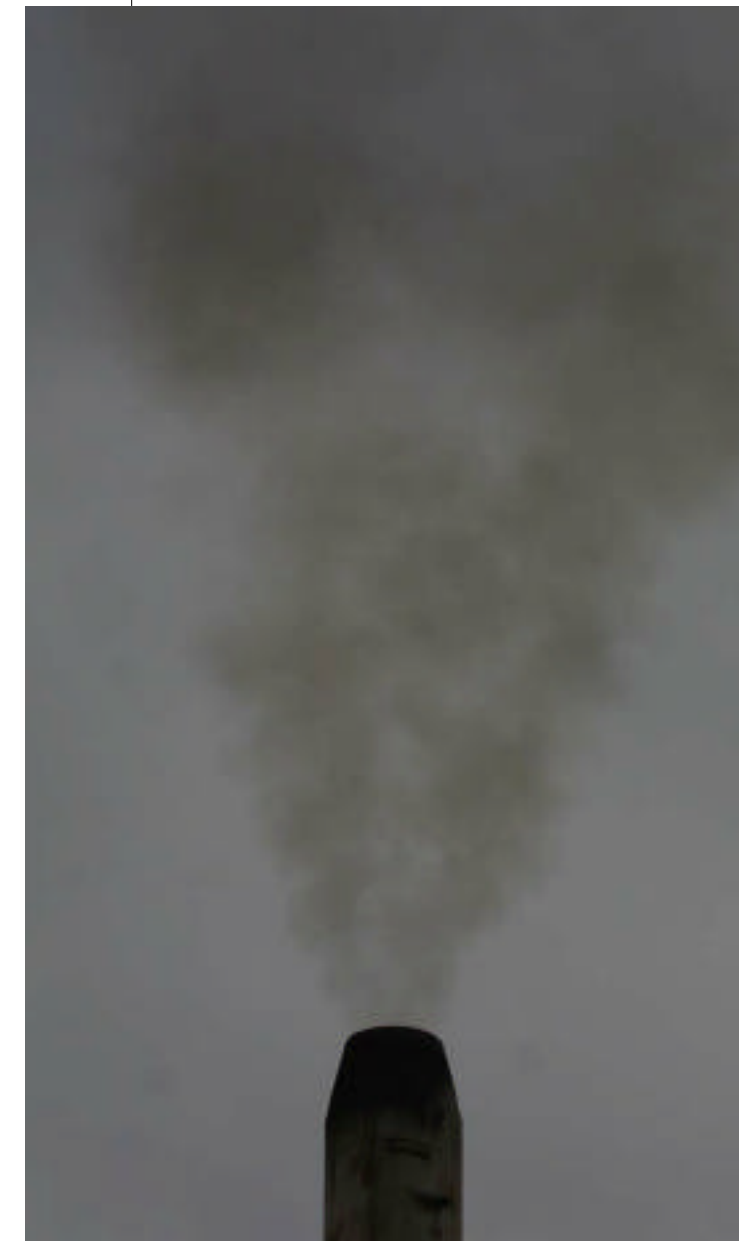
Bad Burning : Ubuhlebezwe Municipality

Interestingly enough, the Legal Resources Centre steered the litigation process away from health considerations to focus squarely on

the problems relating to the incinerator's permit.

Ellen Nicol, co-ordinator of the Legal Resources Centre's Environmental Justice Project, described how legal action was brought against five parties, including the municipality and operator. The national and provincial departments of environmental affairs, and the chief air pollution officer, all indicated they would not oppose the application.

In the meantime, an application to renew the permit by the municipality and operator was unsuccessful.



Legal Resources Trust Annual Financial Statements

for the year ended 31 March 2002

Trustees' approval of the annual financial statements

The trustees are responsible for monitoring the preparation and the integrity of the annual financial statements and related information included in the annual report.

The financial statements are prepared in accordance with the stated accounting policies and incorporate responsible disclosure in line with the accounting philosophy of the Legal Resource Trust. The financial statements are based on appropriate stated accounting

policies consistently applied and supported by reasonable and prudent judgements and estimates.

