



WOMEN'S LEGAL CENTRE

ANNUAL REPORT

2007



ABOUT THE WOMEN'S LEGAL CENTRE

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Edited by Pam Sykes | Layout by Daniele Michelini | Printing by Digital Promotions

Images: Front cover: African Woman, Veronika Nagy © 2001; inside front cover: © iddotat – sxc.hu;

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INTRODUCTION



The Women's Legal Centre is a non-profit, independently funded law centre. Our primary goal is to further women's equality in South Africa, with particular attention to the rights of socially and economically disadvantaged women.

The Centre has a vision of women in South Africa being free from violence in safe housing, free to own their own share of property, empowered to ensure their own reproductive and health rights and able to work in a safe and equal environment. We seek to achieve our goals through litigation and, where we have made gains, we publicise those through advocacy and training.

We have identified five key strategic areas in which to litigate and conduct law reform for the period 2007 to 2009:

- **Fair access to resources:** We will take up cases that ensure that women receive a fair share of the assets of partnerships when these are dissolved, whether by death or separation. This involves ensuring that all partnerships are legally recognised, irrespective of religion and custom.
- **Freedom from violence:** We will take up cases that improve the access of women and girl children to State protection from gender based violence—particularly rape and domestic violence—and increase protection of girl children from abuse in schools.
- **Safe housing:** We will take up cases to extend tenure to women in their own right, and to prevent loss of tenure on dissolution of relationships.
- **Freedom to work:** We will take up cases that extend employment protections to vulnerable groups, develop the law on sexual harassment in relation to farm and domestic workers, and ensure equal opportunities in the workplace.
- **Being well:** We will continue to defend legal challenges to the right to make choices around reproductive health, and to litigate to ensure that women have access to reproductive health care. We will take cases related to women's access to health care and the intersection between HIV/AIDS and our other strategic focus areas.

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The common thread running across all these areas is a determination to provide the most basic level of equality to all women: to create the foundations or preconditions for equality where these do not exist at present. When South Africa's women can work safely, control their own fertility, enter freely into partnerships that do not economically disadvantage them and live free from violence in safe housing, we will have created the base from which they can begin to exercise their own choices.

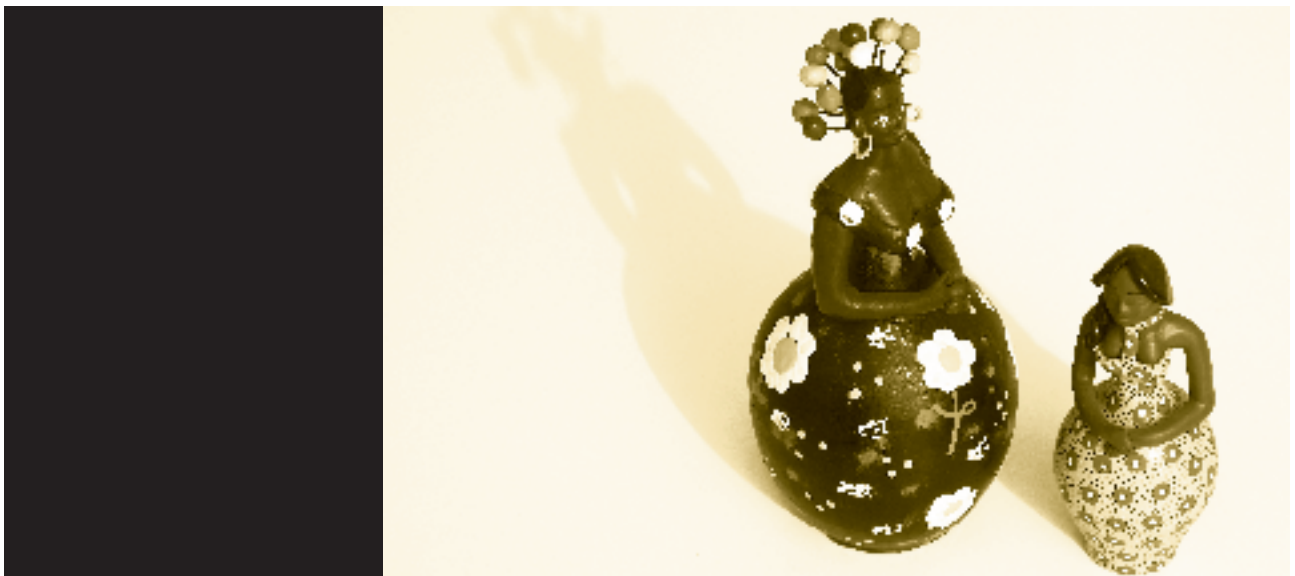
We also offer free legal advice to women, either assisting them ourselves or referring them to the relevant body, NGO or court. Most of the queries we receive involve the dissolution of partnerships, gender based violence and maintenance.

Our advocacy work focuses on providing support to other organisations and groups advocating for women's rights in our focus areas. We provide legal opinions, draft and make submissions to parliament, present workshops and draft legislation, regulations and policies. We also provide training to ensure the gains won in court are communicated and implemented, and to help recover our costs.

Finally, we provide information and training and do capacity building on a regional level as part of our work towards the transformation of the legal profession and broader society

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CHAIRPERSON'S LETTER

During 2007 the Women's Legal Centre successfully completed the transition that began in 2006 with the departure of our founding Director Michelle O'Sullivan. The first half of the year was unexpectedly turbulent, with our initial choice of new Executive Director resigning at the end of May. We were fortunate during this period to have an exceptionally hands-on Board of Trustees, which helped the Centre maintain a constant vision and direction. In South African NGOs boards typically serve an oversight role only, with the organisation's vision and drive coming mostly from its senior managers. The fact that our Board has been such a strong custodian and advocate of the Centre's vision was immeasurably valuable in weathering the changes of management from 2006 to 2007.

We have also been fortunate in the ongoing commitment and support we have received from our funders, who remained solidly behind the Centre and its work rather than taking a "wait and see" position. The Centre now has a exceptionally able new Executive Director at the helm in the person of Jennifer Williams, who joined at the beginning of the year as an attorney before taking over as Acting Director and then Director. Under her guidance the Centre has set a clear course for the future.

The work of the Centre continued unabated through this transition, with several significant cases wrapped up and new cases launched. The high-profile judgments for which the Centre receives most media coverage are in fact a small proportion of its total work, including not only less media-friendly cases but also the months and even years of preparation that precede each judgment. It's thanks to the ongoing effort of our staff that cases such as, for example, Van Zijl, Kylie, Bhe and numerous cases around women's equal access to resources in relationships have focussed national and international attention on the rights of women and girls in South Africa.

People from the communities we serve have continued to trust us to take on very difficult and important issues on their behalf. Our relationships with these communities are particularly important in cases such as our class action around Muslim personal law, where we face the delicate task of balancing a commitment to equality with respect for religious observances. The Centre's way forward on this issue was decided after a great deal of consultation, and we are grateful to the community for the confidence they have placed in us.

Community-based organisations and NGOs are also vital sources of new cases for the Centre. The Sex Workers Education and Advocacy Taskforce (SWEAT), for example, first alerted us to the Kylie case. Finding the right cases to pursue is not an easy task, so our synergies and good working relationships with other organisations are particularly valuable.

In South Africa as a whole, 2007 was a bleak year for gender activists. While women and girls continue to lead difficult lives, made even more so by gender inequality and discrimination, the quality of leadership on gender has been thin. Gender issues were notable by their absence in the ANC leadership struggle. Moreover, it is very hard to sustain a national conversation on issues like rape and gender-based violence in a context in which women are assaulted for wearing mini-skirts or for being lesbian, and the rape trial of a prominent politician elicits displays of violent misogyny. If nothing else, the events of the past couple of years have brought home to gender activists that we have not come nearly as far as we had hoped. The consensus we have been building on what constitutes sexual harassment has been blown apart, and the gap between our aspirations and reality brutally exposed.

It is community activists and organisers who have filled the vacuum left by our national leaders. Across the country, women are organising around issues including their right to safety, decent housing, healthcare, education and safe and dignified work. In the end, this is how democracy is built. There were many easy gains to be made in the early years of our democracy, but these are gone. From here on, it will be hard work, often outside the privileged environments of our urban centres with their think tanks and policy centres.

The gains are not always visible in the short term, but the work being done today has important consequences. The Women's Legal Centre has been able to exert influence wholly disproportionate to its size thanks to the co-ordinated contributions of its staff, trustees, funders and community supporters, including many attorneys, to all of whom we are profoundly grateful. We are all motivated by the powerful and unifying conviction that equality is not only desirable, but can actually be achieved.

DIRECTOR'S LETTER

During 2007 the Centre successfully completed the process of organisational development which started in 2006. The strategic plan for the next three years is in place, the structure tweaked where necessary to ensure efficiency, and the learnings of the transition phase have been built upon. The year ended on a good note, with some significant judgments obtained and preparatory work completed for matters projected for 2008. A special thanks to the trustees, particularly the chairperson, who provided strong and clear leadership and ensured that the Centre remained on a sound footing and emerged with clarity of its vision and mission. The staff of the Centre made a formidable team, matching the commitment and loyalty of senior management.

We said farewell to Shehaam Johnstone, who started with the Centre as a legal advisor, worked her way up to junior attorney and has now left the Centre to take up a position with government. Shehaam worked in the focus area of access to resources in relationships and very ably assisted with the research and statistics gathering for the Muslim Personal Law class action. We wish her well in her new endeavours.

The Centre continued to break ground in the area of women's rights in our strategic focus areas, making submissions as amicus in the Sister Charles and Gasa matters, which were favourably received by the Labour Appeal Court and Supreme Court of Appeal. We assisted POWA (People Opposed to Women Abuse) in making submissions to the High Court, and successfully defeated challenges to clients who raised constitutional issues in relation to the dissolution of their Muslim marriages in the High Court. The Centre twice had to approach the High Court to ensure that Marie Stopes be allowed to continue providing terminations of pregnancy in the Western Cape, pending a determination of the licensing requirements. All these cases are reported on in more detail below.

We supplemented each area of litigation with related advocacy and training work, and continued to build on relationships with sister organisations in other parts of Africa and internationally.



LITIGATION REVIEW

Freedom from violence

Women will never enjoy equality until they are safe, and so violence against women remains a crucial focus area for the Centre. This year saw an increase in the number of women complaining that the police fail to act on domestic violence interdicts, many of these cases attracting media attention. We also became aware of an increasing number of cases of sexual abuse in schools. The Centre began preparing court challenges to develop the duty of care in these areas. In *Phaswane and Arends*, we sought to limit the secondary traumatising of rape survivors by the legal system.

NEW CASES

Ismael

Sexual violence in schools

In this case an eleven-year-old girl was kidnapped, indecently assaulted and sodomised by a educator on the premises of her school. The educator is employed by the school governing body rather than by the Department of Education, and therefore falls out of the Department's jurisdiction. This case brings into sharp relief the responsibilities of governing bodies to ensure a safe learning environment. The school had been aware of allegations against the educator, and the governing body failed to check that the educator was registered with SACE, the applicable regulatory body.

The Centre believes a claim against the department and the school governing body would develop jurisprudence on the duty of care of these bodies in relation to sexual abuse in schools. We obtained a legal opinion on the prospects of success, which are strong, and we have given notice to the Department of Education of our intention to issue summons.

S v Phaswane, Mokoena

Treatment of evidence by child victims

The Transvaal Provincial Division of the High Court called on interested parties to make submissions around the constitutionality of provisions in the Criminal Procedure Act relating to evidence given by child witnesses and child victims. People Opposed to Women Abuse (POWA) approached the Centre to make submissions on their behalf. Our submission considered the gendered nature of sexual violence and argued that the provisions violated the constitutional rights to freedom from violence and equality of women and girl children. Judgment will be handed down in 2008.

Maritz

The State's duty of care to protect women from repeat offenders

This case illustrates how the justice system can fail women: our client was raped by the same man twice, on the second occasion while he was serving a suspended sentence for the first rape.

We are considering a damages claim against the Department of Justice for failing to take into account the prospect of the accused re-offending when seeking a suspended sentence. We have asked for a legal opinion on the prospects of success for this case, which would if successful extend the duty of care on the State to protect women from repeat offenders.

There is also a possible negligence claim against the police and correctional services, who failed to act when the client reported attempts by the accused to assault her while he was under correctional supervision and prior to the second rape.

Barendilla

Police failure to act on interdicts under the Domestic Violence Act

In this case our client approached the police with her interdict under the Domestic Violence Act and told them that her ex-partner had threatened to kill her and her daughter. The police did not act on the interdict and the

ex-partner subsequently murdered her daughter. Our research suggests that this failure of the police to act on domestic violence interdicts is common, for reasons ranging from not believing the client to misinterpreting their legal obligations. We are in the process of obtaining a legal opinion on the prospects of success for a damages claim in which we will be seeking to develop the law around the Domestic Violence Act to compel police officers to act on protection orders.

Geswindt

Killing of an abusive partner

Our client in this case was charged for the murder of her domestic partner after a six-year relationship characterised by physical, sexual, emotional and psychological abuse. The Centre took the case on, seeking to develop the law to elevate co-ercive control from a mitigating factor to a defence in cases where women kill their abusive partners. The facts of this case later revealed that the client had acted in the parameters of self defence and the State withdrew the charges against her.

Lott

Killing of an abusive partner

In this case our client was physically and emotionally abused by her husband for over twenty years. After she divorced him they continued to share a house for financial reasons and for the sake of the children, and the abuse continued. After one incident our client stabbed her ex-husband, resulting in his death.

The case was postponed several times before the Centre took it on. We objected to a further postponement requested by the State on the basis of our client's constitutional right to a speedy trial. The court upheld our objection and the charges were withdrawn.

Arends

Fathers' consent to adoption after rape

In this matter we successfully applied to the Court to dispense with the need for the father's consent in an adoption matter where the mother alleged that the child was born as a result of rape. The Children's Act requires that a parent who does not consent to adoption should advance reasons why his or her consent should not be dispensed with. On this basis we argued that the onus should be on the father to prove that the allegations of rape were not true on a balance of probabilities. We argued that to require the mother to bear the onus went against the reasoning of the constitutional court that rights to unmarried fathers should not be exercised in such a way as to prejudice single mothers who bear the bulk of child care responsibility. We argued further that compelling the mother to prove the rape would amount to secondary victimisation.

EXISTING CASES

Van Zijl v Hoogenhout

The right of child abuse survivors to claim damages in adulthood

Our client was sexually abused by her uncle for several years during her childhood, but was initially barred from instituting a civil claim against him by the terms of the Prescription Act. In 2005 the Supreme Court of Appeal held that prescription only starts to run once the survivor has full knowledge of the abuse and who was responsible for it, and that our client was thus entitled to bring a civil claim against her uncle.

The Cape High Court handed down judgment in favour of our client on 25 May 2006 with an award of R450 000 as damages, of which R200 000 was awarded in respect of general damages. The court said even this amount was conservative, given the serious nature of the crimes and the damage suffered by our client.

Mr Hoogenhout then divested himself of all assets to avoid paying the damages award, and in 2006 the Centre successfully applied for an order to sequester his estate. However, Mr Hoogenhout died in January



**Court grants
final order
against
rapist's estate**

2007 and the Centre applied to substitute the executor of the estate in the sequestration proceedings, which order was granted. The Executor intends to challenge attempts to set aside the transfer of assets into his wife's name. An enquiry will be held in 2008 into the transfer of assets.

Fair access to resources in partnerships

The Centre seeks to ensure that women receive their fair share of joint assets when marriages or partnerships end, whether by death or divorce. The cases in this area deal with the relationships and forms of marriage in our law where women do not yet enjoy full legal protection, such as religious marriages, domestic partnerships and some customary marriages.

NEW CASES

Gasa vs Road Accident Fund

Women's rights in polygamous marriages

Mrs Gasa had been a partner in a polygamous marriage. After her husband was killed in a road accident, Mrs Gasa and her husband's first wife both applied to the RAF for compensation. Mrs Gasa was refused on the grounds that although the law now recognises polygamous marriages, her customary marriage was nullified because her husband had previously married another woman in terms of the Marriage Act. The RAF's ruling relied on the Black Laws Amendment Act, an apartheid-era law which remains on the statute books.

Mrs Gasa challenged this decision in the Cape High Court and lost, but on November 21 the Supreme Court of Appeal, by agreement between the parties, overturned the High Court judgment and awarded Mrs Gasa her damages claim of R54,086.

The RAF was also ordered to compensate any other claimants who fell into the same category as Mrs Gasa. In addition, the Department of Home Affairs was ordered to review the Black Laws Amendment Act within 18 months.

The Centre, acting as *amicus curiae* at the request of the Supreme Court of Appeal, questioned the constitutionality of the fund's refusal to honour Mrs Gasa's claim and challenged the validity of the statutes relied on by the High Court. We asked the Court to consider the negative impact of the Black Laws Amendment Act (which refers to the now repealed Black Administration Act) on women married in terms of customary law who do not fall under the Recognition of Customary Marriages Act, which came into effect in 2000.

This is an important case not only for Ms Gasa but for all women in her position with claims for loss of support. It also lays the groundwork for future challenges to the discrimination against women inherent in a dual system where civil law enjoys primacy over customary law.

Class action on marriages under Muslim personal law

Recognition of religious marriages

The Centre has dealt with many cases over the past few years involving the rights of women married under Muslim personal law, including those in polygamous marriages. We will now launch a public interest class action challenging the failure of the Minister of Justice to introduce legislation recognising marriages concluded according to Islamic rites. We will be seeking an order from the Court that either:

- Legislation should be enacted to deal with the consequences of such marriages including custody, maintenance and property; or
- That the Courts have inherent jurisdiction to determine such consequences.

There is a further argument that the Divorce Act should be read to apply to Muslim marriages while the legislation is being drafted.

The Centre is working with lawyers, academics and Muslim scholars on this issue. We completed preparatory work during the first part of the year and briefed Counsel to launch the application.



Stokes

Right of spouses to be treated as preferential creditors on insolvency

This case concerns a woman who was awarded assets during her divorce proceedings, after which her ex-husband deliberately conducted his financial affairs recklessly and then had himself declared insolvent. The Insolvency Act does not make provision for spouses to be treated as preferential creditors, so that our client now stands to lose the assets that the court has awarded her.

The Centre has asked for an opinion on the likely success of a challenge to the provisions of the Insolvency Act as being prejudicial to spouses, and particularly women, as this group is most often economically disadvantaged at divorce.

EXISTING CASES

Paulse

Rights to pension funds on divorce

Our client, on divorce, was awarded half of her ex-husband's pension fund. The provisions of the Divorce Act, in conjunction with the Pensions Act, prohibited women in our client's position from accessing pension interest until their ex-partners retired, and the interest on the whole amount from date of divorce to date of withdrawal accrued to the ex-partner only.

The Centre made representations to the Pensions Ombudsman on our client's behalf. There are also moves afoot to pass legislation to rectify this situation in relation to private pension funds. We are also seeking to challenge the limited application of the proposed amendment, which does not apply to State pension funds.

Gumede

Rights to property in customary marriages

Mrs Gumede was married according to customary law in Kwazulu Natal before 1998, when the Recognition of Customary Marriages Act (RCMA) was passed. Section 7 of the Act considers all customary marriages after the passing of the RCMA, but not before, to be in community of property.

During divorce proceedings, Mr Gumede claimed that Mrs Gumede was not entitled to any of the matrimonial property. This accords with section 7 of the Act as well as the application of primogeniture under the KwaZulu Natal Code.

The Centre was admitted as *amicus curiae* in this case in December 2006. In our submission challenging the constitutionality of section 7 of the RCMA, we argued that the divide between marriages entered into before and after 1998 is arbitrary and violates the constitutional rights to equality and dignity of women married before 1998. The provisions of the RCMA relating to marriages that are deemed to be in community of property should be extended to women married before its enactment whose marriages still exist. We also argued that customary law should be developed to recognise all customary marriages as marriages in community of property.

The matter was heard on 6 December 2007 in the High Court (Durban and Coastal Division) and judgment will be handed down in 2008.

Mkonqo

Rights of domestic partners

The Road Accident Fund (RAF) repudiated Ms Mkonqo's claim for loss of her domestic partner and the support she received in the partnership, saying she had failed to allege a legal basis for a duty of support. She launched proceedings challenging this decision on the basis that the RAF had in the past accepted such claims.

The Centre was admitted as *amicus curiae* and will make submissions on the adverse impact on women of the failure to recognise a duty of support in domestic partnerships. We will submit that women do not necessarily have the power to negotiate the formalisation of relationships as marriages, and that women suffer disproportionate economic harm when domestic partnerships end. The Centre will seek to develop the common law duty of support.

We are waiting for the matter to be set down for argument.

Bhe

Inheritance rights of girls under customary law

In 2004 the Constitutional Court struck down the African customary law rule of primogeniture and affirmed the rights of women and girls to inherit and to claim maintenance from deceased estates. The case which prompted this ruling was that of Nonkululeko Bhe, whose father-in-law had planned to sell the house she and her daughters were living in when her husband died. We noted then that the challenge was to ensure the effective implementation of the judgment, so that our clients would actually have a house to live in. Since then the Centre has, through various donations, ensured that a home was built and our clients moved in. An attorney transferred the property into the children's names on a pro-bono basis and the City of Cape Town agreed to waive all costs and wrote off the outstanding debt. The property was transferred into our clients' names in March 2007 and we received the title deed in October 2007.

Edel v Edel

Rights on divorce

The Centre was granted permission to intervene as *amicus* in this divorce case by the Johannesburg High Court. The defendant claimed that the Divorce Act unfairly discriminates between people married before 1 November 1984 and those married after that date. In terms of Section 7(3) of the Act, only those married before that date have access to judicial discretion which allows the court to order a redistribution of the marital property. The Centre prepared heads of argument on the constitutionality of the section, looking at the indirect discrimination against women present in the failure to provide the protections generally accepted on divorce such as a re-distribution of assets.

The matter was set down for trial in April 2007, but the parties settled shortly before the hearing. The settlement was favourable to Ms Edel.

Muslim Marriages

Women's rights to property in religious marriages

Daniels

In this case the Constitutional Court ruled that spouses married under Muslim rites were entitled to inherit in terms of the Intestate Succession Act and the Maintenance of Surviving Spouses Act, and that our client was thus entitled to inherit the house she had occupied with her husband until his death in 1994. The Centre undertook to arrange the transfer of the property into our client's name, to raise money to cover outstanding rates and other expenses. We have engaged the services of a conveyancer on a pro-bono basis.

Salie

In this case we argued that the Divorce Act is unconstitutional because it fails to provide women married in terms of Islamic rites with the same remedies that are available to other women married out of community of property. We also argued that the Muslim Judicial Council is covered by the Promotion of Administrative Justice Act, and that the talaq which ended the marriage was unjust administrative action. In the alternative we argued universal partnership, unjust enrichment and breach of contract.

Ms Salie's former husband challenged our summons as not having a valid cause of action, but withdrew the exception shortly before the matter was set down for argument. He has now made an offer to settle the case and we have commenced settlement negotiations.

Gabie-Hassam

The Centre is acting as *amicus curiae* in this case, a challenge relating to the application of the Intestate Succession Act to polygamous Islamic marriages. The applicant had argued that, as first wife, she should get the protection provided for by the Act exclusively – that is, excluding the second wife from any division of the marital property. The Centre will argue that all wives should be protected, with a focus on the right to security of tenure. This matter will be argued before the High Court in 2008.

Moolla / Jamoldien

The Centre was once again *amicus* in this matter, arguing that Muslim marriages should be “read in” to the protections of the Divorce Act. The parties settled the matter half way through the trial in May 2007.

Partly as a result of the high rate of settlement in *amicus* matters, we have since commenced our class action on the recognition of Muslim marriages, which was discussed under New Cases above.

Access to safe housing

Women’s access to land and housing is often limited by the fact that they hold tenure through a male relative. This renders them vulnerable to losing their homes, and the Centre seeks to challenge policies that indirectly discriminate against women and replace them with policies giving women tenure in their own right.

NEW CASES

Group action on housing

Registration of housing in the name of husbands only

This case is an offshoot of our class action on Muslim marriages. We are specifically challenging a policy of the Cape Town City Council to register houses in the name of the husband only when spouses married according to Islamic rites apply for housing as a couple. We are arguing that this policy clearly discriminates against women on the basis of gender, religion and culture.

The Centre has taken affidavits from eight women who have agreed to be co-applicants, and we will obtain Counsel’s opinion on the prospects of success.

Claasen

Housing and tenure rights of female farm workers

Our client is a permanent employee on a farm where her husband was also previously employed. After his dismissal from his job the farmer threatened to evict our client from their house, as the right to the house belonged only to the husband in terms of farm policy.

The Centre intended to defend this eviction on the basis that the policy directly discriminated against women and further, that it deprived our client of her constitutional right to access housing and security of tenure.

The farmer did not proceed with the eviction. The Centre is seeking another case through which to challenge this form of discrimination.

Being able to work

Although the legislature has put a Code of Good Practice in place to regulate employers’ obligations in relation to sexual harassment, many women still face a workplace culture that renders them vulnerable to harassment and unlikely to report it for fear of repercussions. The Centre seeks to develop the jurisprudence to take into account circumstances that may intimidate women and deter them from reporting sexual harassment.

NEW CASES

Ghansar

Defamation suit after sexual harassment complaint

Our client laid a complaint of sexual harassment against her supervisor, after which he was disciplined by their employer and subsequently dismissed. He then sued our client for defamation in the magistrate’s court. We are defending her case and seeking a ruling that claims of sexual harassment should be covered by qualified privilege in defamation cases. We have also successfully applied for leave to file a counter-claim against her former supervisor for psychological damages.

Claasen

Workplaces with high levels of sexual harassment

Our client, a provincial traffic officer, was sexually harassed and assaulted by a colleague and laid a complaint, after which she felt that she faced a pattern of ongoing discrimination. Her many requests for a transfer were refused. The Centre assisted her in her negotiations with the employer to highlight how apparently neutral employment practices amounted to creating a culture of victimisation.

EXISTING CASES

Kylie / Brigitte's

Employment rights of sex workers

Our client worked as a sex worker for 13 years, after which her contract was terminated. She was given a letter dismissing her and requiring her to vacate the premises (where she lived as well as worked) with immediate effect. She was not given a hearing and she disputes the reasons given by the brothel owner for her dismissal.

The Centre helped our client to bring a claim for unfair dismissal with the Commission for Conciliation Mediation and Arbitration (CCMA). Although some aspects of sex work are criminalised, our client also undertook legal work during her employment and we believe her dismissal was both substantially and procedurally unfair.

A CCMA arbitrator ruled in November 2006 that she did not have jurisdiction to entertain the claim, as sex work falls outside the ambit of the Labour Relations Act. We launched a review application during 2007, with the hearing due to be held in February 2008.

The Centre has always sought cases that could improve the conditions of sex workers. A victory in this case would be significant for women who are marginalised as a result of being sex workers and are thus excluded from labour and employment rights, including constitutional recognition of dignity, equality and equal protection under the law.

ANNEXE

Rights of underage and domestic workers

Annexe asked the Centre to intervene on behalf of a group of young women who had been brought from Beaufort West to Cape Town as domestic workers. All were underage, and were being paid less than the minimum wage. The Centre reported this to the Department of Labour, who conducted a full investigation and produced a report recommending action be taken against the employers. The young women are now back home.

Being well

Much of the work done by the Centre in this area is focussed on defending the gains made around women's rights to reproductive health, which are continuously being challenged.

NEW CASES

Marie Stopes Clinics/ Provincial Department of Health

Conflict between national and provincial regulations

In May 2007 the Western Cape Department of Health notified the Marie Stopes Clinics that it intended to require the organisation's reproductive health clinics to comply with provincial licensing regulations. In particular,



Marie Stopes: health department backs down

the clinics were ordered to register as Private Health establishments in terms of Provincial Notice 187 and Regulation 158 of the Health Act, failing which criminal sanctions would be imposed.

The effect of this would be to make clinics already operating in Wynberg and Cape Town illegal, and new clinics planned for George and Mossel Bay would be unable to commence operations.

As the Marie Stopes clinics provide 35% of terminations nationally, the result of closing four clinics in the Western Cape would seriously undermine the constitutional right to reproductive health of a large group of women.

The Centre believes that the Department was acting *ultra vires* by imposing this regulation. The Clinics were designated under the Choice on Termination of Pregnancy Act and therefore should comply with the regulations under that Act. The Act as amended says that if a Provincial Minister wants to introduce regulations, they should do so in consultation with the Minister, which the Department failed to do.

We prepared an urgent interdict seeking an order that the clinics be allowed to continue operating pending a review in the High Court of the Department's decision. The Department agreed to our interim relief but withdrew this agreement and the Centre had to approach the Court a second time. The parties agreed that the clinics should continue operating pending the review and this was made an order of court. The review was set down for argument in February 2008.

PROVINCIAL LAW DOESN'T APPLY TO US

Marie Stopes Clinics fight for right to stay open

Women's clinics allowed to offer abortions until February

Ismael

Concealment of birth charges

We are defending this client on a charge of concealment of birth. This charge is often laid when the State is unable to prove a case of murder following the death of a newborn. As in previous cases of this nature, we will challenge the constitutionality of the criminal provisions relating to concealment of birth, which place the onus on the accused to show that the baby was not born alive. We contend that this reverse onus element amounts to discrimination against women.

EXISTING CASES

Charles and Others v Gauteng Department of Health and Others

Balancing freedom of conscience and religion with access to safe abortion services

This case was initiated by a nursing sister, assigned to the operating theatre at the Kopanong Hospital, who had religious objections to working on emergencies arising from abortions and subsequently resigned, claiming unfair discrimination and constructive dismissal.

Charles contended that the remedies she sought were not available under the Employment Equity Act and initially sought to have the matter heard in the Equality Court. The Centre intervened as *amicus curiae* in this matter in the second half of 2004, initially to argue that the matter should be heard in the Labour Court. The Centre contended that the Employment Equity Act provides a complainant with the same breadth of protection as the Equality Act.

In June 2006 we received a favourable judgement from the Labour Court. Sister Charles was granted leave to appeal and on June 22 2006 the Labour Appeal Court found that Charles' complaint must be determined in terms of the Employment Equity Act and referred the matter to the CCMA.

This judgement rejected an attempt to limit the protections and remedies available under the Employment Equity Act, ensuring that women can access the same remedies from both courts.

Osler / Doctors for Life

Minors' rights to consent to abortion

Ms Osler and her parents, supported by Doctors for Life, sued her former high school, a teacher and a private clinic in a damages claim resulting from an abortion. It is alleged that the abortion was unsuccessful and a premature baby was born and died. The Centre was granted permission to intervene as *amicus curiae* and intended to make submissions on the importance of minor's rights to termination without consent. However, the parties settled the matter in April 2007.

ADVOCACY

Support to other NGOs

As part of our goal to support organisations that work towards the advancement of women's rights, we provide legal opinions to other organisations so they can carry out their mandates unhampered by lack of legal expertise. We also train the staff of other NGOs to give basic legal advice.

During 2007 we furnished opinions to:

- **Marie Stopes**, on the application of provincial regulations to clinics;
- The **Sex Worker Education Advocacy Taskforce (SWEAT)** on the legal obligation to report allegations of human trafficking and on the rights of sex workers when arrested;
- The **Gender Advocacy Project (GAP)** on the *sub judice* rule and the constitutionality of a 50% quota of women representatives in government.
- **Alliance for the Recognition of Domestic Partnerships Working Group** on the differences between proposed domestic partnerships and forms of marriage.
- The **Simelele Rape Centre and Treatment Action Campaign** on the province's reduction of doctors at the rape centre.

We also provided paralegal training for Simelele officials and offered lectures in gender law for candidate attorneys undergoing practical legal training through the Law Society.

We supported the **Network Against Violence Against Women** and participated in the launch of the Western Cape branch of the **South African Women Lawyers Association (SAWLA)** and the **Western Cape Provincial Gender Machinery** project run by GAP.

Set out below are some of the activities undertaken during 2007 in each focus area.

FOCUS AREAS

Freedom from violence

- Training for refugees on the Domestic Violence Act;
- A presentation on the Domestic Violence Act to Zimbabwean lawyers, to help them in making submissions on their legislation and devising litigation strategies;
- Training on gender based violence for a workshop of health and correctional service officials hosted by Zivikele;
- In conjunction with the Consortium on Violence Against Women, made written submissions to the National Council of Provinces (NCOP) on the Sexual Offences Bill;
- In conjunction with SWEAT, made written submissions on the provision in the Sexual Offences Bill criminalising clients of sex workers;

'Gaps in Sexual Offences Bill Offences Bill still need plugging'

- In conjunction with Rural Education Advocacy and Community Health (REACH), made written and oral submissions to the National Assembly hearings on discrimination in the workplace. Our submission related to sexual harassment of vulnerable workers (women on farms).
- Training on gender based violence for the Network Against Violence Against Women.
- A paper on the effectiveness of the Domestic Violence Act at the Ilitha Labantu conference "Galvanise Action to Combat Violence against Women and Children".
- Supported the National Working Group on Sexual Offences submissions on the Minimum Sentencing Amendment Bill.
- Participated in the SAWLA campaign to provide free legal advice countrywide for a week to promote access to justice.
- An information stand at the Cape Town City Council open day for the 16 days of Activism to End Violence Against Women.
- An information stand at the open day for rural women hosted by REACH.

Fair access to resources in partnerships

- A half day workshop for POWA (People Opposed to Women Abuse) on domestic partnerships;
- In conjunction with the Alliance for the Recognition of Domestic Partnerships, handed a memorandum concerning the delay in passing legislation on domestic partnerships to the chair of the parliamentary committee and relevant Director General. A draft Bill has now been released.
- Conducted training on relationship rights for the Network Against Violence Against Women;
- Conducted the annual WLC customary marriages workshop in Kimberley, Northern Cape, which was attended by community organizations, justice officials, home affairs officials and politicians;
- A presentation on the Bhe case for UCT law students;
- Training on maintenance at the Mitchell's Plain Department of Justice Imbizo;
- A booklet entitled "Know Your Rights: Relationship Rights".

Access to safe housing

Presented a paper on strategic litigation for land reform at the request of the International Convention of Jurists, Kenya (see under regional co-operation)

Being well

1. A paper on defending the Choice on Termination of Pregnancy Act at an information sharing session hosted by Ipas;
2. A presentation on the intersection between domestic violence and HIV/AIDS at the Gender Based Violence Conference organized by TAC.
3. In partnership with the Reproductive Rights Alliance (RRA), drafted submissions to the South African Human Rights Commission on to the right to access terminations;
4. Participation in and legal advice to the Reproductive Rights Alliance (RRA);

**ARVs for
rape victims
under threat**

5. As a member of the Reproductive Rights Alliance (RRA), made submissions to the NCOP on the amendment to the Choice on Termination of Pregnancy Act. The department has agreed to incorporate some of the recommendations in the regulations.

International and regional co-operation

During 2007 we continued to collaborate and correspond extensively with organisations in the rest of Africa and the world.

- We met with two professors from the City University of New York. We provided information to Professor Goldscheid from the School of Law for her research around the intersection of domestic violence and labour law, and were interviewed by Professor Susser for research on SA's civil society organisations and AIDS treatment access
- We hosted two groups of international jurists:
 - At the request of Global Rights Partners for Justice, we hosted one group for a presentation and discussion on gender law in South Africa.
 - At the request of the United Nations Development Programme, we hosted a group of Serbian jurists as part of a visit researching mechanisms to improve access to justice in South Africa.
- The Centre provided information for the United Nations OHCHR Project on a Mechanism to Address laws that Discriminate against Women.

The Centre provided input to Zimbabwe Lawyers for Human Rights on the application of CEDAW (Convention for Elimination of Discrimination Against Women) in southern Africa.

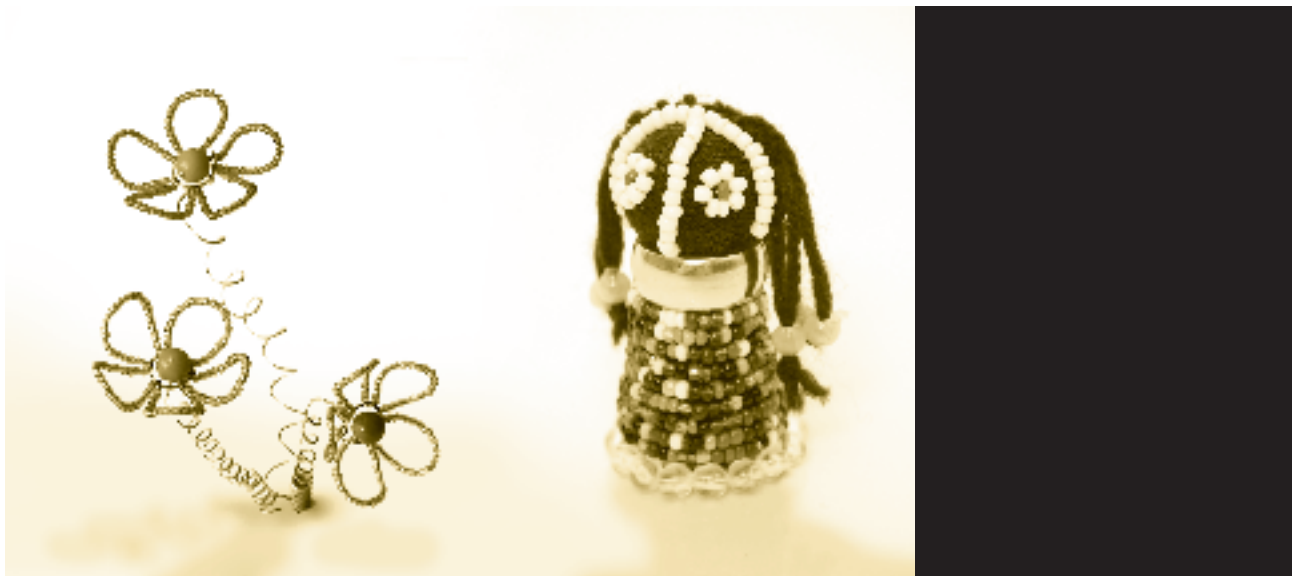
The Centre presented a paper at the ICJ Kenya conference relating to public interest strategies for litigation on access to land.

The Centre supported a new initiative, the African Network of Constitutional Lawyers, which seeks to pool resources and provide regional support in constitutional litigation.

The Centre assisted the Southern and Eastern African Regional Centre for Women's Law in Zimbabwe with information regarding the Choice on Termination of Pregnancy Act.

Publications

During 2007 we researched, drafted and printed a booklet entitled "Know Your Rights: A simplified guide to marriage and relationships". The booklet is intended to educate women of their rights in relationships and marriages. It is envisaged that it will be translated into other South African languages. We hope the booklet will help women make informed choices about the relationships they enter, and increase their access to assets and economic resources in relationships.



DUTY QUERIES

The Centre deals with many queries and requests for advice, both telephonically and from walk-in visitors. We provide information where possible, and give referrals to other organisations. In cases where the query has a relevant public interest component, the Centre will consider taking it further.

Categories	Total
Child sexual abuse	8
Criminal	13
Customary law	22
Damages	17
Divorce	251
Domestic partnership	58
Domestic violence	83
Estates and wills	39
Evictions	32
Family	97
General	53
Housing	24
HIV	4
Labour	40
Maintenance act	210
Muslim personal law	28
Rape	17
Sexual harassment	18
Unfair discrimination	4
Total	1018

ANNUAL FINANCIAL STATEMENTS

**WOMEN'S LEGAL CENTRE TRUST
(REGISTRATION NUMBER: IT 3498/98)
ANNUAL FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2007**

A.S. Pocock & Co
Chartered Accountants (S.A.)
Registered Auditors
Issued 05 May 2008

WOMEN'S LEGAL CENTRE TRUST

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2007

TRUSTEES

L. MALEPE
A. TILLEY
Y. CARRIM
H. MASONDO
M. CAESAR
S. CASSIEM

NATURE OF TRUST

TO MANAGE AND CONTROL A
WOMEN'S LEGAL CENTRE

AUDITORS

A.S. POCKOCK & CO

REGISTRATION NO

IT 3486/98

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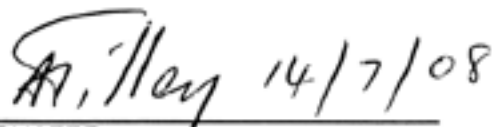
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Annexure A

9

APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements, comprising pages 2-8, were approved by the trustees and are signed on their behalf by:



TRUSTEE



TRUSTEE

DATE

A.S. POCOCK & CO

CHARTERED ACCOUNTANTS (SA)
REGISTERED AUDITORS

REPORT OF THE INDEPENDENT AUDITORS TO THE TRUSTEES OF THE WOMENS LEGAL CENTRE TRUST

We have audited the annual financial statements of Women's Legal Centre Trust set out on pages 4 to 8 for the year ended 31 December 2007. These financial statements are the responsibility of the trust's trustees. Our responsibility is to express an opinion on these financial statements based on our audit.

Scope

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

- Examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- Assessing the accounting principles used and significant estimates made by management, and
- Evaluating the overall financial statement presentation

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

Audit opinion

In our opinion, the financial statements fairly present, in all material respects, the financial position of the trust at 31 December 2007 and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice.

Emphasis of matter

Without qualifying our opinion above, we draw attention to the fact that the financial statements have not been drawn up in accordance with South African Statements of Generally Accepted Accounting Practice in that assets are fully depreciated in the year of acquisition. Furthermore whereas the annual financial statements are prepared at 31 December 2007 the recorded financial year end of the trust is last day of February each year.

A.S. POCOCK & CO

CHARTERED ACCOUNTANTS (SA)
REGISTERED AUDITORS

Supplementary information

The supplementary schedule does not form part of the annual financial statements and is presented as additional information. We have not audited this schedule and accordingly we do not express an opinion thereon.



A.S. Pocock
Chartered Accountants (S.A.)
Registered Auditors

Cape Town
05 May 2008

WOMEN'S LEGAL CENTRE TRUST
BALANCE SHEET AT 31 DECEMBER 2007

	NOTES	2007	2006
		R	R
ASSETS			
Current assets		1 652 354	836 742
Deposits and prepayments		36 267	54 243
Trade and other receivables		5 500	-
Cash and cash equivalents	2	1 610 587	782 499
Total assets		<u>1 652 354</u>	<u>836 742</u>
CAPITAL AND LIABILITIES			
Capital and reserves		1 372 650	698 118
Initial donation		100	100
Retained funding	3	1 372 550	698 018
Current liabilities		279 705	138 624
Trade and other payables		217 154	138 624
Bank overdraft		62 551	-
Total capital and liabilities		<u>1 652 354</u>	<u>836 742</u>

WOMEN'S LEGAL CENTRE TRUST

INCOME STATEMENT FOR THE YEAR ENDED 31 DECEMBER 2007

	NOTES	2 007 R	2006 R
INCOME		4 280 733	3 781 434
Donations and grants	4	4 191 253	3 649 668
Cost recovery		-	95 853
Interest received		75 656	34 343
Sundry income		13 824	1 570
EXPENDITURE		3 606 201	3 577 706
Employment costs		1 800 034	1 956 427
Salaries & benefits		1 720 174	1 801 102
Contributions		15 233	11 056
Supervision		15 790	28 082
Consultancies		27 668	9 000
Recruitment costs		17 134	107 188
Temporary assistance		4 035	-
Litigation costs		811 207	572 494
Advocacy & training		173 958	133 831
Information costs		121 759	228 979
Newsletters		43 736	3 420
Annual report		29 885	38 453
Internet/computer support		16 682	7 696
Law books & subscriptions		26 230	32 297
Material development		-	144 333
Resource centre		2 970	2 780
Volunteer costs		2 256	-
Trust costs		58 606	63 986
Administrative costs		405 020	407 672
Bank charges		15 965	18 746
Interest paid		271	-
Cleaning and catering		1 502	13 354
Equipment rental and maintenance		24 914	35 229
Rental of offices and parking bays		235 544	191 860
Stationery and postage		29 202	31 740
Supplies		3 666	7 127
Sundries		11 113	13 724
Telephone and fax		82 843	95 891
Audit and accounting		131 081	74 397
Audit fees		44 631	30 951
Accounting fees		86 450	43 446
Professional fees		31 724	36 024
Law Society fees		3 868	2 714
Insurance		21 856	27 310
Professional indemnity		6 000	6 000
Travel costs		15 692	16 185

WOMEN'S LEGAL CENTRE TRUST
INCOME STATEMENT FOR THE YEAR ENDED 31 DECEMBER 2007
(Continued)

	2 007 R	2006 R
Organisational and staff development	44 352	38 122
Capital expenditure	12 768	49 588
Computers & office equipment	11 229	41 705
Furniture		3 754
Equipment	1 539	4 129
NET SURPLUS OR DEFICIT	<u>674 532</u>	<u>203 728</u>
OPENING RETAINED FUNDING	698 018	494 290
CLOSING RETAINED FUNDING	<u>1 372 550</u>	<u>698 018</u>

WOMEN'S LEGAL CENTRE TRUST

**NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 DECEMBER 2007**

1. SUMMARY OF ACCOUNTING POLICIES

The following are the principal accounting policies of the company which are consistent in all material respects with those applied in the previous years, except as otherwise indicated.

Basis of Preparation

The financial statements have been prepared on the historical cost basis.

Revenue

Revenue comprises funding received from donations and grants. Revenue is recognised when it is received.

Financial Instruments

Financial instruments carried on the balance sheet include cash and cash equivalents, receivables and amounts payable. These instruments are generally carried at their estimated fair value.

Property, Plant and Equipment

Property, plant and equipment are written off to the income statement on acquisition date.

	2 007 R	2006 R
2. CASH AND CASH EQUIVALENTS		
Current accounts	-	91 756
Investment accounts	1 609 787	690 067
Petty cash	800	676
	<u>1 610 587</u>	<u>782 499</u>
 3. RETAINED FUNDING ANALYSED BY FUNDER		
Ford Foundation	537 443	-
Foundation for Human Rights	-	(46 277)
HIVOS	47 824	-
ICJ	-	67 347
Save the Children Sweden	10 500	-
Wallace Global Fund	254 497	212 909
General Funds	522 286	464 040
	<u>1 372 550</u>	<u>698 019</u>

Funding specifically for 2008, R525 000, has already been received from the Ford Foundation and the Wallace Global Fund and is included in the balance of retained funding.

WOMEN'S LEGAL CENTRE TRUST

**NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 DECEMBER 2007 (Continued)**

	2007 R	2006 R
4. GRANTS AND DONATIONS COMPRISE:		
AUSAID	-	79 830
Ford Foundation	1 372 968	379 839
Foundation for Human Rights	46 531	320 000
Global Fund for Woman	-	210 120
HIVOS	578 786	481 770
National Lotteries Fund	686 480	-
Open Society Foundation for South Africa	1 100 000	1 100 000
Save the Children Sweden	70 000	-
Swedish Section of the International Commission of Jurists	-	717 173
Wallace Global Fund	335 924	360 892
Other donations	564	45
	<u>4 191 253</u>	<u>3 649 668</u>

5. TAXATION

The organization is exempt from income tax under 10(1)(cn) as read with Section 30 of the Income Tax Act. No provision has been made for taxation in the current year.

WOMEN'S LEGAL CENTRE TRUST
ANALYSIS OF FUNDS BY FUNDER FOR THE YEAR ENDED
31 DECEMBER 2007

	Total	Ford Foundation	Foundation for Human Rights	HIVOS Foundation	International Commission of Jurists	National Lotteries	Open Society Foundation	Save the Children Sweden	Wallace Global Fund	General Funds
INCOME	4 280 733	1 372 968	46 531	578 786	0	686 480	1 100 000	70 000	335 924	90 044
Donations and grants	4 191 253	1 372 968	46 531	578 786		686 480	1 100 000	70 000	335 924	564
Interest received	75 656									75 656
Sundry income	13 824									13 824
EXPENDITURE	3 606 201	835 525	254	530 952	673 47	686 480	1 100 000	59 500	294 336	31 797
Employment costs	1 800 034	595 000		256 465		300 000	534 347	21 455	74 009	18 758
Litigation costs	811 207	40 000		80 000		150 000	363 500	38 045	13 966	
Advocacy & training	173 958	44 490		15 000	673 47	36 480	10 641			
Information costs	121 759	0		84 842			37 117			
Trust costs	58 606			49 981			8 625			
Administrative costs	405 020	18 226	254	522		200 000	105 082		80 665	271
Audit and accounting	131 081	118 303					12 778			
Professional fees	31 724	19 506					12 218			
Travel costs	15 692						15 692			
Organisational and staff development	44 352			44 352						
Capital expenditure	12 768									12 768
NET SURPLUS OR DEFICIT	674 532	537 443	46 277	47 824	(67 347)	0	0	10 500	41 688	58 247
OPENING RETAINED FUNDING	698 018		-46 277		673 47				21 290	464 039
CLOSING RETAINED FUNDING	1 372 550	537 443	0	47 824	0	0	0	10 500	254 497	622 286

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WOMEN'S LEGAL CENTRE