LAWYERS FOR HUMAN RIGHTS

2016 ANNUAL REPORT

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MESSAGE FROM THE NATIONAL DIRECTOR

Lawyers for Human Rights (LHR) continues to be a prominent South African human rights organisation committed to social justice activism and strategic public interest litigation. Founded in 1979 in response to the increasingly repressive apartheid regime, LHR lawyers provided legal support to political prisoners, communities faced with forced removals and actively campaigned against the death penalty.

This year, LHR continued to use the South African Constitution as a transformative instrument for change and to deepen the democratisation of South African society. The organisation provides a full range of free legal services to individuals, social movements and marginalised communities through targeted advocacy and strategic litigation.

The refugee and migrant rights programme continues to be LHR's largest programme assisting more than 10 000 clients annually and conducts impact litigation in this field. The programme launched the *Help@Hand* mobile phone platform which provides information and advice for asylum seekers, refugees and other non-nationals who may not have access to LHR's offices.

The Land and Housing Programme in the year 2016 has extended its work from land restitution, urban evictions and assisting ESTA occupiers to include mining, sale in executions, family home town planning issues.

The Environmental Rights Programme continued to focus its strategic interventions at safeguarding environmental and other rights on behalf of poor and marginalised communities. This year the programme has done exceptional work to assist the Blyvooruitzicht mining community with the reconnection of water and electricity following the closure of the gold mine. It has also initiated a human rights impact assessment with the Blyvoor community to explore the broad human rights impacts of the collapse of the Blyvoor Gold Mine on the surrounding village. In November, this study was presented to the UN Forum on Business and Human Rights in Geneva.

As a prominent player in the field of public interest litigation, LHR continues to undertake strategic cases that do not only ensure access to and the realization of equal rights to the marginalized in society, but in the long run set precedence in making rights real. This year the programme has expanded its work to include labour matters. The programme also made many appearances on behalf of students arrested during Fees Must Fall demonstrations.

The newly-established gender equality project with its primary focus on gender-based violence (GBV) in South Africa and the region has done exceptionally well in its first year. The project provides capacity and technical expertise to the other LHR programmes using a combination of strategic and impact litigation, advocacy, and policy and law reform efforts.

South Africa's prisons and penal system have been plagued by a number of grave issues for years despite the existence of robust and progressive legislation protecting the rights of accused persons and sentenced offenders. The Programme continues to respond to the growing need for the protection and fulfilment of such rights and it seeks to achieve this goal through research, advocacy and strategic litigation.

LHR co-hosted three international conferences. In August, LHR in partnership with Ditshwanelo and Zimrights co-hosted the International Federation for Human Rights' (FIDH) International Forum in Johannesburg bringing together activists from almost 100 countries around the globe to exchange experiences and good practices on strengthening civil society's participation in democratic governance. The forum was followed by FIDH's Internal Congress during which all its member organisations come together for the purpose of strategic exchanges and to define FIDH's strategic direction for the coming three years.

In October, LHR assisted in hosting the 10th Anniversary Conference of the African Chapter of the International Association of Refugee Law Judges in South Africa was held at University of Pretoria. More than a hundred judges and refugee decision-makers from Africa, Europe and Australia attended. This was a strategic opportunity to enlighten judges from across the region on refugee law.

In early November LHR, in collaboration with FHR, Amnesty International, SALC, Centre for Human Rights and SALO organised a two-day consultation with leading civil society groups, professional associations, government representatives, AU representatives, academics and key media leaders drawn from the Southern Africa region to discuss the broader context surrounding the AU proposal and adoption of the Malabo Protocol. Participants also debated the AU proposals for member states' potential withdrawal from the ICC.

REFUGEE AND MIGRANT RIGHTS PROGRAMME

The Refugee and Migrant Rights Programme (RMRP) operate specialist refugee law clinics in Pretoria, Johannesburg and Durban with an advice office in Musina. In 2016 it ran the following projects:

- Statelessness project,
- Detention monitoring project,
- Mental health project, and,
- Mozambican Mineworkers' Project.

The focus of the program is to alleviate the plight of refugees, asylum seekers and migrants through strategic litigation implementation, research, community engagement and training, lobbying and advocacy of government officials and rights awareness initiatives in South Africa and regionally. We conduct our work in close collaboration with various social movements, other human rights organisations and marginalized and vulnerable communities. The following work was done in 2016:

HELP@HAND

LHR, with the support from Praekelt Foundation launched its *Help@Hand* mobile phone platform which provides information and advice for asylum seekers, refugees and other non-nationals who may not have access to LHR's offices. It also allows users to report incidents of xenophobia and xenophobia-related violence which permits a basic mapping of potential "hot spots" for violence against non-nationals.

Help@hand provides non-nationals with information on permits, health, education and unlawful arrest. It also will allow users to report corruption, xenophobia and unlawful arrest. Help@hand is accessible from all feature phones, is available in four different languages (English, Kiswahili, Somali and French) and is a low-cost service. While Help@hand is not an emergency service, it is an easy and convenient way for non-nationals to access information and report violations regarding their legal rights in this country.

HELP@HAND BRINGS HOPE FOR FOREIGN NATIONALS

Written by: BHEKI C. SIMELANE

Published on Daily Maverick 05 MAY 2016 11:35 (SOUTH AFRICA)

A Lawyers for Human Rights initiative has brought hope for foreign nationals. Help@Hand, a first in South Africa, is a mobile service that provides low-cost human rights information to foreign nationals living in South Africa, and some measure of optimism. By BHEKI C. SIMELANE.

Non-nationals living in South Africa can breathe a sigh of relief following the launch of a mobile information tool that will equip non-nationals with low-cost human rights information. The tool which launched in Cape Town on 28 April launched in Johannesburg on 5 May and is set for a Durban launch on 12 May.

The tool is a result of collaboration between Lawyers for Human Rights, the Praekelt Foundation and the United States Bureau of Population, Refugees and Migration. (The Praekelt Foundation is a nonprofit body founded in 2007. It's dedicated to improving the lives of poverty-stricken people in society through the use of mobile technology.)

Help@Hand is still in its preliminary stages but already is drawing positive reactions from various quarters. This could underscore South Africa's commitment in ensuring the protection of the rights of foreign nationals and also insulate the terror caused through years of xenophobic assaults.

The tool encourages non-nationals to report xenophobic flares: "It's a great service. It's a fantastic idea. I like the fact that it's personal and one can report without fear of intimidation. I wouldn't have left Orange Farm for the hostile streets of Johannesburg had this service existed during the 2008 xenophobic violence. My life went from bad to worse since then as I lost my home and all its belongings," said Prince Sibanda, a 38-year-old Zimbabwean.

Ongoing national challenges facing non-nationals, such as xenophobia and access to basic services such as health facilities and education, prompted the undertaking of this initiative. In the meantime, Lawyers for Human Rights continues to provide free legal services to vulnerable and marginalised non-nationals, ensuring that their constitutional rights in South Africa are upheld and understood.

The service will also allow users to report corruption, to which many defenceless non-nationals have fallen victim. Corrupt law enforcement officers, immigration officials and Home Affairs officials continue to haunt non-nationals' stay in South Africa. The Marabastad Refugee Reception Centre in Pretoria has been fingered, and so have many other officials from Home Affairs offices.

Another foreign national, 43-year-old Raphael Otti from Malawi, said he had been repeatedly swindled by Home Affairs officials. "In the seven years that I have been in the country I still haven't got the proper paperwork because each time I have paid for fake papers, only realising this when I want to undertake serious business initiatives to improve the lives of my family back home.

"I think this is a great service that shows that South Africans are serious about the protection of the rights of non-nationals. I'm just a little disappointed that the government of South Africa could not take action earlier, but very optimistic at the future," Otti said. To his disappointment, Otti still doesn't have the proper papers to remain in South Africa.

Help@Hand will provide non-nationals with information on permits, health, education and unlawful arrest and also allow users to report xenophobia and unlawful arrest. The tool will be available in four languages: English, French, Somali and Kiswahili.

Non-nationals who wish to access the tool for assistance can dial *120*8864*1538*.

Earnest Ramali, 55, from Malawi, said the service was, "a great idea and with the potential to minimise a sizeable figure of the challenges currently faced with non-nationals living in South Africa. I also like the fact that we can access it on our mobile feature phones. It's fantastic – with such programmes non-nationals living in South Africa can no longer live in constant fear," said Ramali.

Project Assistant Stella Longwe said limiting xenophobia was not the main attraction for the project. "We are not trying to limit xenophobia. What we are doing is we are using a tool to inform refugees, asylum seekers and migrants about their rights. When we use the tool to report xenophobia it's only for research purposes and also kind of derive an early warning system against xenophobia," Longwe said. DM

AMENDMENTS TO THE REFUGEE ACT

The proposed legislative amendments to the Refugees Act constitute a very concerning attack on refugee protection in South Africa. The rights to freedom of movement, the right to work and dignity and the ability of refugees to establish independent livelihoods are particularly in peril. LHR has made extensive written submissions on the proposed amendments and has asked Parliament to open up a second round of public commentary.

To read the full submission visit: www.lhr.org.za/submissions

LHR SUBMISSION TO PARLIAMENT ON THE REFUGEE AMENDMENT ACT

LHR has a number of concerns regarding the amendments to the principal Act introduced in this Bill. These changes represent a wholesale change to refugee protection and adjudications in South Africa and present a massive deviation from the urban refugee policy. The urban refugee policy has been the cornerstone of refugee protection in South Africa since the inception of refugee protection in South Africa in 1993. The development of this policy and the Refugees Act of 1998 was the result of widespread public consultations with stakeholders, government departments and civil society during the Green and White paper process of the mid-1990's. We submit that changes of this nature to refugee and asylum policy should be based on a similar consultation process.

We are aware that, at the same time as these legislative changes are being introduced to Parliament, the Minister of Home Affairs has engaged in a migration policy review. As part of this review, LHR was invited to

attend the Migration Policy Colloquium which took place at Kiewietskroon Estate on 30 June and 1 July 2015. The substance of the amendments contained in the Bill are such that they will drastically change refugee protection in South Africa and the rights accorded to refugees and asylum seekers. We are surprised that such amendments are being introduced before the Green paper is introduced in March 2016 and the White Paper process is finalised before the end of 2016, as stated by the Minister at the Colloquium.

Considering the changes which are being considered in the above process, we submit that such drastic changes to asylum and refugee policy should be considered within the context of that process and introducing such changes at this point is counter-productive and anathema to the consultation process already underway.

- We submit that at this stage of development of the asylum adjudication process, it would be better to focus internally on capacity development and efficiency as a means to prevent abuse of the system. At present, research has shown that the level of decision-making lacks quality and does not meet the basic standards of administrative justice. This creates backlogs in the review and appeals processes which, in the end, results in extended sojourns of applicants with asylum seeker permits. This has negative consequences for the Department which must renew temporary status for extended periods;
- The Standing Committee which must review extremely high numbers of manifestly unfounded cases with little resources and an extended mandate;
- The Refugee Appeal Board which must hear numerous appeals without the benefit of a good first instance decision; and
- Asylum seekers who may have had valid claims at the time of arrival but for whom the situation in their country of origin changes and may not qualify for refugee status by the time a final decision is taken, but are included in the statistics as "abusers" of the asylum system.
- Good quality RSDO decisions would prevent much of the backlog in the system. Adequate counter-corruption capacity which, in our experience, does not exist within the Department at the moment, would also prevent abuse. Finally, an asylum system which is properly situated within a reformed migration policy, as outlined above, would allow for reforms which would alleviate pressures on both the asylum and immigration systems. This would allow for a proper allocation of resources to deal with the realities of Southern African migration.

THE MOZAMBICAN MINEWORKERS PROJECT

For Mozambique's large number of current and retired migrant mineworakers, who have a long history of working in South Africa's mines, many are unaware of their rights and the available social protection mechanisms and services. The shortcomings in legal policy implementation, documentation and knowledge have contributed to a number of severe social protection problems for migrant mineworkers, namely, portability of pensions, access to compensation and essential reintegration programmes.

In order to find sustainable solutions, migrant mine workers and their families need appropriate channels to voice their concerns. Managed and implemented by the International Organisation for Migration and funded by the European Union, the aim of this regional project is to improve the protection and advocacy capacity of migrant mine workers and their families in Southern Africa. The project has three components: institutional capacity-building of the Mozambican Mine Workers Association (AMIMO); facilitating legal services and

counseling for mine workers and their families, together with Lawyers for Human Rights (LHR), and; advocacy and communications at the national and regional levels to spur dialogue with stakeholders and inform beneficiaries of their rights.

In August as we celebrated women's month, Lawyers for Human Rights (LHR) and its' partners, the International Organization for Migration (IOM) and the Mozambican Mine Workers Association (AMIMO) continued to assist migrant mineworkers and their families who cannot access the social security benefits they are entitled, which include healthcare, pension schemes and worker compensation.

We dedicated this August to remembering the wives of Mozambican mineworkers who face insurmountable challenges and uncertainty when their husbands go to South Africa to pursue a better life by working on the mines. We have heard stories of women whose husbands simply never return home and no explanations are available. We have also heard stories of miners or their wives who are unable to access death/disability compensation, cannot access their pension, provident funds and other social benefits.

THE STORY OF HELENA

The story of Helena is one filled with misery and heartbreak. Her husband was a mine worker and he died whilst in South Africa. His body was sent back to Helena without any real explanation of what happened to him. Just that he had been coughing. She was not given a death certificate or any other documents. She never received any compensation, just the corpse of her husband. Helena is illiterate and had no idea where to even look for help. Her husband died so many years ago, even she is not sure of the exact details, it impossible to assist her.

You can watch the full story on our youtube channel: https://www.youtube.com/watch?v=nCmU5XwMVWg

STATELESSNESS PROJECT

IRecognition of nationality serves as a key to a host of other rights. As a result, stateless individuals are often unable to access basic human rights such as education, health care, employment, equality, liberty and security of person. In addition, denial of citizenship frustrates peace and has resulted in violence and armed conflict in several African nations. However, the problem of statelessness has remained largely invisible. Currently there exist limited mechanisms under South African law and policy to assess, prevent and reduce statelessness. At the same time, there is a dearth of information or statistics about the magnitude of the problem.

LHR this year launched a booklet discussing case studies of childhood statelessness in South Africa. This booklet was followed by a campaign to end childhood statelessness in South Africa.

You can download the booklet here:

http://www.lhr.org.za/sites/lhr.org.za/files/childhood_statelessness_in_south_africa.pdf

COURT VICTORY FOR STATELESS CHILDREN

Written by: Ilse de Lange

Published by: The Citizen (07 September 2016)

The girl was born in Cape Town to Cuban parents in 2008, but could not obtain Cuban citizenship.

An eight-year-old girl who was left stateless when she was born to Cuban parents in South Africa has not only won her long legal battle to be declared a South African citizen but has opened the way for other stateless children to apply for citizenship.

The department of home affairs initially sought to appeal a ruling of the North Gauteng High Court declaring the child a South African citizen, but after waiting for two years for the matter to be set down in the Supreme Court of Appeal, this week suddenly withdrew its application.

Lawyers for Human Rights, who assisted the girl and her parents, said in a statement the department had finally agreed to declare the child a South African citizen by birth, to issue her with a South African citizen identity number and birth certificate and to make regulations to facilitate the implementation of section 2(2) of the Citizenship Act within the next 18 months to allow other stateless children to apply for citizenship.

The girl was born in Cape Town to Cuban parents in 2008 but could not obtain Cuban citizenship because Cuban law did not allow children to obtain citizenship if they were born outside Cuba to parents who were considered “permanent emigrants”, having lived outside of Cuba for more than 11 months. South African law gives citizenship based on the South African citizenship of parents, but because the parents are Cuban, their child could not be a South African and was therefore stateless.

LHR said Section 2(2) of the act gave local citizenship to such children born in South Africa, but home affairs refused to implement the section. The organisation said it had been impossible to implement the section because there was no application form, but once the new regulations were passed, other stateless children would also be able to apply for South African citizenship.

The department initially sought to appeal the judgment on the basis that too many children were expected to apply for citizenship but LHR said there was no basis to believe that an inordinate amount of children would qualify for citizenship under this section, which was a preventative measure for special cases and would protect

the most vulnerable of children. It applied to children born in South Africa who did not have a claim to another country's citizenship.

Stateless children can never leave South Africa, nor obtain legal status in the country without section 2(2), and it was therefore imperative that the section be implemented, the organisation said.

LAND AND HOUSING PROGRAMME

One of the Apartheid legacies, is the issue of land and housing. Due to the apartheid laws that discriminated and marginalized the black community, most of these communities still continue to struggle to access land, housing and mining rights. The Land and Housing Progamme assists previously marginalized communities in the realization of its rights to access land.

The Land and Housing Programme in the year 2016 has extended its work from land restitution, urban evictions and assisting ESTA occupiers to include mining, sale in executions, family home town planning issues.

IMPACT JUDGMENTS

We obtained three judgments in the Constitutional Court during the course of 2016;

In the ***Pheko Judgment***, the Constitutional Court granted our request to have the matter remitted back to the High Court for overseeing the implementation of the order we received in 2011 before the Constitutional Court. The matter was in the Constitutional Court for approximately 6 (six) years, during this long period we brought a contempt of court application, judgment for the contempt was granted in 2015. The Ekurhuleni municipality refused to implement the order, the latest *Pheko* judgment remits the matter to the High Court for trial purposes on the enforcement of the 2011 judgment.

The right to access to housing and the eviction of people from their homes under section 26 of the South African Constitution includes the right to due process when carrying out a court-ordered eviction or demolition. In the ***Ngomane / Govan Mbeki Municipality judgment*** the Constitutional Court held that 'meaningful engagement' applies even in an urgent forced eviction. The court therefore ordered the Municipality to proactively seek the participation of the occupiers in a meaningful engagement to reach a reasonable solution as envisaged in Section 26 of the Constitution.

In the ***LAMOSA judgment*** we opposed an application brought to challenge and declare the re-opening of the land claim process unconstitutional without remedial relief for future lodgement of land claims. The relief sought by the Applicants in the *LAMOSA* matter before the Constitutional Court had it been granted would have shut down any future attempts for communities or individuals to make use of the land claims process in its entirety. The communities we represent would benefit from the re-opening of the land claim process and argued that the re-opening will not as such undermine the “old claims”, but a sensible manner can be found to deal with people who have valid claim but for some reason, mostly because of bad advise, did not submit claims in time. Although the LHR clients could not argued that the process to amend the legislation to allow the re-opening of the claims were flawless, it was important to explain to the court that in principle the re-opening must take

place. The Constitutional Court found that government's process was flawed and referred it back to parliament to redo the process.

In the ***Dladla & others / TUT*** the Judge was not prepared to give us the comprehensive relief we sought in our notice of motion but found that University student residences should be regarded as a "home" as defined by the Prevention of Illegal Evictions and Unlawful Occupiers Act, and therefore a University cannot close hostels, even if there is unrest on a campus, but need to apply for an urgent eviction order. TARISAI HELP HERE

In the ***Zodwa Lukhele*** *case* we obtained an order on behalf of our client who is an old woman residing and making use of communal land for subsistence farming. She was slowly losing possession of her land because the Traditional Authority was demarcating and selling stands on her land. The order formalised her informal land rights in terms of the Interim Protection of Land Rights Act. We are now in negotiations with the DRDLR and the traditional authority to identify alternative land for her.

NEW AREAS OF WORK

COMMUNAL LAND RIGHTS AND MINES

After the success in the *Wilgespruit – case* in 2015, we were approached by a number of communities to assist with their insecure communal land rights and mining activities on the land or adjacent to their land. A few issues that we highlighted and that we will focus on for now are:

Unlawful zoning of land from agricultural use to mining uses. Many times, this re-zoning process does not take place which results in unlawful mining activities being conducted on the land. This implicates different levels of government, including the provincial and municipal governments who have different requirements for re-zoning and land-use planning;

Access to information: we are assisting communities with accessing the social and labour plans ("SLPs") which are required when mining rights are granted to companies. These SLPs often outline the obligations of the mining companies toward the community, however the Department of Minerals and Resources refuses to make the SLP"s available communities. In the upcoming year we will be undertaking various initiatives including litigation to compel the department to make this information available and further ensure mines are following their obligations to communities around them.

Another challenge we intend to tackle is, mines negotiating with the traditional authorities and not with the communities (who are in many cases the de facto owners of the land) about benefits that might derived from mining activities. Communities have in most cases no detail about the terms of the agreements between the "traditional authorities" and the mines.

BANK REPOSSESSED HOMES

LHR, together with many legal NGOs, noted with growing concern the manner in which repossessed houses are sold at public auctions. The fact that a reserve price is not mandatory for sales in execution as well as the lack of judicial oversight over these processes have led to substantial consequences for the judgment debtor, including those with constitutional implications.

The three main cases involving banks are *Given Nkwane, Bukhosi Sibiya, Motebele.* In the Given Nkwane and Bukhosi Sibiya cases we challenged the constitutionality of Rule 46 of the High Court Rules and ask the court to declare that a reserve price must be set when a house is sold in execution. Given's house, worth at least R400 000, was sold for R40 000. In the Motebele matter – our defence against the banks summons for an order for the payment of the bond is that the bank is acting and negotiating unreasonably and in bad faith in terms of the Code of Banking Practice. In other cases we deal with issues like reckless lending, recovering money from execution sales, giving clients an opportunity to sell their houses privately instead of the bank selling it on execution.

LHR wrote an op-ed piece on thought leadership:

http://thoughtleader.co.za/lawyersforhumanrights/2016/06/06/growing-concern-in-way-repossessed-houses-are-sold-at-public-auctions/

EXTENSION OF SECURITY OF TENURE ACT 62 OF 1997 (ESTA) OCCUPIERS

The jurisprudence that has been developed in the last few years by the Land Claims Court is not what was intended with the Extension of Security of Tenure Act and leaves thousands of occupiers in rural areas extremely vulnerable and even worse off than they use to be. Their living conditions have not improved and when an eviction does take place it is normally placing them in a worst position.

We are focusing more on these cases and the *Claytile – case* will challenge the court's decision to accept as suitable alternative accommodation an empty stand in an informal settlement without security of tenure. In the *Amos Molobi case* we want the court to declare the requirement that you must earn less than R5000 to qualify to be an ESTA – occupier unconstitutional or at least for the Minister to adjust the amount, which is something that has not been done since 1998. The *Mokoena - case* is challenging the Impoundment ordinances for the old Transvaal, the court has already declared it unconstitutional in for the old Cape and Natal provinces.

"FAMILY HOMES"

The "family home" is well a known system in the old black townships. The essence of the concept is that houses are held for family members who are not married, a person will move out of the house when they get married. Difficulties arise when title of the house is in one family member's name, many times it will not be clear how this person managed to get title of the house (*Dlamini/ Lekalakala/Selakela, Malebye Seefani).* In the *Malebaloa -case*, Nedbank attempted to attach the family house. The family house is in the name of the brother, who has another house with a bond. Nedbank is struggling to attach the "bond house" and applied to court to get an execution order against the family house. We have now joined the members of the family who are occupying the family house as parties.

LUSISKISIKI – 35 HOUSES DEMOLISHED BY THE MUNICIPALITY

The Inqguza Hill municipality unlawfully demolished 35 houses without so much as a notice to the owners. We obtained an urgent order for the municipality to erect emergency temporary structures in the Grahams town High Court. The municipality is going out of their way to obstruct the execution of the order, the sheriff can't find the municipality manager of mayor to serve on, the municipality has also built structures 5km away from the clients' demolished houses. We applied for a contempt order and was granted a rule nisi with the return date in December 2016.

STRATEGIC LITIGATION PROGRAMME

As a prominent player in the field of public interest litigation, LHR continues to undertake strategic cases that do not only ensure access to and the realization of equal rights to the marginalized in society, but in the long run set precedence in making rights real. This year the programme has expanded its work to include labour matters.

STUDENT PROTEST BAIL APPLICATIONS

LHR has been approached by a number of student leaders and other activists who have been affected by the #feesmustfall protests which have taken place since mid-year across South Africa's universities. As part of the R2P (Right to Protest) group, LHR has been called upon to assist a number of students who were arrested during protests by police. Charges have ranged from public violence to violating court interdicts, while some have been charged with more serious offences such as assault and damage to property.

LHR's role has been limited to providing representation and assistance to students who were arrested. Our goal has been to try and secure police or prosecutor bail when students are first arrested and, if that is not successful, to represent students in bail court. We have made it clear to students that we will not represent them in their trials if charges are pursued. However, in the majority of cases, charges have been withdrawn by prosecutors either at their first appearance or shortly thereafter. This is reflective of the heavy-handed nature of the way that police have been dealing with protests on campus.

There are some cases, however, which may require further litigation intervention. Sweeping interdicts are being granted by courts to universities which are being used to harass student protesters. This includes orders against protesting against any university or making the geographic limitations of such protests far too broad. We have also seen these interdicts used as a grounds for arrest and charges to be laid in the magistrate's courts rather than bringing student protesters back before the high court which issued the interdict to show cause why they should not be found in contempt. In many cases, the cited respondents have been vague and far too broad. In one case, a hashtag was cited as a respondent to the interdict. LHR with R2P is currently looking at these interdicts and is involved with two university student groups (from Limpopo and Gauteng) to contest the interdicts on their rule nisi return dates.

CLOSURE OF THE PORT ELIZABETH REFUGEE RECEPTION OFFICE

On 25 March 2015, the Supreme Court of Appeal handed down judgment in the PE Refugee Reception Office matter wherein they were scathing of the way in which the Department of Home Affairs, and particularly the Director-General of Home Affairs, misled stakeholders, the SCA, Parliament and defied High Court orders. The SCA ordered the office to be re-opened by July 2015 and costs were awarded to our clients. An appeal to the

Constitutional Court was dismissed and the Department was ordered to re-open the PE RRO within 3 months (putting the date at 9 February 2016).

The Department did not comply with this date and brought an application to vary the order of the SCA. They sought an extension of 17 months to comply with the order and relied extensively on the budget cuts imposed by the Treasury Department to justify the extension. LHR attempted to engage with the Department about the incremental provision of services at the office, particularly in light of the lack of office space available to the RRO. This would have included allowing file transfers to PE as well as permitting a limited number of first applications for Eastern Cape residents.

SOUTH AFRICA HISTORY ARCHIVES

LHR is representing the South African History Archives (SAHA) is an application challenging blanket refusals of applications for information under the Promotion of Access to Information Act. SAHA filed a number of PAIA requests to government departments relating to apartheid era corruption on behalf of Hennie van Vuuren and Prof Jane Duncan. The departments included SAPS, the Department of Justice, the NPA as well as public bodies such as the South African Reserve Bank and the Office of the Auditor-General. Most requests were met with blanket refusals.

Applications have been filed in the matters of the South African Reserve Bank (SARB) and the Department of Justice.

SOUTH AFRICAN HISTORY ARCHIVE V THE MINISTER OF JUSTICE & CORRECTIONAL SERVICES AND ANOTHER 44670/14

This application relates to several requests made to the Respondents. The requests are as follows:

- RICA request – records for specified interceptions.
- Secret defence fund request – records of TRC investigations into use of secret funds by SADF and Armscor.
- September request – evidence provided to the TRC relating to the murder of Ms Dulcie September.
- Motsepe request – evidence provided to the TRC relating to the attempted assassinations of Mr Godfrey Motsepe.
- De Beers request – investigations and reports into the export of uncut diamonds by De Beers.
- Palazzolo request – investigations into the alleged illegal activities involving Mr Vito Palazzolo.
- Smit request – Investigations into the event around the murder of Dr Robert Van Schalkwyk Smit and Mrs Jeanne-Cora Smit.
- Tranferred Ekon request – investigations into alleged illegal activities involving Mr Paul Ekon.

As a result of the refusal by the Respondents to grant access to the requested records, and following correspondence with the Respondents' attorneys, the matter was issued on 9 December 2014 and served on the 14 January 2015. Notice to oppose was received on the 14 February 2015. The matter was set down for hearing on 28 May 2015. On 8 May 2015 the State Attorney requested that SAHA provide the Department with three months to review and locate the requested documents. As a result, on 20 May 2015 the matter was removed from the unopposed roll. Due to an insufficient response from the department, LHR then requested that an answering affidavit be filed by 4 September 2015. On 4 September 2015, part of the records were released to SAHA for their consideration. After consideration of the records and engagement with the department, LHR sent a response to the records on 21 December 2015. LHR followed up on this correspondence in January 2016. The State Attorney had apparently been changed and the file could not be located. LHR and SAHA decided to put the Department on terms by 18 March 2016.

Further correspondence followed and on 24 June 2016 SAHA met with representatives of the department. It was agreed that the department would send its final response by 1 August 2016. The documents were delivered to SAHA and processed. On 22 August 2016, LHR indicated that some requests had largely been fulfilled while others were still outstanding. Feedback was requested by 7 September 2016. An extension was granted until 27 September 2016. The department has not been forthcoming with any further details and SAHA is in the process of communicating directly with the an individual employee and well as the Deputy Minister of Justice. Should this prove unsuccessful, the matter will be set down for litigation.

SOUTH AFRICAN HISTORY ARCHIVE V THE MINISTER OF DEFENCE AND MILITARY VETERANS AND ANOTHER 05600/16

This application relates to two requests for access to information relating to policies and practices of the apartheid government during the 1980's and the domestic deployment of the military. This information is relevant to research into historical activities of the military under apartheid. The requests were refused but the Department continued to engage with SAHA, giving the impression that it would provide some access to the records. A process of engagement continued without satisfactory results until 17 February 2016 when the matter issued and served on the Respondents.

On 10 March 2016, a notice of intention to oppose was served. The state attorney requested that an extension for the filing of the answering affidavit be granted until 15 April 2016. On 18 April 2016, a further extended deadline was set at 25 April 2016. On 25 April 2016, a letter was received detailing the release of certain documents. In May, the payment for the documents was made and the documents released. On 28 July, after SAHA had considered the released documents, LHR sent a letter detailing all of the outstanding records. On 5 August 2016, Dr. S.M Gulube's s.23(2) affidavit was received. On 22 September, a letter in response to the affidavit was sent to the State Attorney, with no response. Counsel is currently considering further steps and/or potential set down of the matter.

SOUTH AFRICAN HISTORY ARCHIVE V THE AUDITOR GENERAL AND ANOTHER 10530/16

This application was made in relation to three requests:

- The Intelligence Reports request- Annual reports of the AG, The Pikoli Commission report, the Ngcaba Commission report and the Netshitenze Commission report.
- The De Beers request - investigations and reports into the export of uncut diamonds by De Beers.
- The Secret Defence Fund request – AG report on all secret funds 1960-1994 provided to the TRC.

The requests were all rejected and the matter was issued and served on 30 March 2016. An indulgence until 15 May 2016 was requested and granted. On 16 May 2016, a further extension until 17 June 2016 was requested and granted. On 13 June 2016, some records were made available. A further extension until 17 August 2016 was requested for the remainder of the records. LHR responded substantively to the provided records and granted the additional extension.

The AG missed this deadline and was granted a further indulgence until 31 August 2016. On 26 August 2016 some records were made available but proved to be insufficient. On 6 September, further communication was received and on 19 September LHR responded and allowed further time to continue to resolve what remained of the records until 7 October 2016. On 10 October 2016, further information was received and SAHA undertook to review the documents. A new deadline was set for 28 October 2016. On 7 November further records were released and an indication of 18 November for a final position on the outstanding records was provided by the respondents' attorneys.

SOUTH AFRICAN HISTORY ARCHIVE V THE SOUTH AFRICAN RESERVE BANK AND ANOTHER 05598/16

This application was made in relation to a request for information from the reserve bank relating to investigations into the alleged fraudulent activity of several individuals. The request was refused by the Reserve Bank and the matter was issued on 17 February 2016. Notice of intention to oppose received on 30 March 2016. The Answering Affidavit was served on 31 May 2016. The Replying Affidavit was served on 8 August 2016. An amended notice of motion was served on 22 August 2016.

SAHA's heads of Argument was served on 14 October 2016. The Respondents' attorneys served a supplementary answering affirmation on 8 November 2016. On 14 November 2016, the Respondents' attorneys served their Heads of Argument. The court file has been finalised and, as soon as counsel provides an indication of their availability, the matter will be set down for hearing.

OPERATION FIELA

The appeal against the cost order issued against LHR continues to be before the Constitutional Court.

LHR brought an application in June 2015 regarding Operation Fiela and the methods used by the South African Police Service, the Department of Home Affairs and the South African National Defence Force in conducting raids of private homes in so-called crime combatting operations. Often, these operations were conducted in the middle of the night and involved the forcible entry into apartments blocks and individual flats, mainly targeting non-nationals.

The High Court struck the matter from the urgent roll citing a lack of evidence that it was a recurring event and issued a cost order against LHR. Leave to appeal was denied which resulted in an additional cost order against LHR. The matter was brought by way of petition to the Supreme Court of Appeal however due to difficulties with iAfrica, the matter was delayed for a number of months. In the end, and before the record was finalised, the judges dismissed leave to appeal on the papers and issued another cost order against LHR.

Leave to appeal these orders were sought before the Constitutional Court. We relied particularly on the Biowatch principle that public interest organisations which bring non-vexatious or frivolous matters to court should not be penalised with costs. The high court made specific findings that it was not frivolous or vexatious, but that we should have been more patient and brought the matter in the ordinary course. When leave to appeal was sought from the Constitutional Court, the state attorney wrote to us stating that they would seek costs de bonis propriis against the board members of LHR if we pursued the matter. After consultation with the Board, it was decided that the matter should be pursued on appeal due to the danger of watering down the Biowatch principle.

On 17 August 2016, the Constitutional Court issued directives seeking submissions from the parties as to why Biowatch should not apply in the present circumstances. Submissions were filed by all parties. The Department of Home Affairs (which has taken the lead in the matter) found precedent that Biowatch may not apply in matters pertaining to procedure. We have found case law to the contrary.

ENVIRONMENTAL RIGHTS PROGRAMME

In 2016 the Environmental Rights Programme continued to provide legal support, advice, and representation to marginalized communities and their voluntary associations of communities in order to protect, claim and advance their right to an environment that is not harmful to their health and wellbeing. Increasingly, the ERP's work is expanding to consider the impacts of the extractive industry on mining-affected communities more broadly, including with respect to their rights to consultation, information, and the fulfillment of socio-economic obligations required of mining companies by law.

The Environmental Rights Programme continued to successfully develop its strategic interventions aimed at safeguarding environmental and other rights on behalf of poor and marginalised communities, including with respect to access to water and general work in the area of business and human rights. Achievements in 2016 include:

- Securing the reconnection via two urgent applications of the piped water supply to the Blyvooruitzicht Mine Village ("Blyvoor");
- Obtaining a court order directing a Municipality to avoid interference with the water supply to Blyvoor and to create and implement a long-term plan to ensure sustainable access to water and adequate sanitation for this community;
- Successfully negotiating with Eskom on behalf of Blyvoor to avoid an electricity termination and obtaining a court order establishing that Blyvoor exists within the Eskom electricity supply area to enable the implementation of individual electricity metres;
- Initiating a human rights impact assessment with the Blyvoor community and in collaboration with FIDH to explore the broad human rights impacts of the collapse of the Blyvoor Gold Mine on the surrounding village;
- Securing the municipal provision and continuous delivery of water tanks and sanitation facilities to the informal community of Capital Park in Tshwane Municipality;
- Establishing a task force composed of four government departments, together with the ERP, to identify the cause of and develop solutions for the flooding of the Itsoseng community in the North West Province;
- Partnering with two other leading public interest organisations to develop and host the Mining and Environmental Justice Conference in Pretoria in July 2016; and
- Participating in the Treaty Alliance, a global group of networks and campaign groups organising advocacy activities in support of developing binding international regulations to prevent corporate human rights abuses and provide effective remedy where violations are not prevented.

2016 CASES AND INTERVENTIONS

FARMLAND FLOODING IN THE ITSOSENG COMMUNITY OF THE NORTH WEST PROVINCE

In early 2016, the ERP began representing the community of Itsoseng, located north of Tshwane in the Moretele area of the North West province. The clients are primarily individual plot owners who in 2009 began experiencing problems with excessive water on their properties. The flooding made it impossible for them to continue farming, which had been community's livelihood for generations, and generally destroyed the value of the land, as it had become uninhabitable as well. Raw sewage had

also begun to run across the land. The community's previous efforts to engage the Moretele and Tshwane Municipalities had been unsuccessful, as the latter simply stated that the Itsoseng area had long been a "wetland" and thus the community – depsite having farmed the previously-arable land for years – had few options.

The ERP investigated the area, retained pro bono environmental expertise, and sought meetings with municipal representatives, as the problem seemed associated with the construction upstream of a Tshwane Municipality waste water treatment plant. Pro bono analysis confirmed that a significant increase in storm water run-off and the decanting of waste water from the treamtment faclities caused the flooding and led to a deterioriation of the soil. Agreement was reached to divert the water previously flooding Itsoseng to a nearby stream, aiding the Itsoseng landowners in the immediate term.

However, the diversion of the water has the potential to negatively impact other communities and there remains concern about the sewage present in the water. As a result, the ERP has spearheaded a strategic initiative to address the issue in Itsoseng and in such communities which have fallen victim to "man-made wetlands", usually as a result of development. In essence, assessment of the Itsoseng area has exposed a lacuna in the relevant legislation regarding the interpretation and management of such man-made wetland conditions; indeed, wetlands are considered protected areas under the law and their development and conservation is a state priority, but "man-made" wetland such as Itsoseng appears to garner the same protection under the terms of the current law as natural wetlands, even as its creation and conservation is an affront to the human rights of the area's residents. On this basis, the ERP has convened a task team including representatives from the Departments of Environmental Affairs, Agriculture and Water, as well as the Working for Wetlands government programme, to develop a joint submission for the City of Tshwane's Inter-Governmental Relations Forum , which essentially seeks to contexualise and distinguish "man-made wetlands" from "natural wetlands" in order to provide protection to communities like Itsoseng in future.

KGATLU COMMUNITY: PAIA REQUESTS AND COMMUNITY/CORPORATE ENGAGEMENT

In mid-2016, the ERP initiated representation of the Goedetrouw Farm ("Kgatlu") community located in the Capricorn District Municipality in Limpopo Province. The community, composed of XX people, is situated in the heart of a platinum belt, where the subsidiary of a Canadian mining concern, Platinum Group Metals (SA) ("PGM") has recently completed prospecting. The community had multiple disputes with PGM over the course of the prospecting period prior to engaging LHR, and sought LHR's assistance in obtaining information about the future plans of PGM, representing the community in PGM's Social and Labour Plan consultations, and attempting to safeguard the community's interests as mining gets underway in the area.

As a first step, the ERP successfully launched requests for records from the Department of Mineral Resources ("DMR") under the terms of the Public Access to Information Act ("PAIA") seeking access to information regarding the application for and granting of the PGM prospecting license and mining right relevant to the Kgatlu community. Authorisation has purportedly been granted and we await communication from the local DMR office to indicate the records are ready for collection.

At the same time, the ERP also submitted a PAIA request for access to information regarding an environmental authorization purportedly granted by the Department of Environmental Affairs ("DEA") to Eskom to estalblish an electricity sub-station in the area, presumably to facilitate the future PGM mining operation. The Kgatlu residents strongly opposed the creation of a sub-station in the

area, having not been consulted nor provided with information about its likely impact on their community. After obtaining the first batch of these records, it was apparent that the the DEA had indeed granted authorization for the sub-station despite the lack of community consultation and in violation of the National Environmental Management Act. The ERP sucecessfully engaged the DEA on this issue setting forth the Kgatlu community's objections, and ultimately resulting in a withdrawal of the Eskom substation application.

Most recently, the ERP represented the Kgatlu community in the first of several consultations with PGM with respect to the Social and Labour Plan consultations required by law. This engagement was the first of several that we anticipate as the ERP works to promote and safeguard the community's interests.

BLYVOORUITZICHT MINING VILLAGE HUMAN RIGHTS IMPACT ASSESSMENT

In March 2016, the ERP was awarded funding to collaborate with FIDH and the Blyvooruitzicht Mining Village on a community-led human rights impact assessment ("HRIA") to analyze the impact of the sudden liquidation of the Blyvooruitzicht Gold Mine in 2013 on the surrounding community.

As background, the Blyvooruitzicht Mining Village is home to some 6000 people in approximately 650 households. After seven decades of unbroken operation and after billions in profit had been extracted, owner/operator DRDGold attempted to offload the Mine to Village Main Reef, a smaller mining company. The deal fell apart mid-stream and both companies washed their hands of any responsibility for the Mine, including the environmental and social liabilities associated with closing a mature gold mining asset. The Mine entered into liquidation, ceasing operation overnight and leaving thousands of former employees and their families destitute, an entirely un-rehabilitated mining operation, and the community's access to basic services like water and sanitation threatened[1].

The HRIA, which is due to be published in early 2017, will focus on the particular impact of the liquidation on the rights to environment, development, and adequate housing. The process over the course of the year has included:

- Door-to-door interviews with some 300 households;
- Environmental studies assessing water and air quality;
- Obtaining an opinion on the intersection between insolvency law and environmental obligations;
- Multiple mass meetings and engagement with the Blyvooruitzicht Residents Committee;
- Creation of a short, five minute documentary highlighting the lack of information accessible to the Village residents; and
- Presentation of the HRIA at the UN Forum on Business and Human Rights in Geneva, Switzerland.

The ERP intends to publish the report in order to give voice to the community's experience, identify responsibility for particular rights violations, and provide recommendations to both aid the Blyvooruitzicht community and call attention to the broader concern for South Africa of a gold mining industry entering its twilight years and what this will mean for mining-affected communities.

[1] For detail on the ERP's work on safeguarding Blyvooruitzicht's access to basic services, see the following section.

ESKOM / BLYVOORUITZICHT MINING VILLAGE NEGOTIATIONS

Since the liquidation of the Blyvooruitzicht Gold Mine, the community's access to electricity has been tenuous, as the homes are not yet equipped with individual metres and power to the area is billed at an industrial rate. In November, Eskom issued a notice of termination to the Blyvoor residents. Beyond the obvious implications of a power cut, Blyvoor's access to water was at risk of compromise, as the pumps for the village depend on this electricity to function.

The ERP received therefore received instructions from the Blyvoor Residents Committee to attempt to engage with Eskom on the community's behalf, and initiated negotiations that lasted throughout December. The ERP worked with the community to also prepare resident represenations to Eskom detailing the impact of an electricity cut, of which more than 400 were ultimately submitted. In early 2016, Eskom agreed to continue to supply the area with electricity until the end of April 2016, while it installed individual electricity metres, provided the community covered the high bulk cost of the electricity supply over this period. Although this amount was very high for the Blyvoor residents to manage, the community was committed to doing so for the four months Eskom indicated it would take to install individual metres, at which point individual households would be responsible for their own consumption.

Over the subsequent four months, the ERP continued to engage with Eskom, attempting to ensure Eskom kept its end of the bargain as the community worked to meet its payment obligations with help from the Mine's liquidator. Nevertheless, Eskom ultimately failed to begin installation and the community payments dwindled significantly after April. In June 2016, Eskom indicated that it had learned it needed the Blyvoor area to be demarcated as within Eskom's supply jurisdiction, and needed the Municipality to agree to allow it to supply this area. As detailed in the subsequent section, this required obtaining a court order.

Since successfully obtaining this order, however, Eskom has ceased communicating with both the ERP and the community directly. The ERP is currently working to re-engage Eskom and provide clarity for the Blyvoor residents about its future access to electricity.

MASHABA AND THREE OTHERS / CITY OF TSHWANE METROPOLITAN MUNICIPALITY AND TWO OTHERS

In October 2015, the ERP launched an application in the North Gauteng High Court to compel the provision of a basic supply of potable water and adequate sanitation to the 60 residents of the Capital Park plot, located in a wealthy suburb of the City of Tshwane.

The Capital Park residents had lived without access to these essential services since 2006, as a result of which they had been forced to employ life threatening measures to obtain unclean water from a nearby storm water drainage canal in order to survive. In early September 2015, a fence was constructed between the area in which the residents lived and the canal, further restricting the already-limited access to water. For the previous 10 years, the residents had likewise had no access to sanitation facilities, and had simply dug a rudimentary latrine every few months to service the entire community.

Less than 24 hours after the application was served, the City of Tshwane agreed to immediately initiate continuous provision of water and sanitation facilities to the Capital Park residents.

PENAL REFORM

South Africa's prisons and penal system have been plagued by a number of grave issues for years despite the existence of robust and progressive legislation protecting the rights of accused persons and sentenced offenders. The Programme is a response to the growing need for the protection and fulfilment of such rights and it seeks to achieve this goal through research, advocacy and strategic litigation.

CONDITIONS OF DETENTION

SONKE GENDER JUSTICE / GOVERNMENT RSA (DCS)

During the course of 2015 LHR went about preparing the founding affidavit and supporting documentation. Witness statements from detainees at Pollsmoor RDF, former detainees, and a former health peer worker based at Pollsmoor RDF, were collected and compiled. Statistical information, both current and historical, was also collected. The final application, settled by Ncumisa Mayosi and Geoff Budlender SC, was issued, served during the week of 7 December 2015. The relief sought in the Notice of Motion is supervisory in nature, requesting, in brief, that the Respondents develop a comprehensive plan, including timeframes for its implementation, which addresses and will put an end to 1) the deficiencies in the provision of exercise, nutrition, accommodation, ablution facilities and healthcare services to the inmates of Pollsmoor RDF; and 2) the deficiencies identified in the Prison Visit Reports by Justice Cameron dated 27 July 2015 and 13 August 2015 (the Cameron Report). The Applicant also filed a Rule 16A Notice.

Members of the National Office of the Department of Correctional Services requested a “without prejudice” meeting on 16 February 2016. The Applicant agreed to such a meeting as well as an extension for the filing of the First Respondent’s answering papers pending the outcome of the meeting. Following the meeting, which was attended by members of LHR, the Applicant, the Chief Commissioner for Remand Detention (DCS), the Western Cape Regional Commissioner (DCS), the staff from the Area Commissioner’s office and staff from the office of the Second Respondent. The Second Respondent himself did not attend. Following the meeting, the Applicant requested a “walk through” of Pollsmoor RDF.

INDEPENDENT OVERSIGHT

SONKE GENDER JUSTICE / MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS

The Judicial Inspectorate for Correctional Services (JICS) is a crucial prisons oversight body in South Africa. Unfortunately its effectiveness is crippled by several challenges, including: inadequate financial and operational independence from the Department of Correctional Services (DCS), the very department that it is mandated to oversee and hold to account; ill-defined statutory functions and powers; and the fact that its recommendations

are not binding. Consequently, its functionality as an oversight body has to date been underwhelming, to the detriment of South African inmates.

During the course of 2012 and 2013, the Portfolio Committee on Justice and Correctional Services dedicated a significant amount of time and discussion towards the legislative setup of the Judicial Inspectorate of Correctional Services, more particularly its institutional independence. The Inspectorate itself lamented its lack of independence during this time, as did many civil society organisations. Section 85 of the Correctional Services Act 111 of 1998 describes the Inspectorate as being an 'independent office'. Nevertheless, the Inspectorate enjoys neither financial nor administrative independence from the Department of Correctional Services (the Department).

It has been held by the Constitutional Court in, inter alia, Glenister v President of the Republic of South Africa 2011 (3) SA 347 (CC), that institutional independence is a prerequisite for ensuring the effectiveness of watchdog entities like the Inspectorate. The Inspectorate's lack of financial and administrative independence not only circumscribes severely the efficacy with which the Inspectorate carries out its legislative objectives, but fails to adhere to international and constitutional standards, particularly in relation to the prevention of torture and ill treatment.

Neither the Minister of Justice and Correctional Services nor the Inspecting Judge himself have responded to requests from LHR regarding their proposed plans for remedying the legislative defect. Accordingly, the PRP intends to challenge the legislative setup of the Inspectorate in the Correctional Services Act for failing to have established a truly independent institution, and thus violating section 7(2) of the constitution. A final draft of the founding papers have now been prepared by the PRP, led by David Simonsz and Diane Davis of the Cape Bar.

ILL-TREATMENT AND TORTURE

The PRP records each allegation of assault and torture reported to it. We then undertake to report the matter to the relevant SAPS station and track the investigation and prosecution process. We also report and track the DCS internal investigation.

To date, the PRP has compiled a valuable data base regarding the tracking of assault and torture cases. There have been well over 100 cases of assault and torture reported to us, with not one prosecution having resulted.

SMITH AND 4 OTHERS / DEPARTMENT OF CORRECTIONAL SERVICES

Five inmates were assaulted severely on 12 August 2014 at Leeukop Maximum and then four of them were placed in isolation unlawfully for another 16 days. Three of the inmates were released after the PRP requested the Inspecting Judge to order their removal in terms of the CSA. The fourth was released after threatening to bring an urgent application against DCS for his release. We were then instructed to bring a civil claim for damages on behalf of all five inmates. Led by Janice Bleazard, summons was issued on 9 March 2015. Since then, the defendants have pleaded that the use of force was justified, although their notion to amend their pleadings has

not been filed. Both parties are currently in the process of exchanging discovery documents. It is hoped that we will be able to commence with pre-trial proceedings in January 2017.

ZULU AND 4 OTHERS / NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

After the assault of five inmates (described directly above) the PRP called upon and then assisted the Sandton SAPS with the investigation into the assault of the applicants. The SAPS referred the matter to the NPA in September 2014 to be prosecuted. The docket contained statements from the applicants as well as a number of witnesses, as well as the medical evidence (in J88 format) of the applicants' injuries. The medical evidence for each applicant indicated that the causes of their respective injuries were "consistent with assault". The Director of Public Prosecutions (DPP), South Gauteng, declined to prosecute the matter. The PRP requested requested reasons from the Office of the DPP but the request was ignored. LHR then requested the National Director of Public Prosecutions (NDPP) to review the DPP's decision not to prosecute. This request was also ignored despite LHR having re-submitted the request on three occasions. Once the docket had been returned to the Sandton SAPS station by the office of the DPP, LHR were informed by the SAPS that no reasons had been provided by the DPP. Rather, the only words communicating the decision not to prosecute in the docket were "I decline to prosecute".

Accordingly, the PRP was instructed to review the DPP and NDPP's decision/failure to make a decision, on the following grounds:

- Rationality: the DPP was presented with a prima facie case of assault GHB and torture, the latter being a high priority crime. The fact that he declined, without reason, to prosecute, is irrational and counter to the purpose and objectives of the National Prosecuting Authority. In addition, the failure to take such cases serious, amounts to a clear disregard of the government's obligation to prevent and combat torture as required by the United Nations Convention against Torture; and

- Lawfulness: the NPA's prosecution policy requires 1) that the reasons for having declined to prosecute a matter be recorded by the prosecutor in the docket, and 2) that in the interests of transparency and accountability, reasons, should, as a rule, be given upon request from persons with a legitimate interest in the matter. These rules were not complied with. Moreover, implicit in the mandate of the NPA is the requirement that it comply with constitutional obligations on the state to ensure that the rights of victims, witnesses, suspects and accused persons are not limited unjustifiably in the institution, conduct and discontinuation of prosecutions. Importantly, there is a duty to prosecute a matter if there is a prima facie case and no compelling reason for a refusal to prosecute.

Led by Hamilton Manaetje SC, the review application was filed on 31 May 2016. On 13 June 2014 the PRP received notification from the DPP that he would be re-instituting charges against the accused and asked the applicants to withdraw the application.

We have refused to withdraw the application until such time as charges have been laid formally, which has not yet been done. The PRP thus continues to monitor the progress of the case with the trial prosecutor.

JUST ADMINISTRATIVE ACTION

SONKE GENDER JUSTICE / WESTERN CAPE REGIONAL COMMISSIONER (DCS)

Since the filing of the application Sonke Gender Justice / Government RSA (DCS) (Pollsmoor litigation) the Department of Correctional Services has refused to consider any further agreements between SGJ and themselves regarding SGJ's various service provision projects in certain Western Cape prisons. DCS have done so specifically on the ground that SGJ are litigating against them.

The PRP filed papers requesting this decision be reviewed on 24 October 2016. The review is based on the grounds that the decision taken was arbitrary and capricious.

There have been no notices filed in response yet.

CERTAIN PAROLE APPLICANTS / MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS

The PRP has received complaints on behalf of approximately four hundred inmates serving sentences of life imprisonment in prisons all over the country. The complaints concern the fact that the inmates have remained in prison beyond the respective dates on which they became eligible for parole. This is due to the fact that the correctional officials based at the prisons implicated in the complaints have simply failed to get the necessary documentation in order to put before the various parole boards and enable them to make a decision. The failure on the part of the Department appears to be systemic in nature and many inmates have been compelled to wait years beyond their eligibility dated.

Led by Danie Smit, the PRP has undertaken to represent each group of inmates from their respective prisons and approach the Minister to commit to a time frame within which the parole applications will be considered and finalised. In the event that the Minister fails to respond, review applications will be launched on behalf of each prison group, along with a prayer for supervisor relief.

The PRP currently represents inmates from Mthatha, Kgosi Mampuru, Worcester, Zonderwater, Leeuwop, Mdantsane, Kutama Sithumele and Losperfontein. The various groups are at different stages of engagement with the Minister.

CHILD JUSTICE

SECTION 276(3) CHILD JUSTICE ACT HEARINGS

The Child Justice Act permits a presiding officer, in respect of certain crimes, to sentence a child offender to a term of imprisonment in a child and youth care centre (CYCC), to be followed by a term of imprisonment in a prison after the offender has turned 21.

The offender is entitled to a hearing, however, in which he or she may make representations as to why he should be permitted to carry out an alternative sentence, such as correctional supervision or a suspended sentence. The first ever section 276(3) hearing came before the court during May 2016. The PRP, in partnership with the Centre for Child Law, has agreed to represent child offenders based in the Western Cape at such hearings.

Representation of this nature requires the securing of a correctional supervision suitability report from DCS, examining on the stand the offender's social workers and family, and, ultimately, making representations as to why the offender need not be sent to prison. This means that the court must be persuaded that the offender has served his time at the CYCC well.

The hearing for Emile Dick was on 17 May 2016. The PRP was unsuccessful in its attempts to persuade the magistrate that Dick should be permitted to serve out the remainder of his sentence under correctional supervision. It was successful, however, in arguing that the further sentence of imprisonment should not be three years, as stipulated in the original sentencing order. Rather, the offender was ordered to serve three months of imprisonment.

SENTENCING

ALEXANDER / UPINGTON CORRECTIONAL CENTRE

This matter is a review application in which the prison's refusal to recommend the applicant to the court for a conversion of sentence to correctional supervision is being challenged. The prison's refusal is justified on a misapplication of the relevant law, regulations and policy.

The application was filed on 16 March 2016. The respondent has indicated its intention to oppose and filed an answering affidavit. It has failed, however, to file a Rule 53 record or to comply with the applicants request that it be compelled to discover any documentation relevant to its position in law.

GENDER EQUALITY PROGRAMME

HOW THE GENDER EQUALITY PROGRAMME APPROACHES "GENDER"

The term "gender" is often understood to simply mean "women". The GEP, however, proceeds from the basis that "gender", regardless of the context in which it is used, is diverse and non-binary.

***"Gender** is the range of characteristics pertaining to, and differentiating between, masculinity and femininity. Depending on the context, these characteristics may include biological sex (i.e. the state of being male, female or intersex), sex-based social structures (including gender roles and other social roles), or gender identity."*[2]

We recognise that it is often this diverse and non-binary nature of gender that gives rise to violence and discrimination. In this context, the GEP not only serves women and girls, but also seeks to empower and protect the human rights of members of the LGBTIQ+ community.

GENDER BASED VIOLENCE

In 2016 the programme undertook two broad systemic activities in this context which aim to make government information related to gender-based violence, public and accessible:

ADVOCATING FOR STATS REFORM

We joined a coalition of organisations from diverse sectors, led by the Institute for Security Studies, to reflect on the manner in which crime statistics are released annually, and what these statistics tell us and (more importantly) do not tell us. The GEP attended a meeting of the coalition on 8 August 2016, together with APCOF, CSVR, Ndifuna Ukwazi, Right to Know Campaign, Safety and Violence Initiative, Social Justice Coalition, Children's Institute, and SWEAT.

Together with the Proof Media agency, we devised a communications plan to ensure streamlining of messaging, and collaboration where we had similar messaging, for amplification.

The GEP contributed to the call for:

[2] Udry (November 1994). "The Nature of Gender"; Haig (April 2004); "The Inexorable Rise of Gender and the Decline of Sex: Social Change in Academic Titles, 1945–2001"; "What do we mean by 'sex' and 'gender'?" World Health Organization.

- **sexual offences statistics that are disaggregated** by offence, and by the gender and age of victims;
- **domestic violence statistics** to be released separately, and not hidden in other crime stats like assault and damage to property;
- **recognition that** a decrease in sexual offences is more likely an indication of increased underreporting, and not a decrease in actual incidents;
- **looking beyond the South African Police Service (SAPS) as the only institution for crime prevention**, and calling for the involvement of other state departments in the release of the statistics, such as Social Development (with a mandate to provide services to victims), and the NPA (to provide statistics on how many reported cases led to convictions).

Subsequent to the release of the crime statistics in September 2016, the GEP prepared several infographics for LHR social media, related to the release and interpretation of the crime statistics. The infographics illustrated how little useful information the sexual offences crime statistics provided in 2016.

Using the Promotion of Access to Information Act

There are over 36 different sexual offences defined in South African legislation. Despite this, SAPS and the NPA persistently report incidents and conviction rates in a universal category of crimes simply called "sexual offences." We do not know how many rapes were reported in the last year, or how many sexual assaults.

Similarly, we do not know anything about the state of violence against women and children (or the LGBTIQ+ community) by looking at state statistics, as the statistics are not disaggregated by age and gender of the victims.

This cloaks the true GBV situation in South Africa, and makes it difficult to advocate for specific interventions. Civil society cannot participate meaningfully in solving a problem if we are never made aware of the true nature and extent of the problem.

We know this information is available, and that it lives in the systems of both SAPS and the NPA in registers, case management systems, and databases. We also know this information is available because it has been shared in the past.

Consequently, after the release of the crime statistics the GEP lodged **two separate applications in terms of the Promotion of Access to Information Act** to:

- **The NPA**, requesting a list of complaints dealt with under the Sexual Offences At of 2007, from 16 December 2016 to date, showing per offence:
    - The number of guilty and not guilty verdicts
    - The number of complaints withdrawn before court
    - The number of complaints withdrawn at court
    - The number of decisions not to prosecute

- **SAPS**, requesting disaggregated sexual offences statistics showing:
    - Reported incidents for each separate offence
    - The gender of victims
    - The age of victims

GENDER BASED VIOLENCE CASES

MASENGI MATTER

The matter concerns the **intimate partner femicide of a police officer, by her male police officer husband using his service pistol**, in 2014. The victim's family approached the GEP for assistance in April 2016, because for almost two years the SAPS investigation had led nowhere, although the incident was public with many witnesses present. The family's repeated complaints to the SAPS, and the Independent Police Investigative Directorate fell on deaf ears. Since the incident, the accused had been enjoying the freedoms of bail, and remained in the employ of the SAPS (despite being the subject of a disciplinary process).

The GEP assisted the family of the victim through written demands to high-level SAPS, IPID, and NPA officials. The matter resulted in the indictment of the accused on **charges of assault, and murder**. The matter has been placed on the Pretoria High Court roll for 25 November 2016. The GEP will conduct a watching brief at this stage.

SPURRIER MATTER

In this matter our client was raped at gunpoint by an unknown assailant in the garden on the Stellenbosch University campus in February 2016. The family was referred to the GEP due to the insensitive manner in which the university dealt with the rape and the victim's psycho-social and academic needs.

The GEP addressed a letter of demand to the university, and represented the client and her family in discussions with the university's Vice Chancellor, and provided advice to the university's working group on Campus Rape Culture.

The client and her family may decide to pursue a civil matter against the university.

LEVENSTEIN MATTER – LHR AS AMICUS

Levenstein and Others v Frankel and Others concerns a Constitutional challenge to section 18 of the Criminal Procedure Act, which stipulates that certain offences cannot be prosecuted after the lapse of 20 years. There are few exceptions, for example the offence of rape.

The applicants are adult survivors of childhood sexual abuse, whose charges will not be prosecuted because the abuse took place in the 1970s.

If the events from the 70s described by the applicants took place today, they would be categorized as rape, sexual assault and sexual grooming of children. However, because they took place in the 70s when sexual crimes where defined differently and far narrower, the most one could charge the abuser with at this stage (were it not for prescription) is the common law crime of indecent assault.

The GEP believes that the applicants' challenge to the prescription period in respect of sexual offences could succeed. However, there is a substantial amount of confusion about how to achieve this, in the light of the legality principle in criminal law, whilst still benefitting the applicants in their lifetime.

The applicants initially sought direct access to the Constitutional Court, but failed in their application. The application has now been relaunched in the Gauteng High Court.

The GEP wishes to play a role as an amicus curiae, to help the court isolate the "prescription" issue, which is where the law can, and must be successfully developed to the benefit of adult survivors of childhood sexual abuse. We wish to offer the court guidance on how it can develop the law of prescription without tarnishing the principle of legality in this context

WISANI MATTER – LHR WATCHING BRIEF

The GEP is conducting a watching brief in the Wisani matter. Patrick Wisani, a former ANCYL leader, is being prosecuted in the Johannesburg High Court for shambokking his girlfriend to death. A coalition of organisations, led by Awethu!, approached LHR for advice on the manner in which the investigation and prosecution was being handled, especially due to concerns about the accused's political connectedness and friends in SAPS.

The GEP agreed to liaise with the prosecutor on behalf of the coalition, and to attend the trial to ensure there was no political interfere in the proceedings. The murder trial is ongoing, and LHR attends the proceedings.

SLABBERT MATTER

This sexual harassment matter was referred to the GEP in March 2016. In August 2015, our client (a matric learner at the time) was photographed in a social setting wearing a cap that forms part of the school uniform at the Afrikaans Hoer Seunsskool (AHS). On 8 Augustus 2015 our client's friend sent her screen shots of a group conversation taking place on social media platform, WhatsApp. The conversation had turned to our client, and the fact that she had been wearing an AHS cap. The persons in the conversation were learners from AHS, and they were making **threats of physical violence towards** our client as a result of seeing her with an AHS cap, and **using indecent language towards her**. On 12 August 2015 an AHS our client to a group conversation on WhatsApp. The group consisted of 90 male learners and our client. Approximately 24 AHS learners on the group participated in **using/permitting foul, humiliating and derogatory language of a sexual nature against our client, and making threats of physical violence against her**.

Our client's father attempted to make the school aware of the events, but the principal's demeanour was hostile and dismissive.

The GEP addressed a letter of demand to AHS, to which we received no response. Consequently, we have launched an Equality Court challenge in the Pretoria Magistrates Court against AHS and the relevant learners, for an order in the following terms:

1. That the respondents each provide a formal written, and a verbal apology, in terms of section 21(2)(j) of PEPUDA;
2. That AHS undergo an audit of its policies and practices, including its institutional culture, in terms of section 21(2)(k);

3. That AHS provide the honourable Court with a detailed, systemic action plan that includes practical steps AHS will undertake to educate its leaners about gender equality, discrimination, and gender-based violence, in terms of section 21(2)(h) and (m);
4. That the third to twenty eighth respondents (the boys in question) attend gender sensitivity training, provided by a reputable gender organisation;
5. Payment of damages in the amount of R100 000.00, for which the respondents will be jointly and severally liable; and the cost of future psychological counselling, to be determined by a health care practitioner, for which the respondents will be jointly and severally liable.

SUPPORT TO EXISTING LHR PROGRAMMES

The GEP aims to serve the existing LHR programmes by providing capacity, support and technical expertise in relation to the gender dimensions of each programme. In this regard, the GEP has mostly been of assistance to the Penal Reform Programme in 2016, in providing litigation capacity.

SEPTEMBER MATTER

In this matter, our client is a transgender woman incarcerated for a period of 15 years on a conviction of murder. She has been incarcerated in male maximum security prison facilities – first Helderstroom Prison, then transferred to Brandvlei Prison during renovations at Helderstroom, and later back to Helderstroom.

It was at Brandvlei that our client's challenges with correctional service staff began. She was subjected to harassment and verbal abuse though the use of derogatory slurs related to her gender identity and expression. She laid a criminal charge with the SAPS, but the investigation went nowhere. Consequently, the client was represented by LHR's Prison Reform Programme, with the matter subsequently handed over to the GEP in January 2016.

We lodged a complaint on behalf of the client with the prison head of Brandvlei, alleging gender discrimination, verbal abuse, and hate speech on the basis of her gender expression and identity. The response to this complaint was not satisfactory to our client.

Whilst contemplating action against Brandvlei in the Equality Court, our client was transferred back to Helderstroom Prison, where her challenges grew. On arrival she had her female garments confiscated, and later her make-up was confiscated by the prison head. Upon verbally asserting her gender identity to the prison head she was deemed "rude" and sent to solitary confinement for a

period of 17 days, without due process, and for a number of days far in excess of the maximum number a prisoner may be kept in solitary confinement.

MAKHUMA MATTER

In this matter, our client is a gay man, incarcerated in the Medium Security Facility of Rooigrond Prison in Mafikeng. At the relevant time, our client was in a romantic relationship with Mr China Mothlanke, a fellow inmate, with whom he shared a bunk bed and a cell with 58 other inmates.

Our client and Mr Mothlanke were assaulted by Emergency Security Team (EST) prison staff in 2015. The EST staff were present in the prison at that time as the result of an unrelated attack on another prisoner. On the morning of the events our clients were counted together with their fellow cell-mates, and it was at this time that the EST officers noticed cosmetic moisturizer on our client and his partner's faces, alongside their self-tailored prison uniforms and feminine mannerisms. Consequently, the EST staff targeted our client and Mr Mothlanke with derogatory slurs and serious physical assault.

The abuse was a direct result of the fact that our client and his partner are openly gay. This amounts to direct discrimination on the basis of sexual orientation. Our client sustained serious injuries and psychological trauma as a result of the assault. We have issued a notice to the head of the prison, the Minister of Justice and Correctional Services, and the Commissioner, notifying them of our intention to commence legal and to hold them jointly and severally liable for our client's assault. Multiple witness statements confirm that the abuse occurred as described by our client.

LGBTIQ+ CASES

A number of cases concerning structural violence and gender equality have presented themselves:

ZAMAMBO MATTER

In this matter, our 16 year old lesbian client has experienced discrimination at her high school in Johannesburg during September 2016. Certain Christian educators have preached against homosexuality in the school assembly, naming our client specifically. These educators have also removed our client from classes to question her about her sexuality, to lay their hands on her while praying for her spiritual deliverance, and forced her to kneel before them while splashing her with "holy water."

The GEP has drafted a letter of demand to the school for an apology to our client and her family, and disciplinary steps against the educators. We await the client's approval. Should the school fail to meet our client's demands, we will launch a case in the Equality Court.

RAMBA MATTER

Our client in this matter, a transvestite gay man, was on several occasions forcibly ejected from the Cabana Nigh Club in Greenpoint, Cape Town, in 2016. He was assaulted by bouncers and told that it is Cubana policy to refuse entry to "people like him," amongst other derogatory statements.

The GEP has addressed a letter of demand to the owners of Cubana, demanding an apology to our client, and a review of the alleged Cubana policy on the basis that it is discriminatory. Should the owner fail to comply with our client's demand, we will consider pursuing claim against the night club in the Equality Court.

VON WILLINGH MATTER

This matter was referred to the GEP from a DSD social worker in June 2016. The client is a 17 year old transgender girl who has been placed in institutional foster care.

Due to a lack of services and appropriate facilities for transgender youth, our client was placed in a facility for boy awaiting trial. Due to her feminine appearance, she experienced several incidents of assault, sexual assault, and victimisation from the residents and staff of the facility. DSD's response to our client's particular needs has been inadequate and prejudiced.

The GEP has **represented the client in proceedings in the children's court**, and overseen her transfer to a facility for girls, where she is with other children in need of care and protection, and not with trial-awaiting children.

However, this arrangement remains inadequate, as our client is not yet fully comfortable in an all-girls environment. The GEP will assist the staff of the latter facility with training and sensitisation programmes, and monitor our client's wellbeing. We will also begin an advocacy process with the provincial DSD, to ensure that appropriate facilities are in place to accommodate transgender children in the future.

MARCUS MATTER

In this matter, the GEP was approached by the Triangle Project for assistance with their transgender female client. Their client was in need of hospitalisation, but the staff at Groote Schuur hospital refused to admit the client to a female ward. The nursing staff also persisted in mis-gendering the client by referring to her though the use of the male pronoun.

The GEP addressed a letter to the hospital management, outlining the law against discrimination and warning the hospital that the actions of its staff might be continued as discrimination for which the hospital may be held legally liable.

As a result, four heads of department apologised to the client, and admitted her to a private mixed gender ward, with individual rooms.

STATEMENT OF FINANCIAL POSITION AS AT 31 DECEMBER 2015 (ZAR)

ASSETS

Non-current Assets	
Property, plant and equipment	13 493 416.00
Other financial assets	-
	13 493 416.00
Current Assets	
Trade and other receivables	3 276 867.00
Cash and cash equivalents	414 483.00
	3 691 350.00
Total Assets	17 184 766.00

EQUITY AND LIABILITIES

Equity	
Accumulated surplus	10 417 017.00
Liabilities	
Non-Current Liabilities	
Other Financial Liabilities	3 692 616.00
Current Liabilities	
Trade and other payables	2 214 997.00
Other Financial liabilities	806 136.00
Total Liabilities	6 713 745.00
Total Equity and Liabilities	17 184 766.00

DETAILED INCOME STATEMENT

Income

Revenue

Funds Received	26 707 047.00

Other Income

Administration and Management Fees	---
Rental Income	2 524 578.00
Recoveries	---
Litigation income	1 323 820.00
Cafeteria sales	61 860.00
Other income	---
Interest received	75 787.00
Gains on Disposal assets	115 290.00
Total Income	30 808 382.00

Expenses

Administration and Management Fees	---
Advertising	143 240.00
Auditors Remuneration	90 886.00
Bad Debts	99 415.00
Bank Charges	82 937.00
Capital Expenses	---
Cleaning	49 663.00
Computer Expenses	56 082.00
Consulting and Professional Fees	542 012.00
Consumables	336 046.00
Depreciation, amortisation and impairment	69 654.00
Documentary and Film	177 821.00
Employee costs	15 973 804.00
General office expenses	184 426.00
Insurance	174 929.00
Lease rentals on operating lease	2 097 222.00

Legal expenses	---
Litigation Expenses	2 242 552.00
Motor Vehicle Expenses	---
Municipal Expenses	---
Postage	---
Printing and Stationery	653 448.00
Promotions	---
Refunds to Donors	---
Repairs and Maintenance	460 480.00
Research and Development costs	301 161.00
Security	228 730.00
Subscriptions	208 789.00
Telephone and Fax	636 144.00
Training	1 267 115.00
Travel- Local	2 080 972.00
VAT not refunded	---
Workshop and meeting costs	494 910
Total Expenses	(28 652 447.00)
Operating surplus(deficit)	2 155 935.00
Finance Costs	(266 199.00)
Surplus (Deficit) for the year	*1 889 736.00*

PROJECT FUNDING AND DONATIONS

PROJECT FUNDS	DONATIONS
International Federation for Human Rights	549 405.00
International Organisation for Migration	2 139 166.00
Fastenopfer	1 061 473.00
Ford Foundation	2 997 376.00
Foundation for Human Rights	450 000.00

HIVOS	---
USA Bureau Population Refugees and Migration	1 553 467.00
University of Witwatersrand	---
Civil Society Development Fund	301 659.00
Legal Aid South Africa	274 725.00
Legal Resource Centre	100 000.00
Open Society Foundation	2 000 000.00
The Other Foundation	70 000.00
Common Wealth Foundation	19 604.00
Sigrid Rausing Trust	3 253 015.00
UN High Commissioner for Refugees	7 047 340
South African History Archives	---
Constitutional Fund	2 000 000.00
European Union	1 319 182.00
Freedom House	1 242 045.00
Other Funders	328 581.00
Total Funds Received	*26 707 047.00*