The trustees believe that the Legal Resources Trust will be a going concern in the year ahead. For this reason they continue to adopt the going concern basis in preparing the annual financial statements.

NB – What follows is an abridged version of the audited financial statements. A full copy is available upon request from the LRC National Office

Report of the independent auditors

To the trustees of Legal Resources Trust

We have audited the annual financial statements of Legal Resources Trust set out on pages 3 to 12 for the year ended 31 March 2002. These financial statements are the responsibility of the trustees. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope We conducted our audit in accordance with Statements of South African Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

We believe that our audit provides a reasonable basis for our opinion.

Emphasis of matter In common with similar organisations, it is not feasible for the trust to institute accounting controls over collections from donations prior to initial entry of the collections in the accounting records. Accordingly, it was impractical for us to extend our examination beyond the receipts actually recorded.

Audit opinion In our opinion, the financial statements fairly present, in all material respects, the financial position of the Trust at 31 March 2002 and the results of its operations and cash flows for the year then ended in accordance with South African Statements of Generally Accepted Accounting Practice.

KPMG Inc.
Registered Accountants and Auditors

Per I Kramer

Partner

9 September 2002

1. Accounting policies

for the year ended 31 March 2002

The financial statements are prepared on the historical cost basis, except for land and buildings carried at revalued amounts and investments carried at fair value. The financial statements incorporate the following principal accounting policies, which are consistent with those adopted in the previous financial year, except as detailed in notes 1.3 and 9. Comparative figures have been restated where applicable.

1.1 Income Income comprises donations, investment income and other non-operating income. Donations are brought to account as and when received and banked.

1.2 Land and buildings Land and buildings are stated at valuation, and are revalued by sworn appraisers at least once every three years using the open market value basis in continuation of existing use for land and buildings.

Any surplus on valuation, in excess of net book value, is

transferred to a revaluation reserve. Surpluses on revaluation are recognised as income to the extent that they reverse revaluation decreases of the same assets recognised as expenses in previous periods. Deficits on revaluation are charged directly against the revaluation reserve only to the extent that the decreases does not exceed the amount held in the revaluation reserve in respect of that same asset. Other deficits are recognised as expenses.

Depreciation is not provided on land and buildings.

1.3 Investments Investments are revalued annually to fair value, determined by reference to quoted market values. Dividends are accounted for on the last day of registration in respect of listed investments and when declared in respect of unlisted investments. On disposal of an investment the difference between the net disposal proceeds and the carrying amount is charged or credited to the income statement.

1.4 Comparative figures Comparative figures have been restated where deemed necessary.

Balance sheet

at 31 March 2002

	Notes	2002 R	2001 R
ASSETS			
Non-current assets			
Land and buildings	2	521 675	521 675
Investments	3	26 634 115	18 407 005
Current assets			
Bank balances		8 718 245	4 403 242
Total assets		35 874 035	23 331 922
EQUITY AND LIABILITIES			
Capital and reserves			
Trust capital	4	250	250
Revaluation reserve	5	2 805 718	744 185
Special endowment reserves	6	2 197 768	2 684 578
General reserve	7	29 757 548	18 518 998
Current liabilities			
Accounts payable		1 112 751	1 383 911
Total equity and liabilities		35 874 035	23 331 922

Income Statement

for the year ended 31 March 2002

	2002		2001	
	R	R	R	R
Income				
Gross current collections				
Donations		32 234 622		20 559 696
– overseas donations		31 823 722		19 585 456
– local donations		410 900		974 240
Dividends received		43 190		57 682
Interest received		1 313 561		1 214 382
(Loss) / profit on disposal of investments		(18 748)		2 051 860
Total income		33 572 625		23 883 620
Expenditure				
Auditor's remuneration	(152 250)		185 000	
– current year	71 500		65 000	
– (over) / under provision in				
– previous year	(265 000)		90 000	
– other services	41 250		30 000	
Interest paid	3 206		–	
Bank charges	2 778		5 953	
Consultancy fees	36 070		53 147	
Investment management fees	136 040		162 161	
Travelling expenses	71 819		28 349	
Other	1 850		2 279	
Total expenditure		99 513		(436 889)
Surplus before transfer to Legal Resources Centre		33 473 112		23 446 731
Transfer to Legal Resources Centre		(23 023 279)		(21 612 074)
Surplus for the year		10 449 833		1 834 657

Donations

	2002	2002
	R	R
Foreign donations		
Belgian Administration for Development Co-operation (BADC)	950 000	
Canadian Bar Association in partnership with the Canadian International Development Agency	5 386 319	
Charles Stewart Mott Foundation	563 710	
Danish Co-Operation for Environmental and Development (DANCED)	2 239 264	
Department for International Development (DFID)	3 647 733	
Embassy of France	20 000	
Evangelische Zentrastelle fur Entwicklungshilfe E.V (EZE)	1 275 016	
Ford Foundation	2 445 075	
Grand Duchy of Luxembourg	754 160	
HIVOS	551 000	
I Manley	46 562	
International Commission for Jurists (Swedish Section) in partnership with Swedish International Development Agency	1 667 132	
KZE	436 064	
Atlantic Philanthropies in partnership with Legal Assistance Trust	9 344 196	
Comic Relief in partnership with Legal Assistance Trust	437 851	
Hilden Charitable Fund in partnership with Legal Assistance Trust	57 897	
John Jeffreys in partnership with Legal Assistance Trust	58 400	
Save the Children Sweden	100 000	
Rockefeller Foundation	1 610 000	
Terres des Hommes	195 379	
The Conference, Workshop and Cultural Initiative Secretariat (CWCI)	35 145	
Yves Laurin	2 817	
	31 823 722	
Local donations		
Ackerman Family Trust		3 000
African Oxygen		1 000
Anglo American and De Beers		50 000
Barlows Limited		15 000
Bowman Gilfillan Hayman Godfrey Inc		10 000
BP Southern Africa		35 000
Breitenbach, Adv A		1 000
Crawford, RM		1 000
EG Woods Will Trust		2 000
Felix Schneier Foundation		10 000
First National Bank		75 000
Foundation for Human Rights		15 000
General Council of the Bar		10 000
Illovo Sugar Limited		1 300
Institute of Justice		5 000
Kentridge, S and F		
– in memory of H Girling		1 200
Kentridge, S and F		
– in memory of Mrs E Kleiner		1 000
Majola, BC		1 000
Mgoqi, Adv W		2 250
Mones Michaels Trust		10 000
Motlana, Dr NH		14 500
Nelson, Adv AJ		1 200
Robb, FC Charitable Trust		60 000
Shoprite and Checkers		1 000
Spoor and Fisher		3 300
Standard Bank Foundation		40 000
Strauss, Kurt and Joey Foundation		12 000
United International Pictures		2 500
University of the Western Cape		8 000
Unknown deposit		1 000
Donation from staff		8 598
Donation less than R 1 000		9 052
		410 900

Names of donors who donated less than R1 000

Bednar, J; Blieden, P; Council on International Education; Druker and Associates, KG; Geldenhuys, Hon Mr Justice Antonie; Goldstone, Hon Mr Justice RJ; Kaudamilandon, JS; Kangra Foundation; Kriegler, Hon Mr Justice JC; Krige, Adv LJ; Labe, AB; Lane Elizabeth and William; London, D.L; Mojapelo, M; Ngcukaitobi, T; Pauw, P; Plaskett, C; Rabinowitz, B; Reid, DB; Rynheath Trust; Schaker, D; Seedorf, S; Southwood, Hon Justice BR; Stegmann, Hon Justice MS; University of Cape Town

Legal Resources Centre Annual Financial Statements

for the year ended 31 March 2002

The Executive Committee's approval of the annual financial statements

The Executive Committee is responsible for monitoring the preparation and the integrity of the annual financial statements and related information included in the annual financial statements.

The financial statements are prepared in accordance with the stated accounting policies and incorporate responsible disclosure in line with the accounting philosophy of the Legal Resources Centre. The financial statements are based on appropriate stated accounting

policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Executive Committee believe that the Legal Resources Centre will be a going concern in the year ahead. For this reason we continue to adopt the going concern basis in preparing the annual financial statements.

NB – What follows is an abridged version of the audited financial statements. A full copy is available upon request from the LRC National Office

Report of the independent auditors

To the Executive Committee of Legal Resources Centre

We have audited the annual financial statements of Legal Resources Centre set out on pages 3 to 9 for the year ended 31 March 2002. These financial statements are the responsibility of the Executive Committee. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope We conducted our audit in accordance with Statements of South African Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

We believe that our audit provides a reasonable basis for our opinion.

Audit opinion In our opinion, the financial statements fairly present, in all material respects, the financial position of the Legal Resources Centre at 31 March 2002 and the results of its operations and cash flows for the year then ended in accordance with South African Statements of Generally Accepted Accounting Practice.

KPMG Inc.

Registered Accountants and Auditors

Per I Kramer
Partner
9 September 2002

1. Accounting policies

for the year ended 31 March 2002

The financial statements are prepared on the historical cost basis. The financial statements incorporate the following principal accounting policy, which is consistent with that adopted in the previous financial year.

Property, plant and equipment

Property, plant and equipment is stated at historical cost less accumulated depreciation, and impairment losses.

Depreciation is provided on the straight line basis, over the estimated useful lives of non-current assets. The annual rates used for this purpose are –

Furniture	10%
Leasehold improvements	10%
Motor vehicles	20%
Office equipment	10%
Computer equipment	20%

Balance sheet

at 31 March 2002

	Notes	2002 R	2001 R
ASSETS			
Non-current assets			
Property, plant and equipment	2	1 532 611	1 486 258
Current assets			
Accounts receivable		1 377 456	1 409 510
Client trust funds	3	538 133	454 127
Bank balances		1 089 005	926 467
Total assets		<u>4 537 205</u>	<u>4 276 362</u>
EQUITY AND LIABILITIES			
Reserves			
Accumulated funds		1 517 317	1 028 380
Asset replacement reserve	4	1 500 000	1 500 000
		<u>3 017 317</u>	<u>2 528 380</u>
Current liabilities		1 519 888	1 747 982
Accounts payable		956 054	1 224 142
Client trust funds	3	538 133	454 127
Bank overdraft		25 701	69 713
Total equity and liabilities		<u>4 537 205</u>	<u>4 276 362</u>

Income Statement

for the year ended 31 March 2002

	2002		2001	
	R	R	R	R
Income				
Funds provided by the Legal Resources Trust		23 023 279		21 612 074
Interest received		13 902		15 170
Functions income		42 162		204 992
Publication income		272		1 446
Profit on sale of property, plant and equipment		53 685		–
Cost recoveries		434 045		184 117
Total income		23 567 345		22 017 799
Expenditure				
Staff costs				
Salaries				
– professional staff	8 434 090		8 496 174	
– other staff	4 882 450		5 367 502	
– contributions	2 546 682		1 257 847	
– recruitment cost	53 910		23 889	
Other	187 880		–	
Transport and office expenditure				
– subsistence and travel	1 040 818		1 097 988	
– telephone and postage	678 878		596 024	
– printing and stationery	311 019		320 285	
– book and periodicals	322 154		258 016	
– insurance	152 161		127 989	
– maintenance	62 774		90 543	
– publication	155 474		161 033	
– fund raising	20 246		8 306	
– motor vehicle expenses	39 584		52 469	
Rent, water and electricity	1 035 426		975 700	
Food and cleaning	92 039		75 822	
Professional and special services				
– auditor's remuneration				
Audit fees	(115 265)		104 996	
– current year	60 500		55 000	
– (over)/under provision in prior year	(175 765)		49 996	
– bank charges	19 667		10 820	
– other professional services	2 580 237		2 376 625	
Sundries				
– depreciation	532 867		505 658	
– loss on sale of property, plant and equipment	–		3 323	
– lease charges for office equipment	11 944		21 367	
– general expenses	33 373		37 615	
Total expenditure		23 078 408		21 969 991
Surplus/(deficit) for the year		488 937		47 808

LRC Directors and Staff

National Office

Bongani Majola – *National Director*

Gugu Biyase
Martha Bopape
Cyrenne Christodoulou
Zunaid Dada
Steve Kahanovitz
Moffat Khumalo
Tshidiso Konese
Susan Mazabane
Tilly Meyer
Soraya Murphy
Derric Reid
Irene Sigwili
Esme Wardle
Thomas Winslow

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Zanu Galiel
Kameshni Pillay
Nancy Tshankie
Catrine Verloren Van Themaat

Johannesburg

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Durkje Gilfillan
Moray Hathorn
Topsy Mackenzie
Pinky Madlala
Martha Mahlophe
Didi Maimane
Nkele Mashiloane
Refilwe Mathabathe
Achmed Mayet
Phumla Mbuqe
Maenetjie Mmakgomo
Constance Mogorosi
Josephine Mokwebo
Nosipho Nkomo
Themba Nyembe
Patrick Pringle
Gereda Shumani

Pretoria

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Louise du Plessis
Esther Khoza
Matthews Mojabelo
Betuel Mtshali
Ellen Nicol
Poppy Ntshabele
Isabella Rangata
Beulah Rollnick
Sabina Segole
Mandla Skhosana
Asmita Thakor
Ingrid Wlotzka
Sarah Zimbaya

Durban

Mahendra Chetty – *Director*

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Bongiwe Hadebe
Phumzile Hloshana
Mzo Mdhladhla
Nompumelelo Mkhize
Bheki Mkhize
Gugu Mncwabe
Asha Moodley
Cathy (Mokhesi) Mote
Raphael Mthembu
Pushpa Naidu
Sibonelo Ndllovu
Margaret Ntuli
Ranjit Purshotam
Sharita Samuel
Saloshni Isaac

Grahamstown

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Cathy Fullarton
Thembeke Ngcukaitobi
Beauty Nortjie
Rufus Poswa
Tabita Qangule
Sarah Sephton
Nomfundo Somandi
Ethel Swartz (Libi)

Cape Town

Vincent Saldanha – *Director*

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Angela Andrews
Anthea Billy
Maggie Carolissen
Naomi Davids
Chantel Fortuin
Ncunyiswa Hans
Mary Honey
Zakhele Mdanda
Tira Sejwane
Seeham Samaai
Anneke Meerkotter
Sibongile Ndashe
Farouz Marquard
William Kertfoot
Ashraf Mahomed
Themble Maneli
Florence Masebate
Nhikiza Matshaya
Pumla Nondala
Kobus Pienaar
Mabel Sajini
Henk Smith
Ricardo Wyngard

Patrons

Sir S Kentridge QC SC
Most Hon Rev D Tutu
Mr Justice JJ Trengove
Mr David Simpson

Trustees

Adv Lee Bozalek
Prof Harvey Dale
Mr Justice Y Ebrahim
Ms Gadija Kahn
Prof Michael Katz
Lady Felicia Kentridge
Mr Jody Kollapen
Adv Bongani Majola (ex-officio member)
Ms Bongi Mkhabela
Mr Justice Dunstan Mlambo
Mr Norman Moabi
Mr Justice Lex Mpati
Mr Justice Mahomed Navsa
Mrs Thandi Orleyn
Mr Derric Reid
Mr Richard Rosenthal
Dr Franklin A Sonn

LRC partners abroad

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E-mail jill@latforsa.softnet.co.uk

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