

COMMUNITY  
LAW CENTRE  
1990-2010

*20 years of excellence*

and

Annual Report 2009



UNIVERSITY of the  
WESTERN CAPE

A place of quality, a place to grow, from hope to action through knowledge



*20 years of excellence*  
and  
**Annual Report 2009**



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- Ms Daksha Kassin (Children's Rights Project, until August)
- Ms Bianca Robertson (Children's Rights Project, from October)
- Mr Lukas Muntingh (Civil Society Prison Reform Initiative)
- Ms Helène Combrinck (Gender Project, until July)
- Professor Jaap de Visser (Local Government Project)
- Dr Lilian Chenwi (Socio-Economic Rights Project)

## Staff

**Director:** Professor Nico Steytler

**Children's Rights Project:** Daksha Kassin (co-ordinator until August), Bianca Robertson (co-ordinator from October), Lorenzo Wakefield (researcher since July), Benyam Mezmur (doctoral intern), Janine Demas (administrator), Professor Julia Sloth-Nielsen (research fellow), Dr. Jacqui Gallinetti (research fellow)

**Civil Society Prison Reform Initiative:** Lukas Muntingh (co-ordinator), Jamil Mujuzi (doctoral intern until July)

**Local Government Project:** Professor Jaap de Visser (co-ordinator), Annette May (researcher); Dr. Yonatan Fessha (post doctoral researcher), Douglas Singiza (doctoral intern), Zemelak Ayele (doctoral intern since April), Valma Hendricks (administrator)

**Gender Project:** Helène Combrinck (co-ordinator until July), Lorenzo Wakefield (research assistant until June)

**Socio-Economic Rights Project:** Dr. Lilian Chenwi (co-ordinator), Siyambonga Heleba (researcher until August), Rebecca Amollo (doctoral intern), Renchia du Plessis (administrator), Dr. Christopher Mbazira (research fellow)

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**Office management:** Trudi Fortuin (office manager), Candice Pretorius (student assistant), Keathélia Saptó (receptionist)

## Research Fellows

Professor Kader Asmal

Professor Julia Sloth-Nielsen

Dr Jacqui Gallinetti

Dr Christopher Mbazira

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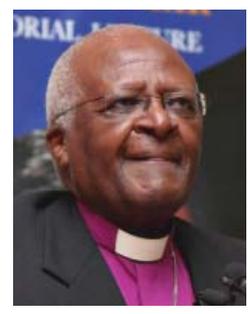


## Messages of support

### Archbishop Desmond Tutu, 13 August 2010

The Community Law Centre continues to play a pivotal role in the community in the promotion of good governance, and protection of vulnerable members of our society who ordinarily do not have access to legal recourse.

Dullah Omar's vision continues to be upheld and I feel privileged to have had this long association with the Centre. As you head into the future, may you continue to provide that unconditional and unsurpassed assistance to the marginalized as well as give policy direction in issues that affect our democracy.



Archbishop Desmond Tutu

### The Rector, Professor Brian O'Connell, University of the Western Cape

The Community Law Centre (CLC) at the University of the Western Cape (UWC) epitomizes everything that the institution values. It produces new knowledge of the highest standard and that knowledge relates directly to the development of a keener sense of what it means to be human and how humans ought to relate to one another. Congratulations to CLC and long may it continue to serve UWC well and through it our very notion of humanity.



Professor Brian O'Connell

### The Dean of Research, Professor Renfrew Christie, University of the Western Cape, 23 August 2010

#### Happy Birthday to the Community Law Centre !

It was by no means certain that the CLC would make it. My archives from 1990 contain a letter from me to my staff noting that we were to share offices with the CLC; that Dullah Omar's life was under threat and attack; and that the staff must be especially careful about safety!

A year or two later we put into one tiny room three people who would later become Cabinet Ministers or achieve similar rank: Zola Skweyiya, Bridgitte Mabandla and Bululani Ngcuka, with Kader Asmal kibbutzing! Later still, the "Arch", our Patron, asked "how do so few people do so much work?"

Chairing the Board of Trustees for fifteen years has given me great satisfaction and pride. To all the CLC staff and students, past and present, I say: "Thank you and congratulations on your wonderful achievement!"



Professor Renfrew Christie

### The Dean, Professor Julia Sloth-Nielsen, Law Faculty, University of the Western Cape, 17 August 2010

The Faculty of Law is proud of the Community Law Centre as a premier institution of research and policy development in South Africa and increasingly, throughout Africa. The close relationship has seen the Community Law Centre contribute significantly to constitutional development, to law reform, to post-graduate student development in the Faculty to publications, all of which have enhanced the profile of the University and the Faculty for two decades. We are proud of our association with the CLC!



Professor Julia Sloth-Nielsen



# *Celebrating 20 years of excellence*

an historical discursion



## Forging the new South Africa

The Community Law Centre was borne out of the struggles of the 1980s. From the mid-1980s, UWC, under the leadership of Professor Jakes Gerwel, was a 'liberated zone' in the repressive apartheid state. In this home of the left, staff and students prefigured what South Africa could be like – a non-racial, non-sexist, democratic state.

Law, then, was seen as a tool in the hands of the illegitimate state, used to reproduce the status quo. Yet, there were possibilities of exploiting the contradictions in the legal

system towards a better future. John Murphy, a lecturer in the Law Faculty (now judge of the North Gauteng High Court), developed the idea of establishing a centre that would provide legal services to the community as well as engaging in research on a new legal regime for South Africa. The Ford Foundation, in the person of Alice Brown, provided a grant in 1987 for the establishment of a centre, with two objectives – providing direct legal assistance to indigent persons and fostering research in human rights and democracy.

The second objective never got off the ground. The Law Faculty, then reflecting the old order, blocked any attempts to appoint researchers, who by their very calling were to be subversive of the legal establishment. At the time, the entire student body was on boycott because of a dispute between staff and students in the Law Faculty, pitting the old order against the new. The casualty was the centre; while a legal aid clinic opened its doors in 1987, the research and advocacy component remained dormant.

Prof Gerwel forged ahead; the idea of a research institute would come to fruition in the darkest hour of apartheid while the tyres were burning on Modderdam Road. In 1989, shortly after Nico Steytler joined the Law Faculty as head of the Department of Public Law, he

and John Murphy drafted a constitution for the Community Law Centre, which would focus on research and advocacy. Then, already, Adv Dullah Omar had been earmarked to lead this enterprise. Omar was a leading intellect of the left, with a legal practice focusing on human rights and playing a strong leadership role in lawyers' and community organisations.

The timing for the Centre – though not anticipated – could not have been better. The unforeseen unbanning of the ANC and other liberation movements on 2 February 1990, heralding the period of negotiating for a new South Africa, required that a new democratic state be conceived. The preparatory work for the Community Law Centre was by then done; all that was required was for Omar – once he had secured suitable offices from the University



Professor Jakes Gerwel

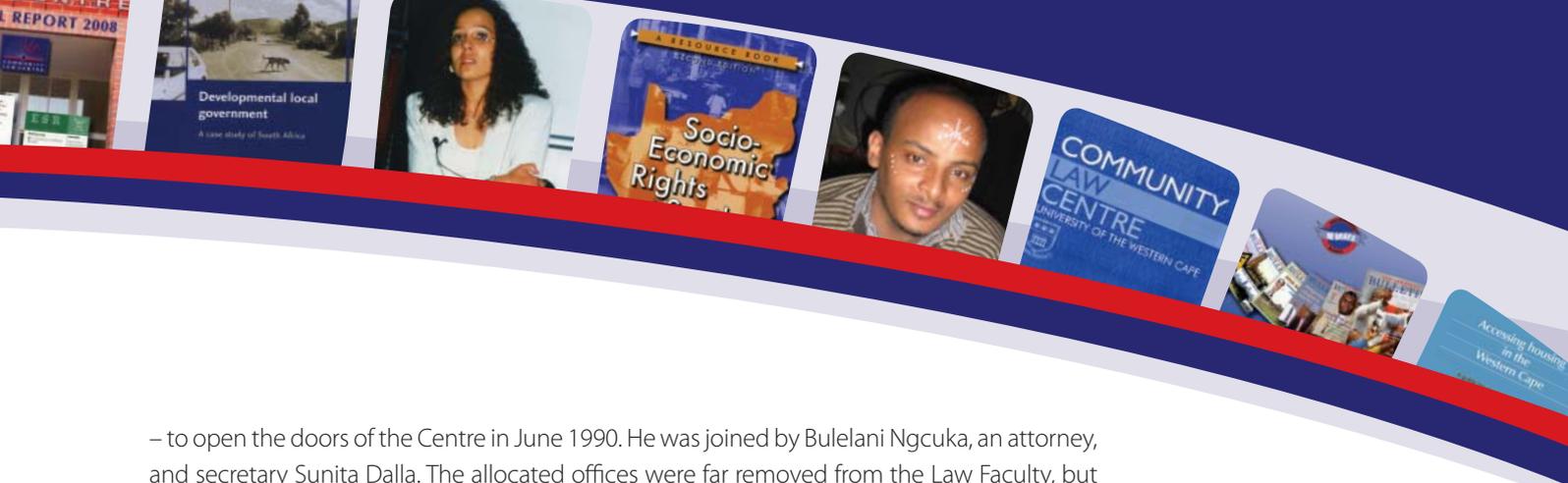


Adv Dullah Omar



Bulelani Ngcuka





– to open the doors of the Centre in June 1990. He was joined by Bulelani Ngcuka, an attorney, and secretary Sunita Dalla. The allocated offices were far removed from the Law Faculty, but right next to the Dean of Research, Prof Renfrew Christie, who over time became an institution in the Centre. The Board of Trustees included Archbishop Tutu, who would actually attend board meetings, along with the community activists Christmas Tinto and Lucy Nyembe.



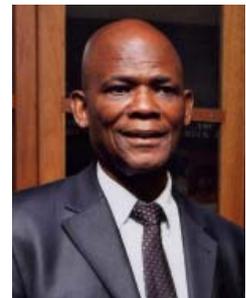
Board of Trustees meeting in 1993: Professor Jeremy Sankin, Advocate Dullah Omar, Professor Flip Swart, Peter Volmink, Advocate Steve Majiedt, Professor Nico Steytler

Crammed into two offices, the mission of the Centre changed dramatically: from a research institution looking towards the future, it became directly involved in negotiating that future. From the outset, Omar made his intention clear when he wrote to Professor Gerwel: 'My plan for our centre is to participate in the debate and discussion in a way which enables us to be involved in future constitution-making in our country.' This happened on a significant scale with the return of exiles. Dr Zola Skweyiya, the head of the ANC legal department and Constitutional Committee, and Brigitte Mabandla, also from the ANC legal department, joined the Centre. Although they were not staff members, Albie Sachs and Kader Asmal (the first professor in human rights in the Law Faculty) worked closely with the Centre. Collectively, as members of the ANC Constitutional Committee, these individuals participated in the constitutional negotiations, charting the course towards the new South Africa. The Centre became a major contributor to policy formulation for the new constitutional order, focusing on the structure of the state, the electoral system, gender issues, children's rights, policing and the transformation of the judiciary.



Amy Biehl

Attracted by the Centre's work, a number of students from abroad volunteered their services. One was Amy Biehl, a student from the USA who joined the Centre in 1992 as a voluntary researcher on gender. Having spent more than a year at the Centre, her time in South Africa ended tragically when she was murdered by a mob of young people while dropping off friends in Gugulethu.



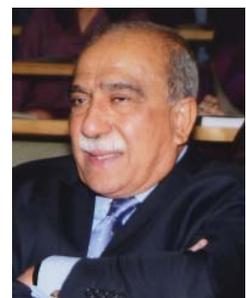
Dr Zola Skweyiya



Brigitte Mabandla



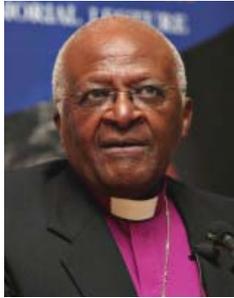
Justice Albie Sachs



Professor Kader Asmal



Chief Justice Arthur Chaskalson



Archbishop Desmond Tutu

The 1994 democratic election saw most of the Centre's staff being elected to Parliament and elevated to high political office. The Centre's ethos and direction, however, had been firmly set during its founding years.

When Dullah Omar sadly passed away after a long illness in 2004, the Centre instituted an annual memorial lecture to pay tribute to his rich legacy on human rights and democracy. The first lecture was given by his colleague and co-founder of the Centre, Bulelani Ngcuka, the former National Director of Public Prosecutions. The second lecture was delivered by another founding member, Minister

Brigitte Mabandla, in 2005. Chief Justice Arthur Chaskalson spoke in 2006 and Minister Trevor Manuel in 2007. A trustee of the Centre, emeritus Archbishop Desmond Tutu, graced the occasion in 2008, while in 2009, Dr Navanethem Pillay, the UN High Commissioner for Human Rights, gave an inspiring lecture on women's rights in the international human rights systems. In a short space of time, the Annual Memorial Lecture has become an important event in the calendar of the University.



Minister Trevor Manuel



Dr Navanethem Pillay



2nd Dullah Omar Memorial Lecture with Minister Brigitte Mabandla

## Shaping the new democracy and connecting with the rest of Africa

With the departure of original staff members, the Centre not only had to be re-staffed but also had to refocus its activities. In 1994 Nico Steytler was appointed as director and Julia Sloth-Nielsen and Sandy Liebenberg as researchers. From the heady days of being intimately involved in negotiating a constitutional settlement, the Centre's activities moved towards assisting in the transformation of the legal order befitting the new democratic state, giving form and content to the constitutional framework. The Centre sought to provide the new state with research assistance and advice, placing its resources and expertise at the disposal of Parliament, government ministries and departments and other state institutions such as the Human Rights Commission and the Law Reform Commission.





Signing ceremony of EU grant for the Socio-Economic Rights Project

Foremost was the drafting of the final Constitution by the Constitutional Assembly that commenced in February 1995. Steytler and Liebenberg were appointed as technical advisors to two important theme committees, the structures of national and provincial government and the Bill of Rights, respectively. In addition, the Centre submitted a number of proposals and memoranda to the Constitutional Assembly on children’s rights, women’s rights, the public protector, the human rights commission, the prosecuting authority, and the structure of the courts.

After the adoption of the 1996 Constitution, the focus of the Centre shifted to the analysis and development of appropriate policy and legislation to give effect to the constitutional commitments. For the next few years, this occupied the Centre’s time and energy. It can, however, be said that the road to ruin is paved with good laws and exemplary policies. In the 10th annual report in 2000 it was noted that

“ [a]t the start of the new millennium, South Africa faces a number of interlated challenges, including poverty, the HIV/AIDS pandemic, crime, the subordination of women and children who continue to bear the brunt of apartheid’s legacy. It is no longer enough simply to draft sound policies and laws, although these are obviously indispensable. Increasingly, the Centre’s work is focused on the effective implementation and functioning of laws and institutions that are critical to human rights and democracy. This requires close monitoring of the experiences of vulnerable and disadvantaged groups and the impact of policies and laws on these groups. ”



Professor Julia Sloth-Nielsen



Sandy Liebenberg



The need to engage critically with government on the implementation of laws and policies has become imperative and the Centre, as illustrated below, has sought to contribute in this area as well.

From its inception, the Centre's focus was not only on South Africa, but also on the rest of Africa. Its first annual report of 1990 already noted that the Centre's central objective 'is to take its place as part of a continental African network of learning with a commitment to Africa'. This objective came to fruition in the new millennium with work on children's rights in Mozambique, Lesotho, Southern Sudan and Swaziland. More recent examples of our continental footprint are the following:

- The Centre has been given observer status at the African Commission on Human and People's Rights and is only the second university institution to have concluded a Memorandum of Understanding in terms of which it provides research assistance to the Commission.
- The Children's Rights Project concluded an agreement with the United Nations Children's Fund (Unicef) whereby it will make available expertise for Southern and East African governments on domesticating the Convention on the Rights of the Child.
- The Centre's Civil Society Prison Reform Initiative (CSPRI) has been commissioned to investigate pre-trial detention and case-flow management in Zambia and Malawi.



The constitutional enterprise of realising human rights and democracy in South Africa has been firmly located in international human rights instruments. Not only have they influenced the drafting of the Bill of Rights, but the Bill's interpretation must take such instruments into account. The Centre has actively promoted compliance with international human rights law. The Children's Rights Project's journal, *Article 40*, is named after the provision in the Convention on the Rights of the Child dealing with child justice. The expertise of the Centre in this area has been widely recognised, as the following two examples illustrate:

- At the request of the Office of the High Commissioner for Human Rights and the United Nations Counter-Terrorism Implementation Task Force (CTITF), the Civil Society Prison Reform Initiative (CSPRI) developed a Basic Technical Reference Guide on detention whilst countering terrorism.
- The Socio-Economic Rights Project was an important player in an international NGO Coalition that drove the international campaign for the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which was adopted in 2008 and opened for signature and ratification in 2009.



This year the Centre has launched a two-year Parliamentary Programme, funded by the European Union, to promote constitutional rights using the leverage of international human rights law. On the basis of South Africa's international commitments, the aim is to strengthen parliamentary oversight in order to enhance government accountability and to strengthen participatory democracy by seeking and creating more opportunities for civil society to interact with Parliament.





## Focus areas

Given the enormity of the challenges facing the new South Africa in the area of human rights and democracy, the Centre has chosen those areas that are concerned with persons exposed to high vulnerability and marginalisation – children, women, the poor and those in conflict with the law, including prisoners. The rights approach has been complemented by our work on local government and decentralisation, focussing on how the government closest to the poor and most marginalised groups in society can provide services responsively in the most efficient and effective way.

The Centre has organised itself through a number of projects. Some were there from the beginning while others evolved over time. Although research was mostly project-based, there have also been a number of joint initiatives where projects pooled resources and explored the crosscutting nature of issues. One such example was the investigation into the application of socio-economic rights when basic municipal services are privatised or outsourced.

## Children's rights

In its first year the Centre's agenda for action included 'specific issues relating to gender, family and children, their rights and future and their place in a constitution for a non-racial democratic non-sexist South Africa'. A Children's Rights project emerged, which focused on children in trouble with the law. The campaign in 1992 was not only concerned with the release of juveniles kept in adult prisons, but also with the fact that there was no system of juvenile justice. Over the years, the project, under the leadership of Julia Sloth-Nielsen, was intimately involved in devising such a system. This eventually found expression in the new Child Justice Act of 2008, which came into operation on 1 April 2010. The Centre contributed much to the Act through numerous pilot projects, participation in innumerable meetings and fora and submissions to Parliament, slowly pushing the relevant government departments and Parliament in the direction of producing the most innovative child justice system on the continent and a leading example internationally. The Act and its implementation are a testimony to the research and advocacy work of Julia Sloth-Nielsen, Charlotte McClain, Jacqui Gallinetti, and Daksha Kassan. Through their work Sloth-Nielsen and Gallinetti have established themselves as world experts on the topic and are employed by Unicef and international NGOs to provide expertise to other parts of the continent.

The project's work was not confined to child justice; the focus included family law and played a significant role in shaping the Children's Act of 2008, as well as drafting some of the regulations in terms of this Act. Charlotte McClain also devoted much time to developing policy on children with disabilities.

After obtaining a doctorate, Sloth-Nielsen moved in 2000 to a professorship in the Law Faculty, but continued to work closely with the Centre as a research fellow. Her successor, Jacqui Gallinetti, took the project to further heights before she, too, having obtained a doctorate, took up a teaching position in the Law Faculty at the beginning of 2009. Daksha Kassan then took over the coordinatorship of the project and Lorenzo Wakefield was appointed as a researcher. Bianca Robertson recently joined the Centre as the project's new coordinator.



Charlotte McClain



Dr Jacqui Gallinetti

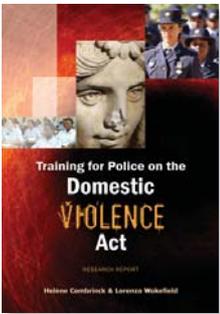


Daksha Kassan





Helène Combrinck



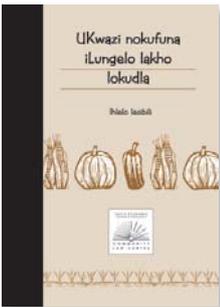
## Women and gender

Brigitte Mabandla initiated the women and human rights project with the clear objective of promoting gender equality in the interim Constitution. Sandy Liebenberg continued with this project in respect of the final Constitution and, after its adoption, focused on the gender implications of the various rights and their formulation in the Bill of Rights. Part of the project was also to incorporate international human rights standards relating to women's equal participation in political, social and economic life into national laws and policies.

With a shift of attention to gender equality in the enjoyment of adequate housing, health and security, Liebenberg in due course focused her attention exclusively on socio-economic rights and established the Socio-Economic Rights (SER) project. For the next ten years Helène Combrinck was responsible for the Gender Project, as it became known, paying particular attention to gender-based violence. Path-breaking research was conducted on the granting of bail in sexual offences cases and the implementation of the Domestic Violence Act. Considerable time and resources were devoted to ensuring that the Sexual Offences Act, eventually enacted in 2009, accommodated gender concerns. Innovative research was also carried out on the intersection between gender-based violence and HIV/AIDS.

## Socio-economic rights

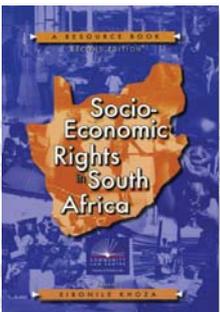
The focus on socio-economic rights could be traced to the speech that the former Chief Justice of India, Judge Bhagwati, gave at the Centre in 1992, entitled 'Social and economic rights – methods of enforcement'. This key focus was taken forward with the establishment of the project on socio-economic rights in 1997. With socio-economic rights entrenched in



Sibonile Khoza

the Bill of Rights, and not as a directive principle of state policy as it is in India, the formidable task was to give content to these rights and explore methods of enforcement. The SER project soon established itself as the premier research institution on these innovative provisions, working in a number of ways: publishing high quality research, producing the journal, *ESR Review* from 1998, driving campaigns and innovatively engaging in *amicus curiae* litigation.

Karrisha Pillay (1997–2000) was an indispensable colleague in the project. After leaving the Centre she became a leading constitutional lawyer at the Cape Bar, yet has shown her continued interest in the Centre by serving as a Trustee on its Board. When Liebenberg was appointed to the chair in human rights at the University of Stellenbosch in 2003, her shoes were filled by Sibonile Khoza, who brought to the Centre a new focus on the right to food. When he left in 2009 for a senior position in the Western Cape Administration, Lilian Chenwi assumed the duties of coordinator and soon, as noted above, established her reputation in the international terrain with her work on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.



Lilian Chenwi

1990–2010

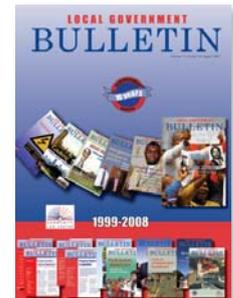


## Local government

Local government was part of the Centre's concerns from the start. The 1990 annual report noted: 'Given the struggles at local level during the 1980s and the need in post-1990 local communities and civic organisations [including the Centre] would be required to focus more and more on how to intervene and ensure delivery of essential services and housing to people. Local government therefore was targeted by the Centre as a special area of intent, study, research and community education.' The Centre's first seminar in October 1990 was on 'the future of the City of Cape Town and local government'. This theme re-emerged a few years later, when the Centre seconded two researchers, Rudolf Mastenbroek and Johann Mettler, to the Portfolio Committee on Local Government to assist in the review of the Local Government Transition Act and drafting of legislation in terms of the new local government dispensation. Since then the Local Government project has grown in leaps and bounds.

Mettler steered the project but was frequently called upon by government to assist, for example, in coordinating the implementation of the Municipal Structures Act in the run up to the local government elections in 2000. In 1998 a Master's student, Jaap de Visser, entered the project. Having had his thesis published as the official guide to provincial interventions in municipalities, he was bound to make his mark in the field. The project devoted much of its energy to making the new local government dispensation work. The *Local Government Bulletin* became the flagship for communicating with all municipalities and stakeholders.

When Mettler applied his expertise to the benefit of South African Local Government Association and De Visser continued his studies in the Netherlands, the work was continued by Geraldine Mettler and Reuben Baatjies. De Visser returned in 2006 to take over the reins of the project. Since then the project has been joined by Annette May, Derek Powell and Phindile Ntliziywana. To reflect its expanded vision and activities, the project is now called the Local Democracy, Peace and Human Security Programme.



Jaap de Visser



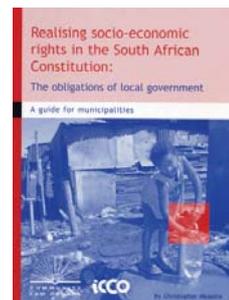
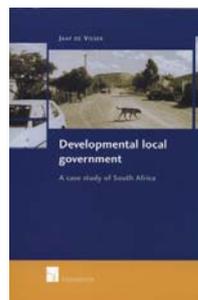
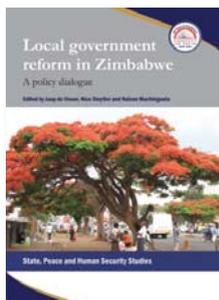
Johann Mettler



Reuben Baatjies



Annette May



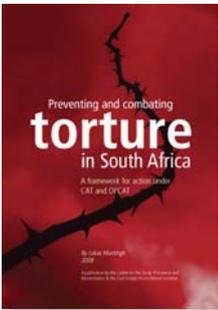
Geraldine Mettler



Lukas Muntingh

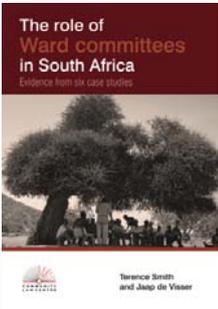
## Criminal justice and prison reform

The Centre devoted considerable attention to the criminal justice system over the years. In the early years, Clifford Shearing started a policing project, focusing on police accountability, the organisation of the police and public order policing. Nico Steytler taught and published on the constitutional aspects of criminal procedure. Fast forward a few years and the Centre became the home of the highly successful Civil Society Prison Reform Initiative (CSPRI). CSPRI started as a joint project between the Children’s Rights Project and Nicro in 2002, with the aim of enabling civil society to play an active role in prison reform. From 2005 CSPRI moved to the Centre under the guidance of Lukas Muntingh and the project has since become the leading authority on sentencing and prisons in South Africa. Based on this expertise, CSPRI has been commissioned to assist further afield in Malawi, Zambia, South Sudan and Palestine.



## Activities

The Centre’s core activities have been research, working with government, advocacy, amicus curiae litigation, community outreach, and teaching and training.

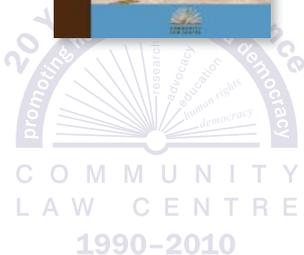
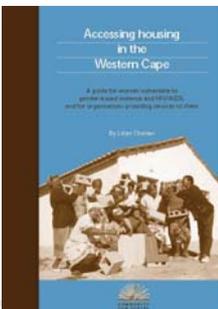


## Research

At the core of the Centre’s activities is cutting edge research, both theoretical as well as empirical, and the Centre has produced high quality work. Two staff members (Sandra Liebenberg and Nico Steytler, in 2003 and 2004 respectively) and a research fellow (Julia Sloth-Nielsen in 2008) have been given a B rating from the NRF and this year Jaap de Visser attained a C rating.

Professor Renfrew Christie, both the chair of the Board and the Dean of Research, has prodded the Centre to produce more accredited peer-reviewed publications. At the Board meeting of 23 March 1993 he coaxed the Centre staff, who at that time were involved in writing the interim Constitution, to ‘publish more papers in scholarly journals’. This has not always been an easy task. Given the primary goal of financial survival, the main task of researchers has been to attract grants and consultancies from international funders, organisations and state departments, who are interested only in seeing research having high impact in the arena of policy and practice. Consulting work is, per definition, not concerned with publications in the public domain.

However, the Centre is committed to producing high-quality peer-reviewed publications not only because it is part of a university, but because through such publications it builds its reputation for innovative research with high social impact. Over the years, the Centre’s researchers have produced numerous books, chapters in books, articles in local and international accredited journals, and research reports. The Centre researchers, doctoral interns and fellows have been responsible for a significant portion of the Law Faculty’s accredited publications. In the last two years, the Centre’s staff have been responsible, either individually or as co-authors, for more than half of the Law Faculty’s publications.





## Working with government

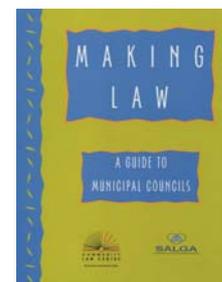
On the strength of their expertise staff members have been consulted by, and appointed to, important state institutions and forums. They have also been commissioned to write numerous laws, policies and guidelines. Already mentioned are the contributions to the drafting of the interim and the final Constitution and the Child Justice Act, the Children's Act and the Municipal Structures Act. Other laws and guidelines that bear the fingerprints of the Centre include: the Western Cape's provincial constitution of 1997, the bail provisions in the Criminal Procedure Act of 1997, the Child Care Amendment Act of 1999, the regulations in terms of the Children's Act, the Domestic Violence Act, minimum sentence legislation, amendments to the Correctional Services Act, the Intergovernmental Relations Framework Act of 2005, the guidelines on the settlement of intergovernmental disputes, the guidelines on provincial supervision and the national prosecution policy directives.

Centre staff have also worked closely with independent state institutions concerned with human rights and law reform. The Centre collaborated with the South African Human Rights Commission on developing an appropriate methodology for fulfilling their constitutional mandate regarding the monitoring of socio-economic rights and members have served on several of its committees. Members were also appointed to various committees of the South African Law Reform Commission, including the Project Committees on Juvenile Justice, Child Care and Protection, Domestic Violence, Simplification of Criminal Procedure, Sexual Offences and the Review of the Child Care Act.

Members were also appointed to independent boards. Sloth-Nielsen served on the National Advisory Council on Correctional Services (1996) and the National Council on Correctional Services (1999). Steytler has been a member of the Municipal Demarcation Board since 2004. He also convened a commission of Salga on the restructuring of the political leadership of that organisation.

At times, staff members were seconded to state institutions on a full-time basis. Charlotte McClain was seconded to the Deputy-President's office to develop a white paper on disability, while Johann Mettler was seconded to the Department of Provincial and Local Government to lead a national task team of local government experts to assist in the establishment of the new local government system in 1999–2000.

Apart from the commissioned research for national and provincial departments, the Centre also provides expertise for international organisations including the World Health Organisation, Unicef, the UN High Commissioner on Human Rights, the World Bank, the Food and Agriculture Organisation, ILO and international NGOs such as the Forum of Federations and Save the Children Alliance.





The Amicus team in the Constitutional Court case on the eviction of residents of Joe Slovo

## Advocacy

Central to the Centre's mission has been the advancement of human rights by engaging with decision-makers through public discourse and advocacy campaigns. The proximity to Parliament has meant that the Centre could regularly engage with legislators on their functions of law making and oversight. Responding to the invitations of Parliament's various committees, the Centre has made numerous written and oral submissions to the Portfolio Committees on Justice and Constitutional Affairs, Local Government, Social Development, Health, Correctional Services and Safety and Security. While it is difficult and arrogant to claim impact, the Centre's impact is evident in several pieces of legislation. In respect of some we have been unsuccessful, but this has not dampened our interest and enthusiasm to continue our engagement with Parliament.

Much of the advocacy work undertaken by the Centre involves building networks and issue-driven coalitions with a wide variety of NGOs and CSOs. For example, the introduction of the new child support grant in 1997 represented a major opportunity for advocacy around a programme that had major implications for disadvantaged women and children. Working with a number of NGOs, the Centre helped spur public debate and the mobilisation of civil society. As a result, key aspects of the programme were improved to provide a more substantial safety net for poor children and caregivers. A further example is the coordination role that the Centre played with regard to the Child Justice Alliance, a network of over 400 organisations and individuals who work towards the realisation of the Child Justice Act.



## Amicus curiae litigation

Given the Court's role as final arbiter and enforcer of the Constitution, the Centre has sought to bring its expertise to bear directly on the development of jurisprudence. The first engagement came in 1994, when Julia Sloth-Nielsen gave expert evidence in *S v Williams*, a case in which the Constitutional Court declared the whipping of juveniles unconstitutional. Breaking new ground, the Centre was admitted as a friend of the court in 2000 in the case that resulted in the watershed *Grootboom* judgment. For the first time the Court held unambiguously that the right to housing can be enforced, although in the circumstances it means no more than the duty of the state to provide a policy to deal with the housing crisis. The Court accepted a number of arguments based on international human rights law raised by the Centre. Not satisfied with the Court's jurisprudence, the Centre engaged the Constitutional Court again – albeit unsuccessfully – on the question of a core minimum content to socio-economic rights in the *Treatment Action Campaign* case. In the cases of *Modderklip, Olivia Rd. Residents*, and *Joe Slovo Residents*, all three dealing with evictions and the right of access to housing, the focus was on remedies. The Centre was commended by the Court for its instructive and useful contributions.





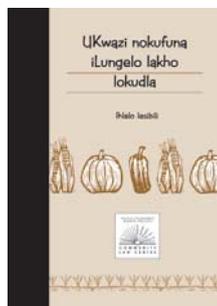
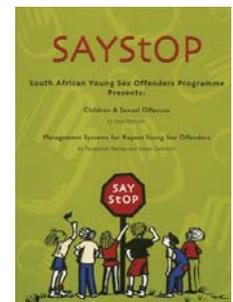
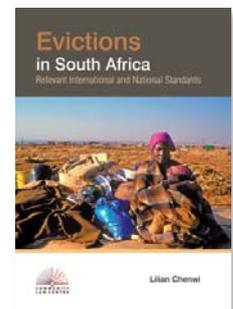
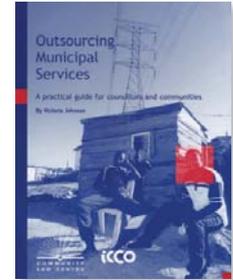
## Outreach

From the outset the Centre was concerned with demystifying the law, making it accessible to a broader public than lawyers. A primary vehicle has been the journals and newsletters the Centre has published over the years:

- *Women and Human Rights Documentation Centre Newsletter* (1997–1999), later renamed *GenderNews* (1999–2005)
- *ESR Review* (1998–) on socio-economic rights
- *Article 40* (1999–) on child justice developments in South Africa
- *Local Government Bulletin* (1999–) on local government laws, policies and praxis
- *SayStop Newsletter* (2001–2) on the diversion programme for young sex offenders
- *Article 19* (2006–2009), advocating a prohibition on corporal punishment.
- *CSPRI Newsletter* (2006–) on prison and sentencing reform
- *CSPRI 30 Days/Izinsuku/Dae* (2007–), a monthly media monitoring newsletter on matters relating to prisons in Africa.

The distribution network of these publications regularly reached over 20 000 persons and institutions in South Africa and abroad. While a number of titles were discontinued due to funding constraints, some have celebrated a tenth anniversary: *ESR Review* in 2008, *Article 40* in the same year, and the *Local Government Bulletin* in 2009.

The Centre has also produced numerous publications to make new legislative developments accessible to the broader public. Some of the publications have also appeared in a number of indigenous languages. For example, *Zihethele*, a plain language guide to the Domestic Violence Act, was produced in four official languages, while the manual *Making law: A guide for municipal councils* (2001) was produced in The Centre has not been confined to the printed word; the Children's Rights Project the executive producer of two videos on child justice.





Jamil Mujuzi



Christopher Mbazira

When the Centre opened its offices in 1990 it inherited the Street Law programme – a project where law students introduced high school learners to law and legal processes. With the advent of democracy the focus shifted towards human rights and democracy, disseminating the values of the rule of law. Peter Volmink and Desmond Grootboom drove this initiative, and both became the national directors of the project when the national office fell under the auspices of the Centre. The national office was eventually relocated back to the University of KwaZulu-Natal and the local project was located at the Law Faculty's legal aid clinic.

### Teaching and training

In circumstances where the general public and civil service have been confronted with revolutionary changes in the law, a strong training component to the Centre's work was inevitable. Training of prosecutors, probation officers, social workers, magistrates, municipal councillors and officials, and members of provincial legislators, has taken the Centre across the length and breadth of the country in hundreds of workshops, reaching thousands of people.

On the academic front, staff members have taught a number of LLM courses in the module on Constitutional Litigation: socio-economic rights, children's rights, gender, criminal justice, intergovernmental relations and constitutional law practice. In 2009, the Centre initiated the first dedicated LLM programme on Local Government and Decentralisation.

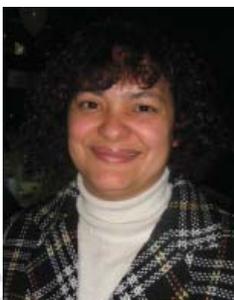
A particular feature of the Centre's teaching endeavour has been the partnership since 1998 with the Centre for Human Rights at the University of Pretoria in presenting the Master's degree in Human Rights and Democratisation in Africa, along with law faculties in Uganda, Ghana, Cameroon, Egypt and Mozambique. During the first semester, the Centre presented modules on democratisation in Africa, an introduction to the South African Bill of Rights and gender issues in the Bill of Rights. In the second semester, it hosted five to six students who attended the LLM courses and wrote their dissertations. Some of the graduates stayed on to complete their doctorates. Danwood Chirwa, Godfrey Odongo, Christopher Mbazira, Yonatan Fessha, Jamil Mujuzi, and Benyam Mezmur contributed immensely to the work of the Centre during their sojourns as doctoral interns.



Yonatan Fessha



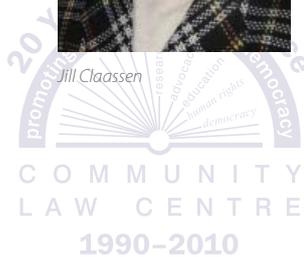
Faranaaz Safodien



Jill Claassen

### Documentation Centre

At the hub of the Centre's research activities has been the Documentation Centre, which had its origins in the Women and Human Rights Project. While a comprehensive collection was first built up on women and human rights under the eye of Faranaaz Safodien (1996–2001), the Doc Centre has extended its scope to include a wide selection of human rights and democracy materials, which are used by both researchers and the broader student community at the University. For the last eight years Jill Claassen has been the driving force, taking the Doc Centre into the digital age.





## The people of the Centre

The Centre has been fortunate to have attracted researchers and support staff who have been committed to its ideals and have devoted their energies to achieving them. It has also been fortunate that people have given their time generously to its welfare by serving on the Board of Trustees (and on the Management Committee). Professor Renfrew Christie should be singled out. Observing the intellectual debates combusting in the office next to his, and spurred on by his own history in the struggle, he joined the Board of Trustees in 1991. As the Dean of Research Christie became a permanent member of the Board in 1995, and has been Chair of the Board for most of the past 15 years. With his probing mind, eye for detail, wise counsel and constant pressing for academic excellence, he has assisted the Centre enormously.

Another key person is Vincent Saldanha. He has been on the Board of Trustees since 1995, first representing the attorneys' profession, and subsequently as a member of the public since his elevation to the bench in 2008. Coming from a public interest law practice at the Legal Resources Centre, he has steadfastly been a guide on how the Centre could better serve disadvantaged and marginalised communities. Other persons who gave much of their time and interest were Dr Rhoda Kadalie, Judge Steve Majiedt, Reverend Trevor Steyn (representing Archbishop Tutu) and Advocate Anwar Albertus SC.

The fact that the Centre has been able to perform well is attributable to persons who have been attracted principally by the cutting-edge nature of its work and the demonstrable impact of its engagements. The Centre has only been able to offer high-quality researchers university-based salaries on the insecure footing of annual contracts, and few people can survive for long in an environment where time has to be juggled between fund raising, research, teaching and advocacy. Many of the researchers have thus moved on to senior permanent positions in universities and government. That in itself speaks volumes of the Centre's capacity-building endeavour over the years.

The researchers' frenetic pace and extraordinary output have been possible only with the dedicated work of the Centre's support staff. Setting the tone was the first secretary to the Centre, Sunita Dalla. With the growth of the projects, the position of the office manager was complemented by project administrators – notably Valma Hendricks, Janine Demas and Renchia du Plessis – who devote their energy to the numerous tasks at hand.



*Professor Renfrew Christie*



*Vincent Saldanha*



*Dr Rhoda Kadalie*



*Valma Hendricks*



*Janine Demas*



*Renchia du Plessis*



Trudi Fortuin



Virginia Brookes

Special mention should be made of Trudi Fortuin, who has been with the Centre as office manager for the past 11 years, following six years at the Street Law Project before that. Dubbed 'the mother of the Centre' by the LLM students whom she has taken under her wing, she is indispensable to the Centre as a whole.

A significant leap forward in the management of the Centre was the appointment of dedicated financial managers. The first was Sadieka Najaar in 1998. Since 2001 Virginia Brookes has done marvels to manage an ever-increasing budget and more demanding reporting requirements. As in other aspects of the Centre's activities,

Brookes's excellence did not go unnoticed and she assisted in financial management for institutions both on and off campus (including the Presidency). The efficiency of the finance office is also attributable to the work of Jody Wyngaard, who joined the Centre as a bookkeeper in 2007.



Jody Wyngaard

## Finances and funders

Apart from 1991, when the University had to provide assistance to correct a budget deficit, the Centre has been able to be self-sustaining. Aside from a portion of the director's salary, and accommodation and utilities that are provided by the University, all costs are covered by revenue raised through grants or consultancies. It has always been a battle, as the question in 1993 by Lucy Nyembe, a trustee, reminds us: 'What plans are there for the future, as international funding is drying up?' The international well has been drying up for the past 17 years, prompting the Centre to be more creative, innovative and hardworking. Open competition for funds at national, continental and global levels is fierce, yet the Centre has managed over the past four years to raise around R10 million per annum. The complaint raised by Dullah Omar in 1992 that funding is only available for projects, not for core salaries, is becoming more acute every year. Yet the Centre has been fortunate to have had the support of the Ford Foundation since its inception, allowing it to cover some of its core costs. Other important funders over the years have been Radda Barnen, SIDA, the Carnegie Corporation, USAID, the Friedrich-Ebert-Stiftung, the European Union, Unicef, the Austrian Development Cooperation, the French Embassy, NDI, the Open Society Foundation, Open Society Initiative for Southern Africa, the Foundation for Human Rights in South Africa, Atlantic Philanthropies, ICCO, Swiss Development Cooperation and the Norwegian Centre for Human Rights.

## Ford Foundation





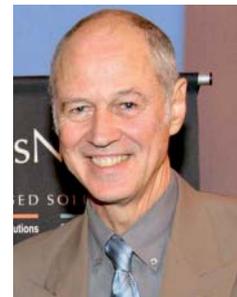
## Challenges

Combining a strong academic tradition with a practical, hands-on approach to change, the Centre is fortunate to have been part of building the new South African society. It has served both as a think-tank and as a resource of practical skills and expertise.

What does the future hold? The 1991 annual report contained the following statement: 'The Centre is community orientated and cannot ignore the trials and tribulations of the disadvantaged communities. At the same time the Centre is required to make a contribution to the theoretical and intellectual level which is broadly democratic.'

This sentiment remains the lode star of the Centre. The disadvantaged communities look much the same as they did 20 years ago. The construction of a new constitutional dispensation and the colouring in of this framework by laws and policies have changed the lives of many, but not all. The plight of many in the countries to the north is no different. It should thus remain the Centre's core business to make a difference to disadvantaged communities, both ensuring that their plight is addressed and making theoretical and intellectual contributions to understanding and addressing the major issues of human rights and democracy of today.

With the vision of the Constitution yet to be realised, the Centre will have its work cut out for it in the next ten years. However, to thrive as a self-sustaining research institution the Centre's key challenge lies in its ability to retain and attract high quality researchers while enjoying the confidence of funders and organisations procuring its expertise. This challenge will be met, however, as the larger problems of the old and new South Africa leave us with no other option.



*Nico Steytler*

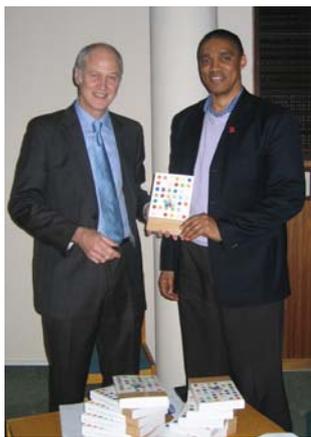
### **Nico Steytler**

Director

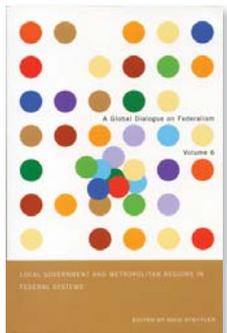


# 2009 Annual Report

## Director's overview



In the 20th year of its existence, the Centre celebrated some major achievements both at home and abroad in fulfilling its mandate of promoting good governance, socio-economic development and the protection of the rights of vulnerable and disadvantaged groups. As the following examples illustrate, the Centre's research expertise is increasingly being sought internationally. First, the Centre is only the second university institution to have concluded a Memorandum of Understanding with the African Commission on Human and Peoples' Rights, in terms of which the Centre provides research assistance. Second, the Children's Rights Project concluded an agreement with the United Nations Children's Fund (Unicef) whereby it will make expertise available for Southern and East African governments on domesticating the Convention on the Rights of the Child. Third, at the request of the Office of the High Commissioner for Human Rights and the United Nations Counter-Terrorism Implementation Task Force (CTITF), the Civil Society Prison Reform Initiative (CSPRI) developed a Basic Technical Reference Guide on detention in a counter-terrorism context. Fourth, the Socio-Economic Rights Project was an important player in an international NGO coalition that drove the international campaign for the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which was adopted in 2008 and opened for signature and ratification in 2009. Fifth, a major research project of the Global Dialogue on Federalism, a joint venture of the Forum of Federations and the International Association of Centres for Federal Studies, came to fruition with the publication of the book, *Local Government and Metropolitan Regions in Federal Systems*. This 12-country study is the sixth volume of the Global Dialogue series and was edited by Prof. Nico Steytler.



At home, the Centre welcomed the Constitutional Court judgment in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* Case CCT 22/08, which produced very positive results for persons facing evictions to make way for housing development. The Centre, together with the Centre on Housing Rights and Evictions, appeared as friends of the court, the submission of which the Court found to be extensive, helpful and of particular value. The Local Government Project celebrated the 10th anniversary of the *Local Government Bulletin* with the production of a 900-page compilation of all 46 editions since 1999, as well as a searchable CD of all the editions. At the celebratory conference, the Project released its research finding that senior municipal officials who hold office in political party structures fundamentally undermine the accountability system of elected councils. The recommendation that there should be a clear separation between the political parties and the administration is reflected in the 2010 Systems Amendment Bill prohibiting senior municipal officials from being office holders in political parties.

The Sixth Dullah Omar Memorial Lecture was delivered by Dr. Navanethem Pillay, the UN High Commissioner for Human Rights, on 1 July. The High Commissioner's inspiring lecture,





6th Dullah Omar Memorial Lecture by Dr Navi Pillay

entitled 'Women's Rights in Human Rights Systems: Past, Present and Future', enjoyed wide media coverage.

The Centre continued with its record of academic excellence. Mr. Jamil Mujuzi graduated with a doctoral degree on the topic of life imprisonment. Prof. Jaap de Visser was given a C rating by the National Research Foundation (NRF), indicating his status as an established researcher with a sustained research record, while Prof. Nico Steytler's rating as a B-rated researcher was confirmed, indicating his status as enjoying considerable international recognition.

Despite the world-wide recession, the Centre still managed to raise R10 million in revenue and its expenditure remained at the same level as 2008. The Centre scored a major achievement in being awarded a R7-million grant by the EU Delegation in South Africa to drive a two-year parliamentary campaign from 2010 on the implementation of South Africa's international human rights obligations.

The Centre wishes to thank all its donors for supporting the work of its projects. Particular acknowledgement goes to the Ford Foundation for generously providing funding for both core expenditure and project activities. Support received from the University in the form of office space, utilities, information and communication technology assistance and human and financial management services is also gratefully acknowledged.

Reflecting on 2009, I am convinced that the Centre has been true to its mission of realising the democratic values and human rights enshrined in South Africa's Constitution and international human rights instruments. Despite adverse world-wide economic conditions, it has managed to deliver on its mandate. I am convinced that the Centre will further build on its reputation as a centre of excellence in the next decade.

### Professor Nico Steytler

Director

**Please note.** This report highlights the Centre's main activities and research products for 2009. For a full report on all the Centre's activities, visit our website:  
[http://www.communitylawcentre.org.za/about-us/annual-reports/2009\\_Annual\\_Report.pdf](http://www.communitylawcentre.org.za/about-us/annual-reports/2009_Annual_Report.pdf)



## Research

In-depth and cutting-edge research is the foundation of the Centre's activities; it informs and guides our teaching and outreach programmes. As a university-based institution, we also disseminate our research results in peer-reviewed publications.

With the Child Justice Act finally enacted, with an implementation date of 1 April 2010, the **Children's Rights Project** developed a Child Justice Act Monitoring Implementation Tool to assist civil society to monitor the implementation and effectiveness of the Act. The information received from this tool would be used to supplement further research and would be communicated to the Inter-Sectoral Committee on Child Justice, which is responsible for implementing the Act. The Project also drafted two research papers advocating a ban on corporal punishment in the home. The first was a review of countries that have prohibited parental corporal punishment, while the second dealt with the international obligations of African states to ban corporal punishment in the home.

**Civil Society Prison Reform Initiative's (CSPRI's)** focus areas remained sentencing, prisoners' rights and reintegration of released prisoners. Research on the Constitutional Court's view on sentencing, as well as on current case law relating to the release of prisoners on parole, drew attention to ever-developing jurisprudence emanating from the rights afforded to vulnerable persons in the Constitution.

A review on HIV/AIDS and the prison system, appearing in *HIV/AIDS in South Africa 25 years on: A psychosocial perspective*, showed that the response to HIV and AIDS in the prison system in respect of both prisoners and staff has been characterised by political foot-dragging and a lack of progressive leadership. Research also indicated that the Sexual Offences Act could have a beneficial impact on prisoner sexual victimisation, as it imposes legal obligations on the Department of Correctional Services to provide adequate protection to prisoners. CSPRI, as part of a group of South African NGOs, completed a review of the criminal justice process resulting in a publication to which CSPRI contributed three chapters on child justice, prisons and sentencing. A joint project by CSPRI and the Centre for the Study of Violence and Reconciliation aimed at gaining a better understanding of the nature and extent of prison violence, recommending preventive measures that the Department of Correctional Services must take. Furthermore, in partnership with the Institute for Security Studies (ISS), CSPRI is part of a comprehensive research project on patterns in repeat violent offending and how such patterns can be broken. In this regard, garnering the views of ex-prisoners on imprisonment and re-entry was very instructive. Finally, a guide was developed to facilitate the monitoring of places of detention by judges and magistrates, which will be used by the Judicial Inspectorate for Correctional Services.

The **Gender Project** assessed the potential impact of the African Protocol on Women's Rights on rape law reform in Africa. The research indicated that the African Protocol on Women's Rights sets out a workable standard for African countries to take into account when domesticating provisions on sexual violence against women and girls. The Project also examined sexual violence against persons with mental disabilities, finding that the South African 2007 Sexual Offences Act progressively reforms the law in relation to sexual offences being committed against persons with mental disabilities. These findings will



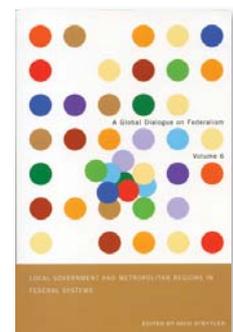


be published in an edited commentary on the Act. The Project concluded its research project on training for police on the Domestic Violence Act. The report highlighted key recommendations for the relevant SAPS departments and oversight bodies. Among other things, it recommended that training should emphasise measures related to SAPS members exercising their discretion to arrest a perpetrator of domestic violence. Working with the Socio-Economic Rights Project, Helene Combrinck's research showed that the right of women who are victims of gender-based violence to have access to housing is hardly ever realised in practice. Practical suggestions to remedy this breach were thus made in the research report, entitled *Living in security, peace and dignity: The right to have access to housing of women who are victims of gender-based violence*.

Given that the quality of community participation in local government is an area of concern, the **Local Government Project's** research report on ward committees showed that they play only a marginal role in this regard. The report, by Terence Smith and Jaap de Visser, recommended that their functioning should be improved as they risk becoming discredited structures. Their legitimacy is too often doubted and they compete with, rather than complement, other participatory structures. A research report on the quality of governance arrangements in municipalities, entitled *Quality of Local Democracies*, showed that there is still uncertainty on role definition between the mayor, speaker and municipal manager, leading to conflict. Furthermore, political interference in administrative decisions is rife. To effect greater separation between the politicians and the administration, it was recommended that being an office holder in a political party was incompatible with being a municipal official as it fundamentally undermines accountability and impartiality. This recommendation eventually found a receptive audience and the 2010 Systems Amendment Bill prohibits senior municipal officials from being office holders in political parties.

The publication of *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press), the sixth volume of the Global Dialogue series, edited by Prof. Nico Steytler, is the first major comparative study on the topic. The 12-country study also highlighted the unique and leading role South Africa's local government system plays globally, combining autonomy with national and provincial supervision and cooperative government. This accounts for the continued international interest in South Africa's system of intergovernmental relations and the demand abroad for the Project's expertise.

The **Socio-Economic Rights Project** covered a range of areas: access to water, women's health in the context of HIV and AIDS, obligations of government on maternal health, child poverty and children's right of access to food and basic nutrition, social security rights of children, housing rights and evictions, housing rights of women, the role of international law in enforcing socio-economic rights in South Africa and the role of the South African Constitutional Court in bringing about social change. Some key findings were: the need for a human rights approach to maternal health especially in the provision of goods and services relating to sexual and reproductive health (the fulfilment of sexual and reproductive rights also shown to be central to women's health in the context of HIV and AIDS, gender inequality and inequity); the absence of litigation concerning children's right to food and to basic nutrition, which underscores the vulnerability of children and shows why special measures are necessary for them to be able to enjoy their rights; the need to strengthen the promotion of socio-economic transformation in the interests of



Research



Dr Lilian Chenwi at the 2009 UN Treaty event at the UN Headquarters in New York

the poor and disadvantaged, including improving access to the courts by the poor in order to bring cases that could result in social change; the need for government to reassess its planning and implementation of housing policies, especially in the upgrading of informal settlements, as poor planning and implementation has resulted in the measures not being a silver bullet to the challenge of informal settlement; and the lived reality of poor women that demonstrates inadequacies and gaps in the implementation of housing policies, which may to some extent be addressed through a 'gendering' of the housing sector.

Research on standing in human rights cases, which formed part of a joint international NGO coalition submission to the United Nations Committee on Economic, Social and Cultural Rights (UN Office of the High Commissioner for Human Rights), showed that a broad approach to standing in human rights cases is required, which ensures that standing

is not restricted to those individuals who are personally affected adversely by an alleged violation.



Dr Lilian Chenwi and Dr Navi Pillay at the UN Headquarters in New York

Research with the Local Government Project on public participation in local government and access to basic services showed that local governments have not met their obligation to provide access to sufficient water, but tackling the problem from a socio-economic rights angle has the potential for better service delivery.

## Applied research

Based on its reputation for high quality research, the Centre is frequently requested and commissioned to undertake applied research for government departments and non-governmental bodies. Through this work, the Centre and its staff not only make a major contribution to policy formulation, but also are placed at the coalface of the key challenges confronting government and civil society.

Unicef and the national Department of Social Development commissioned the **Children's Rights Project** to provide guidelines on appropriate social services for children in conflict with the law. These guidelines will be rendered by probation officers, assistant probation officers and child and youth care-workers. The Project was also tasked to develop training guidelines for social workers and other related professionals on the Children's Act, Children's Amendment Act and Regulations by the national Department of Social Development. As part of this agreement, the Project had to develop training materials for Foundation, Intermediate and Advanced Phases. Each phase was piloted at workshops to assist the Project in improving the content of the materials. Thereafter, training guidelines were drafted on using the materials, which were piloted at the Department of Social Development Child Protection Forum meetings.





The **Civil Society Prison Reform Initiative (CSPRI)** has completed the three-year project, commissioned by the Open Society Foundation (SA), on 'Monitoring the Implementation of the Correctional Services Act', thus providing the Department of Correctional Services with a monitoring tool to measure compliance with the Correctional Services Act of 1998. CSPRI also began audits of the awaiting-trial prison populations and criminal case-flow management systems in Malawi and Zambia for the Open Society Institute for Southern Africa. An assessment of donor confidence in offender re-entry projects operated and managed by ex-prisoners was commissioned by the Embassy of Finland. The research investigated the risks associated with community-based organisations operated by former prisoners from a donor's perspective and what measures can be implemented to address these risks. At the request of the Office of the High Commissioner for Human Rights and the CTITF, the Project developed a Basic Technical Reference Guide on detention while countering terrorism.

Helène Combrinck, co-ordinator of the **Gender Project**, was appointed as one of the key experts to conduct research on the legal and prosecution aspects of human trafficking as part of an in-depth research project carried out by the Human Sciences Research Council on behalf of the National Prosecuting Authority.

The **Local Government Project** designed a framework for the Western Cape Provincial Government in terms of which decisions on the assignment of provincial functions to municipalities are to be taken. The Framework was then applied to the provincial functions of libraries and museums. This Framework was adopted as part of the Provincial Government's modernisation programme. The Project also compiled a manual on the roles and responsibilities of the different municipal office-bearers and officials for the Western Cape's Department of Local Government and Housing.

## Informing public debate on law and policy reform

On the basis of its research, the Centre informs public debate on key issues of law and policy reform. On a number of occasions, parliamentary committees requested the Centre's comments on draft legislation. In addition, Projects forwarded comments to international human rights bodies. The Centre further promoted dialogue with government by hosting roundtables on current issues of concern. Researchers' expertise was brought to bear on these structures through their participation in a number of government committees.

At the 45th Ordinary Session of the ACHPR in the Gambia, Lukas Muntingh delivered a statement on behalf of the Centre in response to the Intersession Activity Report of the Special Rapporteur of Prisons and Conditions of Detention in Africa. He highlighted the problem of sexual victimisation in African prisons, a matter about which the Special Rapporteur is deeply concerned in the context of HIV and AIDS.

The **Children's Rights Project** made submissions to the Department of Justice and Constitutional Development on the Combating Trafficking in Persons Bill to ensuring that child trafficking was defined in accordance with the Palermo Protocol to prevent,

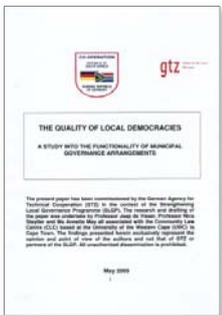


suppress and punish trafficking in persons, especially women and children. The Project also commented on the Regulations of the Child Justice Act from a technical logistical perspective. In addition, the Project advised Unicef Botswana on the draft Regulations that would be annexed to the Botswana Children’s Act 8 of 2009.

The **Children’s Rights Project**, as an active member of the Inter-Sectoral Committee on Child Justice (which is chaired by the Department of Justice and Constitutional Development), worked at the coalface of monitoring the implementation of the Child Justice Act of 2008. In its engagement with government, the Project represented the Child Justice Alliance, of which it is the secretariat and coordinator. The Alliance, with over 400 civil society members, is the leading South African network on child justice issues.

The **Children’s Rights Project** was an active member of the Southern African Network on the Prohibition of Corporal Punishment and serves on the Working Group on Corporal Punishment in South Africa. The Network is a group of organisations in the Southern African region that lobbies and advocates for the ban of corporal punishment, while the Working Group is a South African based alliance of organisations with the same objective.

Improving oversight over the prison system is key to **CSPRI’s** aims. To this end, **CSPRI** presented submissions to the National Assembly’s Portfolio Committee on Correctional Services in response to the Correctional Services Budget Vote of 2009/10 and the Department of Correctional Services 2008/9 Annual Report, emphasising the need to align the budget of the Department with the strategic plan. This has subsequently become a major issue of concern for the Portfolio Committee on Correctional Services. Where the opportunity arises, **CSPRI** participates in activities of the Department of Correctional Services. Lukas Muntingh was appointed as a member of the Department’s Task Team to develop a gang management strategy. Lukas is also a member of the Section 5 Committee on Torture of the South African Human Rights Commission.



The **Local Government Project** made written submissions to Parliament on two proposed constitutional amendment bills. The Project argued that the 17th Amendment Bill, introduced to give a legal basis for the establishment of Regional Electricity Distributors, went way beyond this goal and fundamentally undermined local autonomy. Amid much opposition the Bill was eventually withdrawn. The 18th Amendment Bill and accompanying State Liability Bill sought to regulate state liability after the State Liability Act of 1957, exempting the state from judgment execution, was declared unconstitutional but its invalidity was suspended for a year. The Centre argued that the Bill was flawed because, among other things, it sought to exclude a new State Liability Bill from constitutional scrutiny. Given widespread criticism, the government has obtained a further year from the Constitutional Court to finalise the Bill. Furthermore, Nico Steytler and Jaap de Visser addressed the Minister of Cooperative Governance and Traditional Affairs in a small evening workshop, hosted by the Minister and the Deputy Minister. During this ‘one-on-one’ engagement, the **Project** was given the rare opportunity to offer its views on district governance and the division of authority between the three spheres of government.

The recommendations in the Project’s report on the *Quality of Local Democracies*, calling for greater separation of administration and politics at local government level, were advocated widely before the Good Governance Learning Network, the Institute of Local Government Management, the Institute of Municipal Administration in Southern Africa,





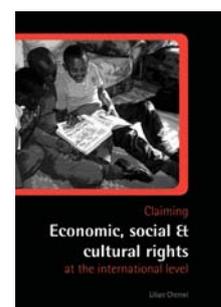
the senior management of the South African Local Governments Association (SALGA) and SALGA's executive leadership. As noted above, the report found a receptive audience and in the 2010 Systems Amendment Bill, senior municipal officials may not be office holders in political parties.

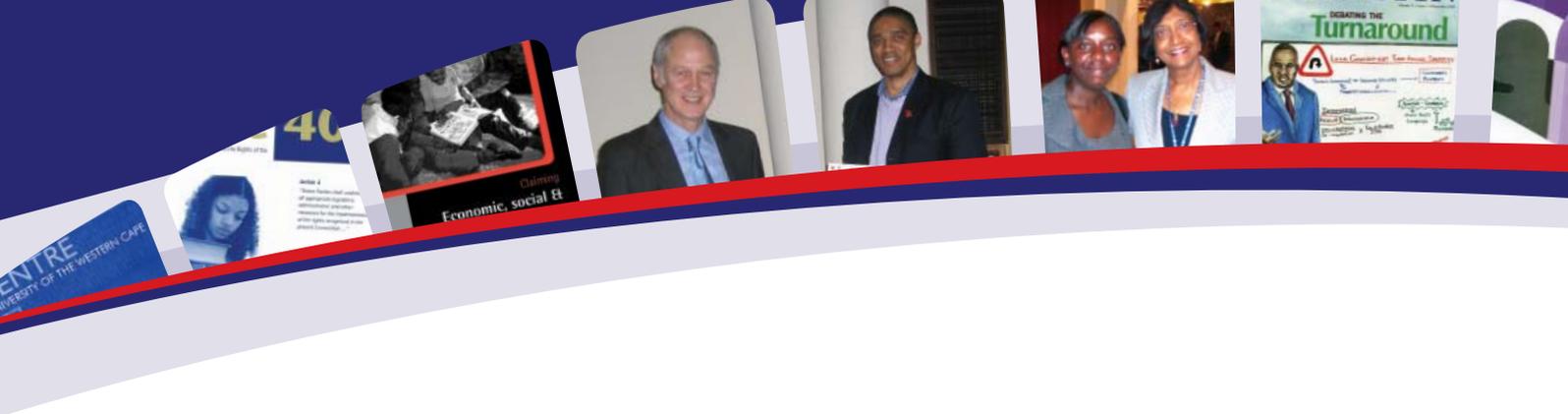
In response to the Department of Cooperative Governance and Traditional Affairs' assessment of the perilous state of local government, the **Project** hosted a roundtable on a 'Turn-Around Strategy for Local Government'. Bringing together some of the sector's most experienced practitioners, key government departments and Deputy Minister Yunus Carrim, the Roundtable identified the fundamental challenges facing local government and possible strategies to address the decline of this sphere of government. A report was submitted to the Department, which had a marked impact on the development of its subsequent turnaround strategy.

The **Socio-Economic Rights Project** campaigned against South Africa's failure to ratify the International Covenant on Economic, Social and Cultural Rights. As a member of ESCR-Net and the NGO Coalition for an Optional Protocol to the ICESCR (OP-ICESCR), the **Socio-Economic Rights Project** worked with other organisations both nationally and internationally. Together with the Black Sash, National Welfare Social Service and Development Forum and People's Health Movement South Africa, the **Project** initiated an advocacy campaign aimed at working towards South Africa's ratification of the ICESCR. The activities included engagement with government through campaign representatives attending a parliamentary hearing and prompting Parliament to question government on the reasons why it has not ratified the ICESCR; coalition building and engagement with other civil society organisations; development of educational and resource materials on the importance of the ICESCR, why South Africa should ratify it and a comparison chart of the ICESCR and the Constitution; organisation of a seminar, in collaboration with the South African Human Rights Commission; regular (mostly weekly) email updates to organisations, institutions and individuals on the listserv; and letters to government and the UN High Commissioner for Human Rights, as well as informal meetings with government officials.

The **Socio-Economic Rights Project**, as a partner of the international NGO Coalition, made a joint comprehensive submission to the UN Committee on Economic, Social and Cultural Rights (UN Office of the High Commissioner for Human Rights) on key issues in relation to the OP-ICESCR and its Rules of Procedure. Joint letters were also written to government missions in Geneva and the foreign affairs ministries of states under review at the Human Rights Council, to states participating in the Council's session on the ratification of the OP-ICESCR, and to signatory states on their signing of the OP-ICESCR. These letters encouraged ratification and fair process in appointment of members to the Committee on Economic, