



woman

# **2009** annual report



WOMEN'S LEGAL CENTRE

First published by the Women's Legal Centre in 2010  
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First row, from left to right: Estelle Malgas - WLC, Stacey-Leigh Manoek - WLC, Shereen Mills - WLC, Shaamela Cassiem - WLC, Yasmin Carrim - Patron, Cherith Sanger - WLC. Second row, from left to right: Denisse Wolfenzon - Intern, Hoodah Abrahams-Fayker - WLC, Ingrid Johnson - WLC, Caroline Schneider - Intern, Aretha Louw - WLC, Sharon Brooks - WLC, Mushahida Adhikari - WLC, Nwabisa Ntshibelo - WLC. Last row, from left to right: Nitya Velu - Intern, Jody-Lee Fredericks - WLC, Jennifer Williams - WLC, Alison Tilley - Trustee, Cathy Masters - CMDS



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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 living 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 them through advocacy and training.

We work in five key strategic areas:

- **Gender-based violence:** We 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 the protection of girl children from abuse in schools.
- **Fair access to resources in partnerships:** We take up cases to 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.
- **Access to housing and land:** We take up cases to extend tenure to women in their own right, and to prevent loss of tenure on dissolution of relationships.
- **Access to fair labour practices:** We take up cases that extend employment protections to vulnerable groups, develop the law on sexual harassment, and ensure equal opportunities in the workplace.
- **Access to health care:** We defend legal challenges to the right to make choices around reproductive health, and litigate to ensure that women have access to reproductive health care. We also take cases related to women's access to health care and the intersection between HIV/AIDS and our other strategic focus areas.

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 (see the Free Legal Advice table at the end of this report).

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 that the gains won in court are communicated and implemented.

Finally, we provide information and training to educate women about their rights, and undertake capacity building activities on a regional level as part of our work towards the transformation of the legal profession and broader society.

## Chairperson's Letter

2009 was a landmark year for the Women's Legal Centre. Notably, we marked our tenth anniversary: an opportunity to reflect on and acknowledge a decade of work by the staff, trustees and legal teams who, under the guidance of our founding Director Michelle O'Sullivan, firmly established the Centre as a global leader in using the law to advance women's rights. Our new Director Jennifer Williams has proved to be a worthy successor, bringing a fresh and inspiring approach to the Centre's work.

I would also like to acknowledge our clients: the ordinary women like Thandiwe Radebe, Esme van Zijl and Nonkululeko Bhe who are at the core of our work. Their determination to see justice done has brought key legal issues to our attention, and enabled us to pursue cases to successful conclusions, often years later. We salute their courage.

Many others have made voluntary contributions to the success of the Centre's work, including our Board, patrons, volunteers and interns. Members of the legal fraternity and other professionals have contributed *pro bono* work and have been consistent supporters. They have been instrumental in the Centre's success.

Our tenth anniversary has seen the Centre consolidate under its new Director after a period of transition. Our focus, now that obviously discriminatory laws have largely been overturned, is extending in two areas: women's social-economic rights, and the rights of sex workers. In the former area we have devoted a great deal of attention

to securing the rights of women in religious (mainly Muslim) marriages to a fair share of matrimonial property when those relationships end, whether through death or divorce.

In the area of sex work, we collaborate extensively with the Sex Workers Education and Advocacy Task Force (SWEAT). We have also appointed attorney Stacey-Leigh Manoek specifically to assist sex workers who face daily harassment, assaults and intimidation. The Centre is also participating in the national conversation around the SA Law Reform Commission's Discussion Paper on Adult Prostitution, which is the basis of draft legislation due to come out next year.

Our focus on sex workers may seem to sit uneasily alongside our work with religious groups, and is sometimes controversial. But in fact both of these areas of work are pushing the boundaries of the status quo in different ways, challenging perceptions, prejudices and interpretations of the Constitution. Women in religious marriages and sex workers are vulnerable in different ways, but they are both vulnerable groups – and it is precisely the rights of such groups that the Centre is committed to advancing.

The Women's Legal Centre enters its second decade with a solid financial status, and a clear purpose and vision of the future. We will continue to protect and advance women's rights, in our own work and in coalitions and partnerships with other organisations.

## Director's Letter

2009 was an exceptionally busy and exciting year. During the first part of this year, the Women's Legal Centre received the good news that it was awarded the 2009 Gruber Women's Rights Prize. Held in St. Thomas, U.S. Virgin Islands (this year), the award ceremony was a wonderful opportunity to share the mission of the WLC with other individuals devoted to public interest work. Attendees included Arthur Chaskalson, the former president of the Constitutional Court of South Africa and Claire L'Heureux-Dube, previously a judge on the Supreme Court of Canada. As a co-recipient, the WLC shares this prestigious award with Leymah Roberta Gbowee. She helped bring an end to civil war in Liberia by mobilising Christian and Muslim women in a resistance movement and is currently the executive director of the Women in Peace and Security Network-Africa.

In addition, the WLC celebrated its 10 year anniversary, addressed by the new Chief Justice of South Africa, the Deputy Minister of Justice and Constitutional Development and our client Thandiwe Radebe.

It has been a good time to reflect on the advances we have made, the challenges we have overcome and – most importantly – our strategies for the future. One of the goals we have identified is to develop the intersection between socio-economic rights and women's rights. One of our first significant moves in this direction was a successful application for admission to appear as a friend of the court in the Langdrif case in the Cape High Court late in 2009. The case deals with the Stellenbosch municipality's failure to provide adequate sanitation facilities in an informal settlement. We argued that this failure is a breach of women's constitutional rights to equality, dignity, health and a clean environment.

During 2009 we launched an application in the Cape High Court with a view to having a City of Cape Town housing policy declared unconstitutional. The policy resulted in houses being transferred solely into the name of the male partner to a Muslim marriage. We also successfully defended an eviction application instituted against our client, Ms Harris, by her ex-husband in a Muslim marriage. The Wynberg Magistrate's Court accepted that she was not an illegal occupier of her home on the basis that the City was the registered owner of the property at the time that the eviction application was made. The court made this decision in spite of the contractual right of her ex-husband to take transfer of ownership of the property in terms of the City housing policy that we are challenging.

In our gender based violence focus area, we represented POWA (People Opposing Women Abuse) in the Phaswane case. This dealt with the Department of Justice and Constitutional Development's failure to provide intermediaries for child witnesses and complainants in sexual offence proceedings in terms of the provisions of the Criminal Procedure Act. The Constitutional Court issued a supervisory interdict, compelling the Department of Justice to report on the adequacy of provisions in place for child witnesses and complainants in sexual offences cases. This judgment is a good illustration of the need for public interest litigation when the state fails to implement existing laws and where such failure violates legal rights.

Also in the area of gender based violence, we were asked to assist the legal team representing a client, Ms Bothma, who was trying to institute a private prosecution against a family friend who had abused her as a child some 40 years ago. The Kimberley High Court had ordered a permanent stay of the

prosecution on the basis that the defendant would suffer trial prejudice because of the long period of time that had lapsed since the sexual abuse took place. We assisted the team in their successful appeal to the Constitutional Court by providing expert evidence from a psychologist to explain the trauma linked to child sexual abuse and the reasons for the delay in the institution of the legal proceedings.

In the area of access to resources in partnerships, our major focus is still on ensuring access to legal protection for women who are married according to religious and customary rites. Early 2009 saw the culmination of the Gabie Hassam case, with the Constitutional Court confirming the order of the Cape High Court that extended the right to inherit to Muslim widows when their husbands die without a will. This case adds to the growing number of matters in which our courts have indicated that certain aspects of the current regime, which fail to recognise Muslim marriages, are unconstitutional.

In May 2009 we approached the Constitutional Court directly for an order that the state should pass legislation providing for the recognition of Muslim marriages. While the court declined to hear the case as one over which it has exclusive jurisdiction, the application drew national and international attention to the plight of widows in unrecognised religious marriages. It also provided us and the Commission on Gender Equality with an opportunity to engage with the Minister of Justice, which resulted in an undertaking to prioritise the passing of the legislation.

In the area of access to health and reproductive rights, we have advocated for many years for the removal of the reverse onus that women face in criminal cases of concealment of birth. Concealment of birth charges are often laid against women when the state is unable to prove a case of murder following the death of a newborn. Criminal provisions place the onus of proof on the accused to show that the baby was not born alive, which is extremely difficult to prove. We made both written and oral submissions to the Portfolio Committee on Justice and Constitutional Development in relation to this reverse onus as discriminatory against women. The Judicial Matters Amendment Act was passed in 2009 without the reverse onus.

Through the Centre's work in 2009 many positive gains have been made towards advancing women's rights despite the many challenges that we were faced with along the way. We will continue to persist in placing women's interest on the forefront in 2010 and will do so with even greater determination and more innovative methods in using the courts as a tool to realise women's constitutional rights.

Cape Times - 24/03/2009

## Muslim Marriages Bill heading for Cabinet

**POUNCE VON DER FORT**  
Johannesburg

THE CONSTITUTIONAL COURT has issued judgment on whether it has exclusive jurisdiction to compel the president to pass legislation which would recognise Muslim marriages.

The court has ruled that the state has failed to meet its obligation to pass legislation recognising Muslim marriages since July 2008.

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Cape Times - 24/03/2009

## Concort deliberates on Muslim marriage claim

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Cape Times - 26/03/2009

## Muslim 'anger' at bid to change marriage law

**THE majority of South African Muslims are "outraged" by the government's intention to regulate their marriages,** according to 34 traditional Muslim leaders who are heavily opposed to an application before the Constitutional Court to force the government to introduce legislation for the legal recognition of Muslim marriages.

The application, which was brought by the Women's Legal Centre, was followed this week by the Justice Department's confirmation that the Muslim Marriages Bill would be put before the cabinet this week.

Addressing the Constitutional Court on behalf of the Islamic Council of South Africa, Farhan Pooni said the legislation "falls foul of the Qur'an".

Pooni dismissed claims from Women's Legal Centre chairwoman, Shamsia Cassiem, that the state's failure to recognise Muslim marriages discriminated against Muslim women because it left them vulnerable to abuse.

— Daily Correspondent

Cape Times - 24/05/2009

## JUDGES PONDER THEIR POWERS

### Concort gets to grips with Muslim marriage bill

**JUDGES**

JUDGES OF THE CONSTITUTIONAL COURT are pondering whether they should grant an order to force the government to pass legislation to recognise Muslim marriages.

The court is divided on whether it has the power to do so. Some judges believe it does, while others believe it does not.

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Cape Times - 22-28/05/2009

## Marrying rights with tradition

**Muslim women are fighting for the right to legal marriage.**

The Women's Legal Centre is fighting for the right to legal marriage for Muslim women. The centre has filed an application with the Constitutional Court to force the government to pass legislation to recognise Muslim marriages.

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# Litigation Review

## 1. Gender based violence

Violence against women remains the greatest obstacle to women achieving equality in South Africa today. The Centre works to set precedents that develop the positive duty of the state to:

- Prevent violence against women and girl children; and
- Reduce the secondary trauma that women suffer when reporting violence, both in the criminal justice system and in the employment sphere.

### Bothma

#### *Private prosecutions by survivors of child sexual abuse*

This case follows *Van Zijl v Hoogenhout*, in which we successfully argued for the right of our client to bring a damages claim against the man who had sexually abused her as a child, despite the fact that many years had passed. Ms Bothma was likewise sexually abused by a family friend in her childhood, but only came to appreciate the consequences of the abuse later in adulthood. She sought to institute a private prosecution against her abuser, but the Kimberley High Court upheld his opposition to this on the basis that it infringed upon his right to a fair trial and would accordingly cause him trial prejudice. The Centre assisted Ms Bothma's legal team in their appeal to the Constitutional Court, providing access to expert testimony by a psychologist who explained the nature of the trauma linked to child sexual abuse, its consequences, and why the institution of legal proceedings had been delayed. We also assisted by providing research in relation to the case.

The Constitutional Court found in favour of Ms Bothma and extended the law in relation to the delay in instituting proceedings to take into account the trauma associated with child sexual abuse.

### S v Phaswane, Mokoena

#### *Treatment of evidence by victims and witnesses of sexual offences*

This case is important for improving the conditions under which women and children who are victims and witnesses of sexual offences testify in court. It focusses in particular on provisions in the Criminal Procedure Act that give the court the discretion to appoint intermediaries during testimony.

The Centre represented POWA in an application to the Transvaal Provincial Division of the High Court, which ruled

that the relevant sections relating to evidence given by child witnesses and child victims of sexual violence were unconstitutional and struck them out.

The case was then referred to the Constitutional Court, which disagreed on the invalidity of the sections and ruled that the existing provisions of the Act relating to the protection of witnesses, while adequate, were not being properly implemented. The Court issued a supervisory interdict, compelling the Department of Justice to report on the adequacy and implementation of provisions in place for witnesses in sexual offences cases.

### Ismael

#### *The duty of the State and school governing bodies to prevent sexual violence in schools*

In this case an eleven-year-old girl was kidnapped, indecently assaulted and sodomised by an educator on the premises of her school. The educator was employed by the school governing body rather than by the Department of Education, and therefore fell out of the Department's jurisdiction. This case brings into sharp relief the responsibilities of governing bodies to ensure a safe learning environment. It also illustrates the gap in the law which allows the employment of educators who are not accountable to any professional body.

The Centre has launched a claim against the Department of Education and the school governing body, which is being opposed. The associated criminal trial was postponed to January 2010.

### 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.

The Centre obtained a legal opinion which recommended that a damages claim be instituted against the Ministers of Safety and Security; Correctional Services and Justice and Constitutional Development. The claim was launched in 2009.

The objective of the action would be to extend the duty of care on the state to protect women from repeat offenders, as well as obtaining some redress for our client.



# Old rape case will go to trial

A WOMAN who claims she was raped almost 40 years ago will go ahead with her case at the end of October, despite the four-decade delay, the Women's Legal Centre in Cape Town said yesterday.

The Constitutional Court set aside a High Court ruling, saying the lower court had failed to take into account the nature of the alleged wrongdoing and the trauma associated with it, which resulted in the delay in instituting legal action.

The woman approached the Constitutional Court after laying the charge for the rape, allegedly committed between 1968 and 1970, had failed.

**Snip**

It recognises the seriousness, gravity and impact of child sexual abuse and guarantees women access to the courts in order to address injustices that they suffered as children.

The accused, currently nearly 80 years old, denied the allegations and made an application in the High Court in Kimberley for a permanent stay of private prosecution, claiming it infringed his constitutional right to a fair trial.

Many of the people he could have called to give testimony had died and he would not be able to verify or refute many of the details provided as evidence because so much time had passed.

The High Court granted the stay on the grounds that the woman "unreasonably delayed" instituting proceedings and that such a delay would cause the accused irreparable trial prejudice.

The Constitutional Court, however, held the High Court would only be in a position to test prejudice during the trial, and that the accused's right to be assumed innocent until proven guilty would protect him.

"The decision has developed the law from a women's rights perspective," said Cherith Sangret, an attorney at the Women's Legal Centre, which acts as a consultant for the claimant.

Sangret said the 52-year-old claimant was positive about the case and confident of winning.

She was unable to say if any witnesses had been tracked down.

"The claimant, led by her legal representative, Steven Groenewald, will proceed with her case in the Kimberley Regional Magistrate's Court at the end of October 2009," a statement read.

— Sapa.

## 40-year-old rape case goes ahead

A WOMAN who claims she was raped almost 40 years ago will go ahead with her case at the end of the month, despite the long delay, according to the Women's Legal Centre in Cape Town.

Last week, the Constitutional Court set aside a high court ruling, saying the lower court had failed to take into account the nature of the alleged wrongdoing and the trauma associated with it, which resulted in the delay in instituting legal action.

The accused, now nearly 80 years old, denied the charges - allegedly committed between 1968 and 1970 - and made an application in the Kimberley High Court for a permanent stay of private prosecution, claiming it infringed on his rights to a fair trial. Many of the people he could have called to give testimony had died and he would not be able to verify or refute many of the details provided as evidence because so much time had passed, he had stated.

The high court granted the stay on the grounds that the 52-year-old claimant "unreasonably delayed" instituting proceedings and that such a delay would cause the accused irreparable trial prejudice.

## Wessels

### *The state's duty to protect women and children from violence*

The complainant was raped, in the presence of her 7-year-old daughter, by a man who had been previously charged with rape but was then released. The state had withdrawn charges against him after the case was postponed several times due to poor investigations by the police.

She sued the Minister of Safety and Security for special and general damages, both for the damage flowing from the rape and for damage suffered by her daughter as a witness. The Centre assisted Ms Wessels' attorneys by providing them with legal advice from a women's rights perspective in relation to gender based violence. In particular, we provided legal research to argue for the development of the law on general damages and obtained experts to provide expert evidence in relation to the impact of rape.

In the event, the case did not develop the law on general damages as the matter was settled out of court before the trial began. We were, however, advised by the complainant's attorneys that Ms Wessels received a substantial settlement amount.

## Barendilla

### *Duty of the police to act on protection orders under the Domestic Violence Act*

Our client approached the police with a protection order under the Domestic Violence Act and reported to them that her ex-husband had threatened to kill her. The police refused to act unless the client obtained a warrant of arrest. Her ex-husband subsequently murdered their daughter.

The Centre considered this as a test case for developing the law on the Domestic Violence Act to compel police

officers to act on protection orders. Our research suggests that this failure of the police to act on domestic violence protection orders is common, for reasons ranging from not believing the client to misinterpreting their legal obligations contained in the Act. Our aim in litigating this case was to hold the state accountable for failing to fulfil its duty to protect women and children in terms of the Domestic Violence Act and the Constitution.

However, we decided that this would not be an appropriate test case, as the protection order in Ms Barendilla's possession was in place to protect her against abuse and not her daughter. This would create problems in relation to causation, which must be proved in damages claims. We have provided advice in relation to the criminal matter, the joint property and maintenance for her remaining children.

## Buyisiwe

### *Unreasonable delays in prosecution leading to secondary traumatisation of rape survivors*

We acted on behalf of the 1in9 campaign in this case, in which the prosecution of our client's rapists was postponed several times over a period of four years. The case was finally moved to the Transvaal High Court and her rapists were convicted.

The Centre and Interrights completed an opinion setting out the rights of survivors of sexual offences in relation to criminal trials, and a possible legal strategy that can be used to hold the state accountable for the impact of unreasonable delays. However, this case did not have the appropriate facts on which to proceed. In addition, our client has been seriously traumatised by the criminal trial and elected not to proceed with any further litigation.



## Lott

### *Abusive husbands killed in self-defence*

Ms Lott stabbed her ex-husband, who subsequently died, after many years of physical, emotional and sexual abuse. The Centre is representing her in the criminal trial. The case provides a promising opportunity to develop the law of self-defence by taking into account the impact of domestic violence, co-ercive control and battered woman syndrome. The Centre has applied to the Director of Public Prosecutions for the case to be withdrawn, and is preparing to take it to trial should the application be refused.

## Kolisi

### *Abusive husbands killed in self-defence*

This is another case in which our client was charged for the murder of her husband after many years of physical, emotional and verbal abuse, both of our client and of their minor children. It represents a second opportunity to extend the application of battered woman syndrome to the law of self-defence.

The Centre agreed to represent Ms Lott for the purposes of making written representations to the Senior Public Prosecutor. The matter has been postponed to 19 January 2010 for further investigations.

## Davids

### *Litigation as a form of domestic violence*

Our client obtained a domestic violence protection order against her husband and reported several violations of the protection order to the police. He is currently facing charges of rape and assault against our client. When she initiated divorce proceedings, the husband brought an application to the High Court to have the client declared a vexatious litigant and to prevent her from laying further criminal charges against him.

Pleadings closed at the end of 2009 and the husband's attorneys withdrew as his attorneys of record, but the matter remains on the roll for hearing. Our discovery affidavit has been filed and the matter has been entered on the continuous roll for allocation of a hearing date. We are awaiting notification of a set down for hearing.

## 2. Access to resources in partnerships

One of our core aims is to ensure that women receive a fair share of marital and relationship assets when marriages or partnerships end, whether by death or divorce. Our

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.

## Gabie-Hassam

### *Spousal inheritance in polygynous Muslim marriages.*

This long-running case came to fruition in the Constitutional Court, which confirmed an earlier Cape High Court ruling that the right to inherit from an intestate husband's estate should extend to women in polygynous Muslim marriages.

We acted as a friend of the court, arguing that the Maintenance of Surviving Spouses and Intestate Succession Acts unfairly discriminated against Muslim women in such marriages. The Constitutional Court confirmed that both Acts are unconstitutional to the extent that they exclude women in polygynous Muslim marriages. The judgment confirms the rights of such women to inherit and does so retrospectively to 1997.

This case adds to the growing number of matters in which our courts have indicated that aspects of the current regime (which fails to recognise Muslim marriages) are unconstitutional.

## Class action on Muslim marriages

### *Recognition of marriages concluded under Muslim rites*

The state's failure to legislate for the recognition of Muslim marriages has meant that women in these marriages lack the protections enjoyed by women in civil and customary marriages when those marriages end, whether by death or divorce.

We have spent several years working on this issue, and in May 2009 approached the Constitutional Court directly for an order that the state should pass legislation providing for the recognition of Muslim marriages.

The Constitutional Court declined to hear the matter as one over which it has exclusive jurisdiction and we prepared to launch the case in the High Court in 2010. However, the application drew much attention to the plight of women in unrecognised Muslim marriages, and was covered in the national and international media. It also provided an opportunity for the Centre, together with the Commission on Gender Equality, to engage with the Minister of Justice to advocate for the passing of legislation. The draft legislation has been included in the 2010 parliamentary timetable for consideration.

We are dealing with several other matters related to the state's failure to recognise Muslim and other religious marriages:

## Sattar

Our client was married in terms of Muslim rites and claims that there was an express or implied agreement that the marriage was to be in community of property. Her ex-spouse disputes this.

The Centre took on this case to gain recognition that religious marriages can be concluded in community of property by agreement, developing the principles established in the *Rylands v Edros* case which recognised the Muslim marriage as a valid contract. The matter was settled out of court in our client's favour before a High Court ruling was made.

## Salie

Our client in this case was married to her husband under Muslim rites for many years, after which her husband divorced her using a *talaq* and attempted to evict her from the family home.

We sought an order that the Divorce Act is unconstitutional because it fails to provide women married in terms of Muslim rites with the same remedies that are available to women married in terms of civil marriages in 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 amounted to an unjust administrative action. In the alternative we argued universal partnership, unjustified enrichment and breach of contract.

The matter has been postponed to 2010. The clients are, however, discussing the possibility of settling the matter out of court.

## Hendricks

During Ms Hendricks' marriage to her husband under Muslim rites they purchased a home, which was registered in both their names. When Mr Hendricks divorced her, he discontinued payments on the bond over the house and refused to allow her to take over the bond.

The Centre took on this case to develop the law on unjustified enrichment. We hoped to set a precedent for women in unrecognised marriages or relationships who purchase homes jointly with their partners, allowing them to obtain a court order to take over the home. Alternatively, they should be able to seek a judgment in money against their partners which can be used as leverage to secure the home.

The matter was settled in our client's favour before went to trial.

## Daniels

In this case the Constitutional Court ruled that spouses married under Muslim rites are entitled to inherit in terms of the Intestate Succession Act and the Maintenance of Surviving Spouses Acts. For Ms Daniels, this judgment meant that she was entitled to inherit the house she had occupied with her husband until his death in 1994. The Centre arranged for the house to be transferred into her name by a conveyancer on a pro bono basis and raised money to cover outstanding rates in respect of the property. The transfer has now been effected and Ms Daniels' home has been registered in her name.

## Adams

This is another case in which the parties were married under Muslim rites. Ms Adams contributed to her husband's estate during the marriage. He divorced her and she now seeks compensation for the extent to which his estate has been enriched.

The Centre has taken on this case to develop the law of unjustified enrichment in relation to claims for compensation for contributions to the joint estate in unrecognised marriages.

Summons has been issued and the matter has been opposed. Negotiations for possible settlement out of court have however commenced.

## Mohamed

This case deals with a divorce in terms of a marriage concluded in terms of Muslim rites. Ms Mohamed is seeking the application of the Divorce Act to her religious marriage, particularly in relation to the division of the marital property and spousal maintenance. She successfully made an application for interim maintenance in terms of Rule 43.

The Centre was admitted as a friend of the court but the Ms Mohamed's ex-husband was sequestered before the matter was set down for trial. We obtained a legal opinion on the prospects of succeeding with a challenge against the sequestration but the opinion indicated that Ms Mohamed's prospects of succeeding with the challenge were slim.

## Vanker

Mr Vanker died leaving two widows; one marriage had been concluded in terms of civil law and the other under Muslim rites. The state opposed Ms Vanker's application to

Cape Times - 16/07/2009

# Court rules in favour of Muslim widows

All the wives in a polygynous marriage will be able to inherit

ERNEST MABIZA  
Legal Affairs Correspondent

All the widows of a polygynous Muslim marriage — covered into under Muslim personal law — will be entitled to claim from the estate of a husband who dies without leaving a will, the Constitutional Court ruled yesterday.

Previously, the Intestate Succession Act recognised only one spouse, making it difficult for all the widows in a polygynous marriage to make a claim.

A polygynous marriage is one in which a man has more than one wife, whereas polygamy can apply to a marriage which involves more than one wife or husband.

Fatima Hassan approached the Constitutional Court last year to order the estate of her deceased husband's estate to recognise her marriage. Hassan was married to her late husband Elwan Hassan under religious Muslim law.

Elwan Hassan married a second wife according to Muslim rites, but without Fatima Hassan's consent. The man died in 2001 without leaving a will.

The executor of his estate refused to allow Fatima Hassan's claim as a spouse under the Intestate Succession Act.

Last July the Western Cape

marriage to be an heir in the immediate estate of their deceased husband. An order of constitutional invalidity has no force until it is confirmed by the Constitutional Court.

The Constitutional Court also ruled that the act should be read as though the words "or spouse" appeared after the word "spouse" wherever it appeared in section 1 of the act. It also ruled that each surviving spouse should inherit a child's share of the estate, and ordered the attorney of justice to pay Fatima Hassan's costs in the high court and the Constitutional Court.

In her judgment, in which all the 10 other judges concurred, Judge Iles Nkomo said the Intestate Succession Act differentiated between widows married under the Marriage Act and those married by Muslim rites.

She said the act also differentiated between widows in monogamous Muslim marriages and those in polygynous Muslim marriages, and between widows in polygynous customary law marriages and those in polygynous Muslim marriages.

"The act works to the detriment of Muslim women and not Muslim men," Nkomo wrote in her judgment. She said the effect of the failure to afford the benefits of the



A BETTER DEAL: Fatima Hassan has won her claim in the Constitutional Court for widows of a polygynous Muslim marriage — entered into under Muslim personal law — to claim from the estate of a husband who dies without leaving a will. Picture: TERRY DUNN

women in polygynous Muslim marriages on the grounds of religion, gender and marital status, the act clearly reinforces a pattern

about the constitutional validity of polygynous marriages entered into in accordance with Muslim rites and the judgment did not increase

significance attached to polygynous unions subsisted in accordance with the Muslim faith was no less significant than a civil marriage or

creation of constitutional invalidity of legislation, which marginalises a class of women, reflects the necessity that the legislature and the

have her marriage under Muslim rites recognised (as in the Gabie Hassam case) on the basis that the other marriage was a civil marriage.

This case clearly illustrates the need for law reform, which would be a more holistic and preferable remedy to the current piecemeal approach taken by the courts. We have been admitted as a friend of the court and the matter has been set down for trial in the Durban High Court.

## Jacob

Ms Jacob is another woman married under Muslim religious rites who is seeking the application of the Divorce Act to her marriage. The Centre was admitted as a friend of the court in this action in September 2009 and a costs order was granted against the state for this application. The matter was set down for trial in 2010.

## Prag

*The recognition of a duty of spousal support arising out of Hindu marriages.*

Our client was married in terms of Hindu religious rites. After 15 years, during which she ran the family home and raised the children, her husband threw her out of their home with only her clothes.

The maintenance court awarded spousal maintenance to Ms Prag. We will now publicise this judgment widely within the Hindu community so that other women are empowered to apply for spousal maintenance.

## Nkosi

*Registration of customary marriages*

Mrs Nkosi was married under customary law, but the marriage was not registered at the time. She sought registration after the parties had separated, but her ex-husband disputed the existence of the marriage. The Department of Home Affairs then de-registered the marriage.

The Centre is aware that many women married in terms of customary law are struggling to register their marriages in terms of the Recognition of Customary Marriages Act. We prepared a case that sought a judgment limiting the powers of officials to de-register a customary marriage or to refuse to register one. However, our client withdrew her case before it went to trial.

## Mkonqo:

*Rights of domestic partners*

After our client's life partner was killed, the Road Accident Fund (RAF) rejected her claim for loss of her domestic part-



The New York Times - 24/07/2009

PELICAN PARK JOURNAL

## In a Complex Family, Death Adds to the Indignity

By BARRY BEARAK

PELICAN PARK, South Africa — When Fatima Hassan returned to South Africa after a visit to Mexico, her husband, Ebrahim, met her at the airport and said he had something important to announce. To further prepare her, he added cryptically, "It's not such a nice thing."

Finally, he spit out the news, she recalled: He had taken an additional wife, Maggie, the young woman who had been their maid. An imam had performed the ceremony. Maggie, a Christian, was now a Muslim.

Islamic law is often interpreted to allow a man more than one wife, and by then Ebrahim's involvement with Maggie was hardly a surprise. She already had given birth to two of his children and was pregnant with a third. But a lover's status is lower than a wife's, and Ebrahim had promised never to marry this other belated half his age, a person Fatima considered "a very stupid girl who washed our floor and cleaned our toilets."

More indignity followed. Within a year, in 2001, Ebrahim died of a heart attack at age 55. He left no will. And when a court-appointed executor sorted through the modest estate, he began meeting out cash to Maggie, whose children were young, giving none to Fatima, whose four children were grown. In fact, the older wife was ordered to leave the house she and her husband had built.

This expulsion was simply too much. "My husband and I owned two stores, and I worked in them Tuesday to Sunday, 7 in the morning until 11 at night," she said. "I gave my life to this man for 30 years. He took my youth away, and I became an old lady. Why should I be the one left without a roof?"

She refused to move, instead filing a lawsuit that on July 15 resulted in a landmark decision by the nation's Constitutional Court. South Africa legally recognizes polygamous marriages in line with indigenous African customs; that is how President Jacob Zuma is permitted his three wives. But Muslim unions are not similarly acknowledged by the state. While the Hassan decision did not change that, it did ensure that when a husband dies without a will in a polygamous Muslim marriage, each of his wives is guaranteed legal rights of inheritance.

About 835,000 Muslims live in South Africa, making up about 1 percent of the population. Pelican Park, the Cape Town suburb where Fatima, 64, lives, is one of their enclaves. Publicity surrounding her case has made her well known here, a hero to some, an embarrassment to others.

Polygamy, however commonly practiced, is a touchy subject.

"These men running around with younger women, it's like a sickness," said Isidema Chafikazi, who runs a small grocery. "You hear it all the time." She reflected further. "If my husband does it, I'll slit his throat."

M. S. Rawson, an officer in a local mosque, said that whatever the rules of inheritance, the male prerogative to take additional spouses was important to preserve. "A shopkeeper takes his assistant as a second wife, a doctor marries his receptionist," he said. "It's done very quietly. The important thing is not to create a scandal."

The South African press has portrayed Fatima as a wronged but recalcitrant widow. Maggie, if mentioned at all, is referred to as Marian, the Muslim name used in court papers. The younger woman's story is unexplored, leaving the implication she used Ebrahim as a sugar daddy.

But life, even at its simplest, is stubbornly complicated.

"I'm always made out to be the evil one," complained Maggie Hassan, now 35. "But I only have God to answer to, and God is on my side."

A young woman of mixed race, she was 16 when the Hassans, an Indian couple, found her in the nearby city of Worcester. They spoke her language, Afrikaans, and needed someone to work in their house and stores. She needed a job, any job. The pay was about \$5 a month plus room and board.

Fatima was always rude to her, Maggie said. Ebrahim was nice. "I was young and it was wrong, but he told me he got no love from her and his marriage was unhappy," she said. "I was scared but he kept on asking. In the end, I got used to him and got to like him."

Fatima, by contrast, does not see Maggie as a victim. "She blamed my husband, and I told her, it was you, too," she said. "When he started kissing you and touching your bum, you should have come and told me, and I would have put a stop to it."

Ebrahim was a frequent philanderer, Fatima said. Indeed, his wanderings included an affair with her. When she began seeing Ebrahim, he already was wed to a woman named Washila. For a time, the two wives shared him before Washila found another man and was granted a divorce.

One of Ebrahim and Fatima's four daughters, Mehreena Hassan, said, "My father was a great father, even if he wasn't such a good husband." Assessing her parents' marriage, she said, "They fought a lot, over anything and everything. My mom can be very difficult. She screamed at him."

Given the circumstances, there may have been much to scream about. "I was better off when I worked in the shop all day and only saw him in bed where it was dark," Fatima said. "I didn't have to look at his face."

Divorce would have meant sullying the family name, she said. Nevertheless, in June 1998, Fatima went to the area's Muslim Judicial Council and obtained a faskh, or annulment, ending the marriage. The couple then reconciled during iddah, a three-month waiting period, Fatima said. They continued to live together.

Johan Jacobs, the executor of Ebrahim's estate, said he was never sure if the marriage still existed. "It's all very confusing, isn't it?"

Landmark decisions are not necessarily reached with airtight facts. For her part, Maggie said she never understood the litigation and thought it all settled in 2004. She and her three children — ages 15, 12 and 8 — live in Worcester, paying \$30 a month for an apartment in a shabby and dangerous red-brick housing project. She does menial work at a day care center.

"All those years Fatima whined about her house and property," Maggie said. "Now I suppose she got what she wanted."

Actually, Fatima's two-bedroom house is the chief remaining asset in the estate, and it will probably be sold, with the proceeds then divided.

"Who needs it anyway?" the older widow said. "The roof is leaking, the geyser is broken."

Her bigger problem is with the past. "How could my husband — a proper, proper Indian man — fall into a trap with such a girl? What was he thinking?"

Jana Silva contributed reporting.

The Witness - 03/11/2009

## Muslim marriage in spotlight

By Neil Jones

Ingrid Oellermann

THE failure of South Africa's Divorce Act to give recognition to monogamous Muslim marriages and afford its protection to women married in terms of Islamic rites has come under the spotlight in the high court in Pietermaritzburg.

At the centre of the debate is a Pietermaritzburg Muslim mother, Ayesha Jacob, whose 14-year marriage under Islamic rites to her husband, Abdul Kader Amod Ayooob, has ended.

Jacob is being supported in her legal battle to assert her rights by the Women's Legal Centre Trust (WLC) — a Cape-based organisation that aims to advance and protect the human rights of women and girls.

The WLC has been joined as an "amicus curiae" (friend of the court) in the case, which the organisation believes to be of interest to many other women who are similarly placed and find themselves without legal protection.

Jacob is asking the court to rule that the failure of the Divorce Act of 1979 to include parties to a monogamous Muslim marriage is unconstitutional and discriminatory.

Jacob is also seeking to win an order for maintenance for her and the couple's three children and an equitable division of the joint estate.

She has asked the court to find that since she and her husband did not conclude an antenuptial contract, their marriage is one in community of property.

In papers before Judge Jerome Ngweni on Friday, WLC director Jennifer Williams said the trust submits that the Divorce Act should be interpreted to include a divorce action between the parties to a monogamous Muslim marriage; and that the failure to include Muslim marriages in the act will impact negatively on a "particularly vulnerable class of women" and violates a number of constitutional rights.

Williams says the WLC has over the years often been approached for legal advice about the impact of Muslim personal law on women and children.

Cases in which it has litigated on behalf of clients highlight the vulnerability of women married under Muslim personal law, and their children, when those marriages dissolve or following the death of a spouse, Williams added.

She said the present case raises matters of public interest affecting many women who were married under Muslim personal law.

The trial will get under way in the high court on May 10 next year.



ner 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 a friend of the court and prepared to make submissions on the adverse impact on women of the failure to recognise a duty of support in domestic partnerships. We would 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.

At the end of 2009 we were awaiting a trial date.

## **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 their share of the pension interest until their ex-partners retired. In addition, the interest on the whole amount from the date of divorce to date of withdrawal accrued to the ex-partner only.

In the interim the law has been amended to allow spouses to access pension interest, but the amendment does not apply retrospectively. The Centre made representations to the Pensions Ombudsman on our client's behalf and she was awarded her share of the pension.

It has come to our attention that the Pension Ombudsman, in another case, has ruled that the amendment should apply retrospectively. However, this has been challenged in the High Court. We are considering intervening as a friend of the court should that case go on appeal.

We are also seeking to challenge the limited application of the amendment, which does not apply to state pension funds (see below).

## **Ngewu**

### ***Extension of the Pension Law Amendment Act to government pension funds.***

Ms Ngewu was divorced in 2007. In terms of her Divorce Order she is entitled to a half share of her husband's pension fund. However, recent amendments to the Pension Fund Act (see above) do not extend to state pension funds. Ms Ngewu's husband is a member of the Post Office pension fund and so she cannot access her half share until he retires, and the interest on her share accrues to him only.

We believe that the prospect of succeeding with this case is high. We have prepared papers to seek an order

that the distinction made between private and state pension funds is unconstitutional and that Ms Ngewu should receive her share of her ex-spouse's pension with immediate effect. The application is due to be launched early in 2010.

## **Board of Executors**

### ***Constitutionality of boys-only testamentary trusts***

The Centre was invited by the Cape High Court to act as a friend of the court in this matter, in which BOE is applying for confirmation that testamentary trusts specifying educational bursaries for boys only are constitutional.

We filed submissions that these provisions violate the constitutional right to equality. We await a set down date for argument.

## **3. Access to land and 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. The Centre seeks to challenge policies that indirectly discriminate against women and replace them with policies giving women tenure in their own right.

## **Harris**

### ***Registration of housing in the name of husbands only***

Our client was married in terms of Muslim rites. Upon termination of the marriage she continued to occupy the marital home for many years after her ex-husband vacated the property. At the time that Ms Harris and her ex-husband had applied to purchase the property from the City of Cape Town the City's policy prohibited Ms Harris from applying to purchase the property and the agreement of sale of the house was concluded between the City and Mr Harris only as the "breadwinner". When they divorced, her ex-husband attempted to evict her from her home as an unlawful occupier under the Prevention of Illegal Eviction and Unlawful Occupation of Land Act.

The Centre decided not to take action directly against the City, but rather to defend the eviction itself. The basis of our defence was that Mrs Harris was not an unlawful occupier, since the contract awarding the house solely to her husband was unconstitutional. In addition, her ex-husband was not the registered owner of the house as the purchase price was not paid in full. Accordingly, the City was the registered owner of the property at the time that Mr Harris instituted the eviction application.



The Wynberg Magistrate's Court confirmed that our client was not an unlawful occupier and that her ex-husband could not evict her from the house. His application was dismissed.

We have since developed a booklet to publicise this judgment and to inform women of their rights in relation to housing and evictions.

## Group Action on City Housing Policy *Registration of housing in the name of husbands only*

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

We originally intended to launch this application in the Equality Court, but decided that the High Court would provide a better forum in light of the merits of the client's case and the relief sought. The application was launched in December 2009.

## 4. Employment rights

Despite legislation and policy to reduce sexual harassment in the workplace, it is still prevalent. Many women still face

a workplace culture that renders them vulnerable to sexual harassment and unlikely to report it for fear of repercussions. The Centre seeks to reduce sexual harassment occurrence in the workplace and to develop the jurisprudence to take into account circumstances that may intimidate women and deter them from reporting sexual harassment.

## Radebe

### *The state's duty of care as an employer to prevent sexual harassment*

Our client in this case was a metro police officer for the Johannesburg Metropolitan Police Department (JMPD) who was raped by her supervisor and reported it. She then faced ongoing victimisation and was ostracised by her colleagues for reporting the rape, to the point that her job became intolerable and she had no choice but to resign. She then referred a constructive dismissal dispute against the JMPD to the Johannesburg Commission for Conciliation, Mediation and Arbitration (CCMA).

Sexual harassment is particularly common in the police service, domestic work and farm work sectors, but these environments are not conducive to reporting it. The Centre seeks to take on cases that will raise employers' awareness of their duty to actively prevent or end sexual harassment, as well as to specifically expose sexual harassment in male-dominated state or municipal departments and to

Citizen - 06/06/2009

# Rape victim will be paid 'soon'

UGEN VOS

THE Johannesburg Metro Police Department (JMPD) this week almost found itself short of thousands of rands in moveable assets, after being backed into a corner over its treatment of a female police officer who accused her superior of rape.

The Sheriff of the Court paid a visit to the JMPD offices on Tuesday, threatening to attach furniture and equipment including chairs, desks, computers and couches. These were to be resold, and the proceeds used to pay the female officer the money legally owed to her by the JMPD.

Thandiwe Radebe had accused a superior, chief superintendent Amnon Kanyago, of raping her in May 2007. She claims that the JMPD management and staff had subjected her to "ongoing degrading and indignifying treatment" after she'd complained – making her employment intolerable to the extent that she had opted to resign.

Last year, People Opposing Wo-

men Abuse (Powa) referred Radebe to the Women's Legal Centre which successfully took up her case.

The Johannesburg Commission for Conciliation, Mediation and Arbitration (CCMA) then ordered the JMPD to pay the victimised police officer severance amounting to 12 months of her previous salary, the highest compensation the Commissioner is legally permitted to award in such cases.

This order was handed down at least six months ago, but the JMPD has apparently neglected or refused to comply with it.

Attorney Cherith Sanger from the Women's Legal Centre eventually became fed up with JMPD's excuses, making the decision to attach their assets.

The JMPD has since received a tongue lashing from women's rights groups, who seem puzzled at the law enforcement agency's failure to comply with the stipulations of the law. "The JMPD has simply refused to take responsibility for its actions, by not paying the monies owing to our client," Sanger said.

"This shows its lack of respect for the law and dismissive attitude of serious women's rights violations such as sexual harassment."

The Centre's director, Jennifer Williams, and Powa's Carrie Shelver, yesterday echoed these sentiments unequivocally – noting that state agencies such as the JMPD were supposedly charged with upholding women's constitutional rights.

Williams said the fact that the JMPD had failed to set a proper

example as a state agency was "cause for concern", and Shelver questioned why the JMPD had remained "blind to their responsibility as employers", even after the CCMA ruling.

Shelver said the JMPD's intransigence showed its "flagrant disregard" for the rights of their employees, the laws of the country, and the authority of the CCMA.

"This is particularly worrying because the JMPD is a law enforcement agency, and as such should respect the rule of law."

The JMPD's Chief Superintendent Wayne Minnaar yesterday defended the department's non-payment saying there had initially been some talk of opposing the judgment. He noted that the JMPD had initiated a probe when the allegations first came to light, saying both have found the allegations baseless. Minnaar said the money would likely be paid out "very soon".

— ugen@citizen.co.za

Snip

"We supported the alleged victim in every way, but we have decided not to prolong this matter unnecessarily. We'd rather see her carry on with her life normally."



hold these employers' liable for failing to comply with their labour law duties.

In this case, the CCMA found in favour of our client and ordered the state to pay her 12 months' compensation, the maximum compensation that can be awarded. However, the JMPD failed to make payment of the award and we were required to issue a warrant of execution against them.

### **Kylie / Brigitte's: Adult commercial sex work**

#### *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 the client to bring a claim for unfair dismissal with the 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.

The CCMA declined to hear the case on the basis that the Labour Relations Act (LRA) does not extend legal protection to sex workers. The Labour Court, while accepting the argument that sex workers are employees in terms of

the LRA, found that they do not qualify for a remedy under the LRA because of the illegality of sex work. The judgment has been taken on appeal to the Labour Appeal Court and is due to be heard in March 2010.

A victory in this case would be significant for women who are marginalised as a result of being sex workers and are thus not vested with labour and employment rights that other employees have, including constitutional recognition of dignity, equality and equal protection and benefit of the law.

## **5. Access to health (reproductive rights, HIV)**

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. The Centre also seeks to develop the jurisprudence around women's rights to reproductive health and access to health care services.

### **Qavane**

#### *Waiting periods for medical aid in the case of pregnancy*

Our client was accepted into a medical aid scheme, but this was made subject to a nine-month waiting period when it became known that she was pregnant. We believed this policy to be unfairly discriminatory. However, when we researched the case it became evident that it would have a



minimal impact on indigent women. On this basis, and in accordance with the Centre's mandate to specifically advance the interests of black and socio-economically disadvantaged women, we decided not to proceed with the matter.

## Forced sterilization

### *Forced sterilisation of HIV positive women*

We are investigating several cases where women, most of them HIV positive, were sterilized without their consent. In partnership with the Health Economics & HIV/AIDS Research Division (HEARD) at the University of KwaZulu-Natal and Her Rights Initiative (HRI), a positive women's advocacy group, we have decided to embark on a more structured research and advocacy process to determine the scope of the problem and to establish baseline data on a national level. HRI and HEARD will partner with the University of KwaZulu Natal Health Faculty and other NGO partners to find cases in other provinces. We have so far identified six cases in KZN and two potential cases in the Western Cape and are awaiting the clients' decision on whether they wish to proceed.

During 2010 we plan to develop a broad based advocacy strategy to inform potential clients of the case and to develop partnerships with other NGOs to refer potential clients to us.

## Langrug

### *Provision of adequate sanitation in informal settlements*

Langrug is an informal settlement of about 1500 households in Stellenbosch. It is home to about 5000 people, a large percentage of whom are women and girl children. The settlement has only 94 toilets, of which more than 50 are not working. Families are forced to defecate in buckets and have nowhere to dispose of the waste, creating severe health and environmental risks. An application was brought by the Western Cape Provincial Department of Environmental

Affairs to compel the municipality to provide sanitation facilities to Langrug. The municipality refused on the basis that it was planning to upgrade the settlement, although it did not provide any timeline for the upgrade.

The Centre intervened as a friend of the court to argue that a municipality's failure to provide adequate sanitation to an informal settlement is a breach of women's constitutional rights to equality, dignity, health and a clean environment. The case clearly illustrates the intersection between women's rights to equality and dignity and their socio-economic rights.

The matter is due to be heard in the Cape High Court in January 2010.

## Mangena

### *The duty of hospitals to admit women in labour*

Our client arrived at a hospital with early labour pains and was admitted, but nurses decided that she was not in labour and sent her home. During the night she started experiencing severe labour pains and her waters broke. She again attempted to access the hospital but was refused entry and gave birth on the pavement outside the clinic, assisted by passers-by.

The Centre is bringing a damages claim against the hospital, with the aim of setting due diligence standards for access to health care for child birth.

A preliminary medical examination was performed on the client and her baby to determine if there were any ill-effects as a result of the birth. The medical examination appeared normal for the mother, however the baby appears to be small for its age and has not reached the customary milestones. Further in-depth medical examinations to determine the extent of the underdevelopment have been recommended to Ms Mangena. She is currently considering whether she wants to proceed with the case.

Mail & Guardian - 19/06/2009

# Sterilised without consent

Rights activists claim HIV-positive women are being made infertile against their will by public health doctors

Maria Kambhosi

Women's rights activists have claimed that South African and Namibian public health doctors are making HIV-infected women infertile against their will.

South Africa's Women's Legal Centre (WLC) has documented in cases of South African women, most of them HIV-infected, who claim to have undergone what the health world calls "forced sterilisation".

Premise Mthembu, a WLC spokeswoman based in Durban, who is helping compile the cases, said forced sterilisations were happening "in very large areas" of South Africa.

Mthembu said many of the patients would not be able to give access to medical services they had to undergo the procedure. She told of a 16-year-old Orange Farm resident who "went to get an abortion earlier this year, and they said they would only operate if she was sterilised".

Another documented case was that of a 19-year-old patient at Prince Mshingana Hospital, outside Durban. In 2007 she was allegedly pulled

out of the delivery ward while in labour and told by the doctor that "you have to be sterilised".

"It comes down to the issue of informed consent," said Amina Ahmed of the Washington DC Office of the International Coalition of Women Living with HIV (ICW).

"If you don't understand what sterilisation means, or if the physician doesn't speak your language, that's not informed consent."

"You also can't really consent when you're in labour. If someone says to you 'sign these forms to have assistance with delivery', you're going to sign whatever's put in front of you."

South African health department spokesperson Phila Hlatshway said he could not comment on the claims.

In Namibia, the ICW is planning legal action against the government over alleged sterilisations.

The group claims to have 40 confirmed cases, seven of which will be aired in court by the end of the year.

Ahmed argued that if pregnant women had improved access to programmes and drugs aimed at the prevention of mother-to-child transmission of HIV, such reproductive control would diminish. "The way new medicines work, there's a less than 1% chance of giving HIV to your child. Obviously we need to stop the spread of HIV to children, but sterilisation is not the correct way of looking at the issue."

Even after the procedure, most women did not fully understand what had happened. "One woman didn't even realize that she was sterilised until she went back to the doctor to get birth control," Hlatshway said.

Prevention of mother-to-child transmission programmes in the region are underfunded, leaving millions of women without services.

Josette Fick-Mahler, the ICW's Namibian coordinator, said many of the women interviewed by the organisation "didn't know what sterilisation was. It was never explained to them."

They thought it was part of a programme the women living with HIV.

Even after the procedure, most women did not fully understand what had happened. "One woman didn't even realize that she was sterilised until she went back to the doctor to get birth control," Hlatshway said.

The Namibian health ministry has not explicitly called for sterilisations, but the ICW claims that according to local doctors the issue was referred to its guidelines issued to all public health sites in the early 2000s, when HIV was beginning to hit the country.

The ICW said that despite repeated requests the ministry has refused to hand over old and recent guidelines.

Fick-Mahler, a project lawyer with the South African Litigation Centre, said the planned court action against the Namibian government was based on the country's Constitution.

"Sterilising a woman without her consent goes against fundamental concepts of people having the right over their own bodies," Fick-Mahler said. "Part of being a human, and especially a woman, is the right to reproduce."

# Gruber Women's Rights Prize

In 2009, the WLC was the co-recipient of the 2009 Gruber Women's Rights Prize.

Each year the Gruber Foundation recognises individuals and groups in the fields of Cosmology, Genetics, Neuroscience, Justice, and Women's Rights. Established in 2003, the Gruber Women's Rights Prize annually awards activists and organisations for its dedication to promoting gender equality and peace building.



*Trustee Teboho Molebatsi is interviewed by US media*

"Our hope is to redress restrictive laws and customs that deprive women not only of their human rights but also of their ability to enrich the human condition." – Peter Gruber

Recipients are selected by an independent advisory board comprised of experts from the field. Efforts are made to ensure a fair process resulting in the selection of the most qualified and dedicated activist or organisation. This year, the advisory board comprised of Sakiko Fukuda-Parr (The

New School), Pinar Ilkaran (Women for Women's Human Rights), Akua Kuenyehia (International Criminal Court), Thadabantu Nhlapo (University of Cape Town), Geeta Rao Gupta (International Centre for Research on Women), and Sakena Yacoobi.

Past recipients of this award include:

Navanethem Pillay, the current United Nations High Commissioner for Human Rights and the first non-white woman to be seated in a South African High Court.

Professor Sakena Yacoobi, founded the Afghan Institute of Learning in 1995 and is the President and Executive Director of this NGO. She is also the co-founder of Creating Hope International and is a member of the Board of Directors for the Global Fund for Women.

Cecilia Medina Quiroga, a Chilean lawyer and former chairperson of the United Nations Human Rights Committee and judge on the Inter-American Court of Human Rights.

Sapana Pradhan-Malla, as a dedicated lawyer, she has led the way in public interest litigation and has played a key role in advancing women's rights in Nepal. Pradhan-Malla is the president of the Forum for Women, Law and Development and vice president of the Legal Aid Consultancy Center.

The WLC is truly honoured to receive the Gruber Women's Rights Prize and to share it with such remarkable and accomplished women and organisations, inspiring us to continue the fight for gender equality in South Africa. It is the support of individuals and foundations like the Gruber Foundation that enable us to continue to work for the advancement of women's rights.

## Global Fund for Women - 2009

### Current Grantee News

#### 2009 Gruber Women's Prize Awarded to Two Grantees from Sub Saharan Africa

Global Fund is excited to announce that two of our grantee partners have won this year's prestigious Gruber Women's prize. The two recipients are Leymah Gbowee, from grantee partner Women in Peace and Security Network – Africa; and Women's Legal Centre (WLC) – a nonprofit law center based in South Africa and a Global Fund grantee since 1999.

The prize will be awarded in a ceremony this fall celebrating the achievements of the recipients, who will share the \$500,000 prize. Additionally, a special event celebrating the tenth anniversary of the Gruber Prize Program will be held on July 1, 2009, at Rockefeller University in New York City.



The official citation reads:

The 2009 Gruber Women's Rights Prize is proudly presented to Leymah Roberts Gbowee, and the Women's Legal Centre for two different but complementary kinds of activism:

Leymah Roberts Gbowee of Liberia, for helping to build peace in her homeland by mobilizing women in a resistance movement that was instrumental in finally bringing an end to the Liberian civil war, and for continuing to promote women-power in peace building; and the Women's Legal Centre of South Africa, for successfully challenging legal and cultural obstacles to women's rights through the courts especially in the areas of inheritance and gender-based violence, and empowering women with free legal advice on the impact of court judgments in their favor.



*Trustee Teboho Molebatsi receives the Prize in behalf of the WLC*



# Advocacy and Training

## 1. General support to NGOs in the sector

As part of our goal to support organisations that work towards the advancement of women's rights, we provide legal opinions, advice and other forms of legal assistance 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 2009 we provided the following assistance:

- Set up a meeting between the Department of Community and Safety and Sex Worker Education and Advocacy Taskforce (SWEAT) in relation to South African Police Service (SAPS) members abuse and harassment of sex workers.
- Provided SWEAT with a legal opinion on the prospects of success in obtaining a moratorium against the arrest and prosecution of sex workers and submitted a request with the Ministers of Justice and Constitutional Development and Safety and Security to this end. The WLC also supported SWEAT in publicising the Ministries failures to respond to its requests.
- Participated in SWEAT's media campaign for the decriminalisation of sex work.
- Participated in Tswaranang Legal Advocacy Centre's strategy workshop on the arrest of sex workers and training of peer educators.
- Provided SWEAT with a legal opinion on SAPS rights and duties in relation to the search and seizure of sex workers.
- Participated in Heinrich Boell Foundation and SWEAT's strategy meeting on engaging with parliament on the decriminalisation of sex work.
- Set up a meeting between the Judicial Inspectorate and SWEAT in relation to treatment of sex workers in prisons.
- On behalf of the 1in9 campaign, drafted and lodged a formal complaint to the Commission for Gender Equality regarding ANC Youth League President Julius Malema's comments on rape.
- Input into the Convention on the Elimination of All Forms of Discrimination Against Women civil society shadow report.
- Made the following presentations:
  - On sex workers legal rights in terms of arrests by the SAPS, the lodging of complaints against the SAPS and the legal procedures for laying a charge against a SAPS member.
  - On public interest litigation to Norwegian judges hosted by UCT's Democratic Governance and Rights Unit.
  - On strategic litigation at a UWC Community Law Centre workshop on Litigation in the African Court.
  - On strategic litigation at a Lawyers for Human Rights conference.
  - On feminist perspectives on working with men at the Men Engage Symposium.
  - On the Bhe case at a Norwegian University conference on socio-economic rights.
- Gave the following lectures:
  - Aspects of Gender law, Constitutional law and Matrimonial matters for candidate attorneys for Practical Legal Training for the Law Society.
  - Aspects of Gender law and Customary law for candidate attorneys at Edward Nathan Sonnenbergs for Practical Legal Training for the Law Society.
  - Women and the Law lecture for University of Cape Town students.
  - Strategic litigation for students at Rhodes University as part of their Constitutional Week initiative.
- Input into the Jurisprudence of Equality Judges training manual for judges on the application of international gender instruments.
- In our capacity as a member of the 070707: Western Cape End Hate Campaign, we have conducted watching briefs and provided legal advice and assistance with hate crime cases. We also engaged with the Director of Public Prosecutions to ensure a swift finalisation of the infamous Zoliswa Nkonyana trial without further unreasonable delays caused by the court or the accused.
- Provided a partner organisation with legal assistance and advice on the handling of complaints of sexual harassment.
- Offered research and advice to Sonke Gender Justice on the Equality Court Project.
- Provided firms of attorneys and partner organisations with legal research on women's rights.
- Updated the Law Society's Practical Legal Training manual on Aspects of Gender Law.

Cape Times - 11/08/2009

# DPP to keep close eye on homophobic murder trial

LYNDON KHAN

PLAGUED by a string of postponements over three years, a suspected homophobic murder trial in Khayelitsha would now be closely monitored by the Directorate for Public Prosecutions to prevent further delays.

It follows protests and marches by gender activists and NGOs over the delays.

They demanded the trial be moved to the Cape High Court of a group of Khayelitsha males accused of murdering fellow shebeen patron Zoliswa Nkonyana because she was openly lesbian.

DPP provincial head Rodney de Kock confirmed yesterday that changes had been made to how the trial would proceed.

The case had been beset by postponements because of a number of changes in defence counsel and some of the nine murder accused not arriving for court appearances.

In all, there have been 20 postponements.

At a meeting last Friday of the Women's Legal Centre and the directorate, it was decided that the directorate would call a meeting before the next court date to ensure lawyers for the defence and prosecution were ready to proceed.

The directorate would send a representative to monitor proceedings at the next court date, scheduled for September 28, at the Khayelitsha Magistrate's Court.

They would also ensure sufficient time was allocated to the case in future.

A leading NGO, the Triangle Project, was pleased with the changes, as the Nkonyana family had been waiting three years for justice to run its course, said its deputy director, Marlow Valentine.

The Western Cape End Hate Alliance marched to the high court on Friday last week to demand the case be transferred

from the Khayelitsha Magistrate's Court because the court was "incapable" of handling it.

Headed by the Triangle Project, the alliance lobbies for the equal rights of lesbians, gays, bisexuals, transgender and intersex people.

In addition to demanding the trial be moved, the march was to "create awareness of gender violence", Valentine said.

But the directorate had told him that moving the case to the Western Cape High Court would backfire because it would create further, and not fewer, delays because time still had to be allocated to hear the case. The high court's roll is usually full.

There was also "no legal mechanism" for placing the trial on the Cape High Court roll, as the accused had already entered a plea.

Valentine said the nine men accused of the murder had been arrogant in court by laughing and waving to their girlfriends in the public gallery.

Nkonyana, 19, was murdered on February 4, 2006 after leaving a shebeen in Khayelitsha when female patrons allegedly tried to force her to use a male toilet instead of a female one because she was openly lesbian.

When she refused and left to use a toilet elsewhere, a group of men followed her and bludgeoned her to death, in a suspected homophobic attack.

A female friend who had been with her that evening was the first State witness, giving shocking testimony on December 5, 2008. She is due to be cross-examined at the next court date.

The friend was placed in witness protection in the Eastern Cape and had to be transported to Cape Town for each court appearance. Evidence was heard at only one appearance.

lyndon.khan@inl.co.za

- Provided legal advice to women and distributed booklets on women's rights at Bellville and Blue Downs magistrates' courts as part of the Department of Justice and Constitutional Development's Women's Day initiative.
- Wrote a letter to the government, in conjunction with the University of the Western Cape Community Law Centre, on laws that discriminate against women.
- Wrote an article for Justice Today (the internal magazine of the Department of Justice) on the Recognition of Customary Marriages Act.

## 2. Advocacy and training related to areas of work

### Gender based violence

- We presented workshops on sexual abuse in schools for:
  - Ronwe Primary School in Paarl.
  - Kwa-Zulu Natal social workers.
- Published booklet on sexual abuse in schools and the new Sexual Offences Act.
- Trained Safe Cities community workers in Bishop Lavis on domestic violence, sexual abuse in schools and the new Sexual Offences Act.
- Published an article on the obligations of the state in relation to women and gender based violence for Skyways in flight magazine.
- Drafted submissions to the South African Law Reform Commission (SALRC) on the Protection from Harassment Bill.
- Drafted submissions on the decriminalisation model to the SALRC for their discussion paper concerning adult sex work.
- Assisted the 070707: Western Cape End Hate Campaign with a memorandum for a protest against hate crimes against LGBTI women, and participated in a march to the Cape High Court to hand over the memorandum to the Department of Justice.
- Advised the Community Health Trust on the drafting of a booklet about gender based violence.
- Made written and oral submissions to the Parliamentary committee on Women, Children and Persons with Disabilities on the 11th year of the implementation of the Domestic Violence Act.
- Provided a free legal advice clinic for women at Vangate Mall (30 November 2009 to 4 December 2009) as part of

# Helping women most in need

## STAFF REPORTER

The Women's Legal Centre (WLC), is a non-profit organisation, established and run by women lawyers focusing on women's human rights.

WLC takes cases to court in order to change discriminatory laws against women and advance women's rights in labour law, land law, access to health services, relationship rights and domestic and sexual violence.

Previously, women and girl children could not inherit and claim maintenance from deceased estates.

For example, girl children and the wife of the deceased could not inherit their father or husband's assets after he died.

WLC took a case to the Constitutional Court on behalf of one Mrs Bhe and her two daughters during 2004 in an attempt to obtain an order that the law excluding women and girl children from inheriting and claiming maintenance from their father or husband's deceased estates, was unconstitutional on the basis that it discriminated against women and girls on the ground of their gender.

Bhe's long-term partner and the father of her two daughters had died. Bhe and her daughters could not inherit the house which they lived in for many years or claim maintenance from the deceased estate as they were not males and Bhe and the deceased were never married.

The CC granted an order in favour of Bhe and her daughters and

changed the law to allow females to inherit and claim maintenance from their father's or husband's deceased estates.

In effect, the order means that all women and girl children can now inherit and claim maintenance from their father's and husband's deceased estates.

■ If you require any legal advice you can contact WLC on 021 421 1389 or visit their office at 4th floor Pearl House Building, 19-23 Adlerley Street, Shermagicht, Cape Town.



Bhe and one of her daughters with the title deed to the house that Bhe and her daughters inherited from her deceased husband's estate

the Western Cape Network on Violence Against women 16 days of activism initiative.

- Made submissions to the Department of Justice in relation to the Prevention and Combating of Trafficking in Persons Bill.
- Gave workshops in Beaufort West and Stellenbosch in relation to the current criminal offences relating to human trafficking, and made a presentation on the Prevention and Combating of Trafficking in Persons Bill.
- Gave workshops hosted by FAMSA relating to Child Sexual Abuse and the Sexual Offences Act in Milnerton and Mitchells Plain.
- Made submissions to the SALRC on the inadequacy of the current law dealing with the cultural practice of ukuthwala (abduction of child brides).

## Access to resources in partnerships

- Wrote three articles for De Rebus Legal Journal:
  - The Govender case (Hindu marriages)
  - The Gumede case (customary marriages)
  - The Gabie Hassam case (Muslim marriages)
- Hosted workshop on the Recognition of Customary Marriages Act in Mthatha.
- Engaged with the senior maintenance prosecutor at Wynberg Court on flaws in the maintenance system.
- Written and oral submissions were made to parliament on the following:
  - An amendment to the Recognition of Customary Marriages Act.
  - The Reform of Customary Law of Succession Bill.
  - The Traditional Courts Bill.
  - Amendments to the Marriage Act.

- Participated in the Commission for Gender Equality Recognition of Muslim Marriages Campaign.
- Lecture to Rhodes University students on Muslim personal law marriages and law reform as part of their constitutional week initiative.
- Presentation to the National Association of Democratic Lawyers on religious marriages.
- Presentation to an African Gender workshop on Muslim marriages.
- Written submissions were made to the Department of Justice on the proposed maintenance amendments.

## Access to Land and Housing

- Presentation at Lawyers for Human Rights conference on emergency housing for survivors of domestic violence.
- Published a booklet on women's rights in relation to housing and evictions
- Hosted workshop for community workers at Safe Cities in Manenberg and Atlantis on women's rights in relation to housing and evictions.

## Employment Rights

- Published an article on sexual harassment for Labour Bulletin.
- Trained staff members of Sonke Gender Justice in Johannesburg and Cape Town on sexual harassment in the workplace.
- Training on sexual harassment at the Western Cape Land Claims Commission as part of their Women's Day initiative.
- Updated and reprinted WLC sexual harassment manual.



## Access to Health

- Published an article for the Marie Stopes corporate brochure on the constitutional right to reproductive health.
- Provided Marie Stopes with legal advice on authorisation and conditions for anti-termination of pregnancy protestors outside their premises in Cape Town.
- Prepared submissions on the need to regulate virginity testing
- Made inputs on the intersection between gender based violence and HIV for Project Concern International.
- Participated in the South African National Aids Council's Law and Human Rights Sector meetings.

## Regional co-operation

- Presentation on human rights and sex work at an African conference of sex workers.
- Presentation on the Radebe case at an Interrights conference on litigating women's rights in Africa.
- Lectured on strategic litigation and gender law to students completing their Masters degrees in human rights at the Women's Law Centre at the University of Zimbabwe.
- Provided research and other assistance to Centre for the Development of People on a case in which Malawian sex workers were compelled to undergo HIV testing and then charged with more serious offences.

- Participated in the Women, Equality and Constitutionalism focus group of the African Network of Constitutional Lawyers.
- Meeting with the Dean of the Law Faculty Nigerian Human Rights Centre on strategic litigation.
- Made joint submissions with the Legal Resources Centre on the Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights.
- Provided Women's Organisation Network for Human Rights Advocacy (Wonetha) with a legal opinion on the legal strategy for challenging Uganda's Anti-homosexuality Bill.

## International Co-operation

- Hosted learners from Gangsatra High in Sweden and made a presentation on gender based violence.
- Made input into a Human Rights Watch study on the application of international instruments in SA.
- Made presentations to:
  - Delegates from Ohio state university on the Centre and women's rights.
  - Norwegian students from University of Bergen.
  - Senator Bray and other US civil rights activists .
- Provided comparative research on Muslim marriages to the New York Times.

The Sunday Independent - 19/07/2009

## Constitutional Court judges should be selected from a wider pool

ALLEN TILLEY

THE nomination of judges to the Constitutional Court is once again in the spotlight, with four vacancies in the court due to be filled this year.

One of the criteria for appointment will be ensuring that the court continues to reflect the diversity of South Africa, in terms of race and gender at least.

The Judicial Services Commission (JSC), aided by its past practice, will be looking for 'diverse' persons who represent different life experiences.

Where do you find skilled jurists? The first Constitutional Court had judges who did not have experience as judges, and came from the ranks of activists and academics.

That lack of experience was not seen as a bar to their appointment.

The JSC seems to have taken the view in recent years that, where appointment to the bench is generally concerned, they need to appoint people who have had experience as acting judges.

Will this be a criterion they apply to the appointment of judges to the Constitutional Court? Will they look to practitioners, rather than academics?

We would submit that they should look to the ranks of academics as well.

There are a number of reasons for doing so, including that academics bring a range of skills and interests that can only add value to the kinds of judgments that the Constitutional Court must give.

But one of the issues that must also be considered is that there are more women in academia than there are in practice at the law, especially at a more senior level.

One former dean of a law faculty

remarked that he believed the reason for this was that women, not being primary breadwinners, can afford to work for the lower salaries offered to legal academics.

I am very dubious about this analysis, and would suggest that the reasons might lie more in the flexibility of academic life, and the more collegiate and less adversarial atmosphere of universities.

Whatever the reason, to exclude academics from consideration as judges is also to

**The number of senior counsel who are black women is too depressing to even talk about**

exclude many women from consideration.

The answer to this might be to say that academics may be appointed, provided they have had some experience as acting judges. In this way, women can get the experience that will make them more acceptable in the view of many on the JSC. I do not think this is necessary, but I concede letting someone try a job is a very effective way of seeing if they can actually do it. However, appointment as acting judge is not in the hands of the JSC, but in the hands of the Judges President in the various courts. Three judges are not required to report on their appointment practices, and they are not the subject of public scrutiny in that no statistics in relation to appointments of acting judges are

published, to my knowledge.

In this particular round of nominations to the Constitutional Court, there will be a number of strong women who will be candidates. However, if you look to the ranks of the office, or wider counsel, the number of women who are up and coming seem to be fewer than might be expected.

There are programmes to try and increase the number of women at the bar, but I would suggest that as society is currently constructed, there will always be fewer women who choose to pursue the rigours of practice at the bar. The role of women as primary caregivers for children is a barrier to any job which has limited flexibility and requires long hours.

The number of women counsel who are black women is too depressing to even talk about, then, race and gender issues conspire to ensure that there is only one black woman still.

How is this problem to be addressed, to ensure there is a pool of skilled and experienced women, black and white, available for selection by the JSC, to appointments to the bench? One way is to revise and strengthen the practice of appointing judges from the ranks of academics. Another is to monitor and support the appointment of women as acting judges. However, we cannot simply hope that change will happen.

We must have processes which support change. Looking to the ranks of existing skills and judges is not sufficient for the transformation of the legal profession.

Allen Tilley is a trustee at The Women's Legal Centre, a not-for-profit law firm which advances women's rights by conducting constitutional litigation and advocacy on gender issues.



The JSC should look to the ranks of academics for Constitutional Court judge nominees, says the writer

PICTURE: CHRIS COLLINGS

## Free Legal Advice to Women

The Centre handles a large number of queries from women seeking advice or from those seeking advice on behalf of other women. We help in these matters by referring women to the appropriate agencies for further assistance, and by providing relevant and useful information. Where the query has a relevant public interest component, the Centre will consider pursuing it. The following queries were dealt with during 2009:

Categories	
Divorce	335
Maintenance Act	213
Domestic violence	116
Inheritance	98
Muslim personal law	92
General	78
Custody and access	73
Labour	65
Customary law	64
Housing	59
Domestic partnership	57
Family	56
Pension	38
Evictions	30
Damages	26
Debt	25
Sexual harassment	21
Criminal	15
Rape	13
Health including HIV	7
Research	5
Child sexual abuse	4
Contract	4
Abortion	3
Interdict	2
Unfair discrimination	2
Sex work clinic	34
<b>Total</b>	<b>1535</b>

## Staff

Jennifer Williams – *Director*  
 Mushahida Adhikari – *Attorney*  
 Hoodah Abrahams Fayker – *Attorney*  
 Cherith Sanger – *Attorney*  
 Noluthando Ntlokwana – *Attorney (resigned in June 2009)*  
 Stacey-Leigh Manoek – *Attorney (joined June 2009)*  
 Jody Lee Fredericks – *Legal advisor*  
 Sharon Brooks – *Administrator*  
 Ingrid Johnson – *Litigation secretary*  
 Aretha Louw – *Litigation secretary*  
 Nwabisa Ntshibelo – *Receptionist*  
 Estelle Malgas – *Office assistant*

## Trustees

Shaamela Cassiem – *chairperson*  
 Shereen Mills  
 Happy Masondo  
 Teboho Makhalemele  
 Alison Tilley  
 Mary Caesar (*on sabbatical*)

## Funders

Claude Leon Foundation  
 Ford Foundation  
 Finnish Embassy  
 Heinrich Boll Foundation  
 Hivos  
 National Lotteries Board  
 Norwegian Centre for Human Rights  
 The Open Society Foundation  
 The Open Society Initiative for Southern Africa  
 Sigrid Rausing Trust  
 Wallace Foundation

**Women's Legal Centre Trust**  
(Registration Number IT 3486/98)  
(NPO Registration Number 032/685/NPO)

**Annual Financial Statements**  
**For the year ended December 31, 2009**

**Women's Legal Centre Trust**  
(Registration Number IT 3486/98)  
**Annual Financial Statements for the year ended 31 December, 2009**

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Income Statement	6-7
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Annexure	10-11
 <b>General Information</b>	
Country of registration and domicile	South Africa
Registered Office	7 <sup>th</sup> Floor, Constitution House 124 Adderley Street Cape Town 8001
Postal address	P O Box 5356 Cape Town 8000
Bankers	Standard Bank
Auditors	Ngubane & Co. Inc Chartered Accountants (S.A.)
Trust registration number	IT 3486/98



**Women's Legal Centre Trust**  
 (Registration Number IT 3486/98)  
**Annual Financial Statements for the year ended 31 December 2009**

**Statement of Trustees' Responsibility and Approval**

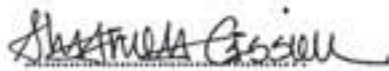
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The trustees are responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The auditors are responsible for reporting on the fair presentation of the financial statements.

The trustees are also responsible for the trust's systems of internal financial control. These are designed to provide reasonable, but not absolute, assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of assets, and to prevent and detect misstatement and loss. Nothing has come to the attention of the trustees to indicate that any material breakdown in the function of these controls, procedures and systems has occurred during the year under review.

The financial statements have been prepared on the going concern basis, since the trustees have reason to believe that the Trust has adequate resources in place to continue in operation for the foreseeable future.

The annual financial statements which appear on pages 4-9 were approved by the trustees and are signed on their behalf by:

  
 Trustee

June 26, 2010  
 Date

  
 Trustee

2 July 2010  
 Date





**NGUBANE  
& CO.**

• Chartered Accountants • Consultants • Forensic Investigators •

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Offices also in Johannesburg,  
Durban, Mafikeng, Pretoria &  
Polokwane

## Report of the Independent Auditors

### To the Trustees of Women's Legal Centre Trust

We have audited the accompanying annual financial statements of Women's Legal Centre Trust, which comprise the balance sheet and the income statement as at 31 December 2009, a summary of significant accounting policies and other explanatory notes, as set out on pages 4 to 9.

### Trustees' Responsibility for the Financial Statements

The trust's trustees are responsible for the preparation and fair presentation of these financial statements in accordance with the generally accepted accounting practice in the manner required by the Trust Deed. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of annual financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with South African Auditing Standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the annual financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the annual financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the annual financial statements, whether due to fraud or error.





• Chartered Accountants • Cost Auditors • Forensic Investigations •

In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the annual financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the trustees, as well as evaluating the overall presentation of the annual financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### Opinion

In our opinion, the annual financial statements present fairly, in all material respects, the financial position of the Trust as of 31 December 2009 and of its financial performance for the year then ended in accordance with the 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 generally accepted accounting practice in that assets are fully depreciated in the year of acquisition.

#### Supplementary Information

We draw your attention to the fact that the supplementary annexure set out on pages 10 to 11 do not form part of the annual financial statements and is presented as additional information. We have not audited the information contained in the annexure and its content is therefore not part of our audit opinion.

*Ngubane & Co. Inc.*

Ngubane & Co. Inc. CA (SA)  
Registered Auditors  
Cape Town  
06 July 2010



**Women's Legal Centre Trust**  
(Registration Number IT 3486/98)  
**Annual Financial Statements for the year ended 31 December 2009**

**Trustees' Report**

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The Trustees have pleasure in submitting the annual financial statements of the Trust for the year ended 31 December 2009.

**Main object**

The main object of the Trust shall be to advance women's rights by conducting constitutional litigation and advocacy on gender issues.

**Trustees**

The trustees of the Trust during the accounting period and the date of this report were:

S. Cassiem (Chairperson)  
A. Tilley  
H. Masondo  
M. Caesar  
S. Mills  
T. Makhalemele

**Post balance sheet events**

The trustees are not aware of any matter or circumstance arising since the end of the financial year that would materially affect the financial position of the Trust.



Women's Legal Centre Trust  
(Registration Number IT 3486/98)  
Annual Financial Statements for the year ended 31 December, 2009

Balance Sheet

	NOTES	2009 R	2008 R
<b>ASSETS</b>			
Current assets		4,975,673	1,235,312
Deposits and prepayments		56,044	57,190
Trade and other receivables		89,922	1,716
Cash and cash equivalents	2	4,829,707	1,176,406
<b>Total assets</b>		<b>4,975,673</b>	<b>1,235,312</b>
<b>CAPITAL AND LIABILITIES</b>			
Capital and reserves		4,773,167	1,145,521
Initial donation		100	100
Retained funding	3	4,773,067	1,145,421
Current liabilities		202,506	89,791
Trade and other payables		117,985	89,792
Leave provision		84,522	-
<b>Total capital and liabilities</b>		<b>4,975,673</b>	<b>1,235,312</b>

Women's Legal Centre Trust  
(Registration Number IT 3486/98)  
Annual Financial Statements for the year ended 31 December, 2009

Income Statement

	NOTES	2009 R	2008 R
<b>INCOME</b>		<b>7,997,016</b>	<b>3,184,945</b>
Donations and grants	4	5,303,597	2,921,269
Cost recovery		17,616	7,063
Interest received		116,660	123,293
Other income	5	2,559,143	133,320
<b>EXPENDITURE</b>		<b>4,369,370</b>	<b>3,412,074</b>
Employment costs		2,321,319	1,699,931
Salaries & benefits		2,231,115	1,526,063
Contributions		19,597	8,925
Supervision		31,992	27,410
Consultancies		38,365	112,689
Recruitment costs		250	24,844
Litigation costs		647,727	630,182
Advocacy & training		118,413	102,123
Information costs		289,566	228,822
Newsletters		23,282	36,124
Annual report		39,458	51,487
Law books & subscriptions		50,266	27,147
Material development		115,426	50,870
Resource centre		13,880	10,405
Volunteer costs		1,505	704
Distribution costs		9,141	3,080
Study tour hosting		-	20,358
Website		10,070	10,478
Internet/computer support		26,538	18,169
Governance costs		98,822	68,640
Trust costs		22,860	68,640
AGM and 10 year anniversary		75,962	-
Administrative costs		471,494	435,876
Bank charges		20,007	19,491
Interest paid		252	893
Equipment rental and maintenance		40,809	34,266
Rental of offices and parking bays		300,414	269,340
Stationery and postage		26,669	29,143
Supplies		7,575	3,649
Sundries		8,140	6,084
Telephone and fax		67,628	73,010



Women's Legal Centre Trust  
 (Registration Number IT 3486/98)  
 Annual Financial Statements for the year ended 31 December, 2009

Income Statement (Continued...)

	NOTES	2009 R	2008 R
Audit and accounting		174,590	149,055
Audit fees		53,554	60,363
Accounting fees		121,036	88,692
Professional fees		28,891	30,232
Law Society fees		7,202	4,399
Insurance		15,480	19,533
Professional indemnity		6,209	6,300
Travel costs		44,505	10,450
Organisational and staff development		5,144	29,237
External evaluation		43,026	-
Capital expenditure		125,873	27,526
Office relocation		120,603	-
Computers & office equipment		-	26,226
Furniture & fittings		1,760	1,300
Equipment		3,510	-
<b>NET SURPLUS OR (DEFICIT)</b>		<b>3,627,646</b>	<b>(227,129)</b>
OPENING RETAINED FUNDING		1,145,421	1,372,550
CLOSING RETAINED FUNDING		4,773,067	1,145,421



Women's Legal Centre Trust  
(Registration Number IT 3486/98)  
Annual Financial Statements for the year ended 31 December, 2009

Notes to the Financial Statements

1. SUMMARY OF ACCOUNTING POLICIES

The following are the principal accounting policies of the Trust 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, except as otherwise indicated.

Revenue

Revenue comprises funding received from donations and grants. Revenue is recognised when it is received. Grant periods do not always correlate to the financial year end of the Trust and therefore balance of retained funding per funder is for expenditure to be incurred in the next financial year in terms of the funding contract.

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 against the funding received for this purpose.

A detailed fixed register is maintained and is available for inspection.

	2009 R	2008 R
<b>2. CASH AND CASH EQUIVALENTS</b>		
Current accounts	62,712	8,754
Trust bank account	12,399	21,993
Investment accounts	2,924,582	1,143,659
Foreign funds held at bank	1,829,375	-
Petty cash	639	2,000
	<u>4,829,707</u>	<u>1,176,406</u>
<b>3. RETAINED FUNDING ANALYSED BY FUNDER</b>		
Finnish Embassy	182,357	215,025
Ford Foundation	-	39,183
Heinrich Bohl Stichting	(24,327)	-
HIVOS	374,482	14,945
National Lotteries Fund	315,531	-
OSISA	141,609	-
Sigrid Rausing Trust	608,070	128,923
General Funds	3,175,345	747,345
	<u>4,773,067</u>	<u>1,145,421</u>

Women's Legal Centre Trust  
 (Registration Number IT 3486/98)  
 Annual Financial Statements for the year ended 31 December, 2009

Notes to the Financial Statements (Continued..)

	2009	2008
	R	R
<b>4. GRANTS AND DONATIONS</b>		
Claude Leon Foundation	150,000	-
Ford Foundation	681,895	-
Foundation for Human Rights	-	-
Finnish Embassy	275,600	432,250
Heinrich Bohl Stiftung	131,250	-
HIVOS	987,833	755,029
National Lotteries Fund	775,870	-
NCHR	329,305	298,630
Open Society Foundation for South Africa	500,000	700,000
OSISA	271,802	-
Save the Children Sweden	-	-
Sigrid Rausing Trust	608,070	732,360
Wallace Global Fund	588,503	-
Other donations	3,469	3,000
	<u>5,303,597</u>	<u>2,921,269</u>
<b>5. OTHER INCOME</b>		
Contracted service - Study Tour	-	133,320
Settlement re: lease cancellation	681,768	-
Sponsorships for 10th Anniversary	48,000	-
Gruber Prize	1,829,375	-
	<u>2,559,143</u>	<u>133,320</u>

**6. TAXATION**

The organisation is exempt from income tax under 10(1)(c)(i) 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 2009

	Total	Claude Leon Foundation	Ford Foundation	Finch Embassy	Heinrich Böhl Stiftung	HRVOS Foundation	National Lotteries Fund	NCHR	Open Society Foundation	OSISA	Sigrid Rausing Trust	Wallace Global Fund	General Funds
<b>INCOME</b>	<b>7,997,916</b>	<b>150,000</b>	<b>681,595</b>	<b>281,015</b>	<b>131,250</b>	<b>987,833</b>	<b>775,870</b>	<b>339,654</b>	<b>500,000</b>	<b>271,802</b>	<b>608,070</b>	<b>588,502</b>	<b>2,681,125</b>
Donations and grants	5,303,587	150,000	681,895	275,600	131,250	987,833	775,870	329,305	500,000	271,802	608,070	588,502	3,470
Interest received	118,600			5,415				10,349					100,846
Cost recovery	17,618												17,618
Other income	2,559,143												2,559,143
<b>EXPENDITURE</b>	<b>4,369,370</b>	<b>159,000</b>	<b>721,078</b>	<b>313,682</b>	<b>155,978</b>	<b>628,256</b>	<b>460,339</b>	<b>339,654</b>	<b>500,000</b>	<b>130,153</b>	<b>128,922</b>	<b>588,502</b>	<b>253,125</b>
Employment costs	2,321,319	115,690	409,050	107,750	48,452	300,000	368,878	159,500	270,000	120,000	57,295	260,282	84,532
Litigation costs	647,727		58,674	77,249	47,323	70,000	1,220	111,079	100,000			182,182	
Advocacy & training	118,413		29,311	26,223	11,171	4,000		19,575		193		27,840	
Information costs	280,566		22,703	94,980	19,945	151,938							
Trust costs	98,822	27,982							22,800				48,000
Administrative costs	471,494	6,448	111,548	3,514	23,437	78,708	60,241	49,500		10,000		98,098	
Audit and accounting	174,580		40,016	3,960	5,250				53,729		71,627		
Professional fees	28,881					15,480			13,411				
Travel costs	44,505		44,505										
Organisational and staff development	5,144					5,144							
External evaluation	43,028					3,026			40,000				
Capital expenditure	125,873		5,270										120,603
<b>NET SURPLUS OR DEFICIT</b>	<b>3,627,546</b>	<b>-</b>	<b>(39,183)</b>	<b>(32,667)</b>	<b>(24,328)</b>	<b>359,537</b>	<b>315,531</b>	<b>-</b>	<b>-</b>	<b>141,609</b>	<b>479,148</b>	<b>-</b>	<b>2,428,009</b>
<b>OPENING RETAINED FUNDING</b>	<b>1,145,421</b>		<b>38,183</b>	<b>215,025</b>		<b>14,945</b>					<b>138,923</b>	<b>-</b>	<b>747,345</b>
<b>CLOSING RETAINED FUNDING</b>	<b>4,773,007</b>	<b>-</b>	<b>-</b>	<b>182,358</b>	<b>(24,328)</b>	<b>374,482</b>	<b>315,531</b>	<b>-</b>	<b>-</b>	<b>141,609</b>	<b>608,071</b>	<b>-</b>	<b>3,175,345</b>

The supplementary information presented does not form part of the financial statements and is unaudited

"The WLC has used the theme of San(bushmen) women for this Annual Report. All of the photographs used in this publication were taken by Neil Rusch for the book titled *"Cederberg Rock Paintings"* written by John Parkington which depicts photographs of the San tribes in rock art in the Cederberg, Western Cape area. We extend our special thanks to Neil Rusch for allowing us use his photographs in this publication free of charge.

In this Annual Report we have exclusively used photographs of San women in rock art because we wish to celebrate San women's invaluable contributions towards the survival of their people and specifically to dismiss the misconceptions of the sexual division of labour within the San tribes.

The San are known as a "hunter-gatherer" society in terms of which men are the hunters and women are the gatherers. The latter has been constructed as a lesser role in that any person capable of "walking" is said to be able to perform whilst the former has been constructed as the basis of the San's survival and sits at the heart of the evolution of the human species. It has further been said that women are naturally not inclined to hunt and thus opt to attend to gathering activities.

This is a myth that is factually incorrect as gathering requires skill and knowledge of a wide range of vegetation. In addition, San women have a high status in the San society and are respected as leaders who have decision making powers and take ownership of water holes and foraging areas which provide water and food sources and directly contribute to the survival of the San Tribes.

The negative and harmful gender constructions that the hunter-gatherer myth has created supports the notion of gender discrimination being unfounded to the extent that it is based on the biological and physiological differences between men and women and is comparable to the many and more other (and in some cases more modern) gender constructions that support gender inequality and the unfair discrimination that flows from inequality. These constructions continue to feed the hardship and struggles that women face despite their many contributions to their families well-being, the labour market, economy and society at large. Women would contribute to society in different and more directly beneficial ways should gender roles not have been prescribed so strictly as these gender roles have dictated women's abilities.





**WOMEN'S LEGAL CENTRE**





**WOMEN'S LEGAL CENTRE**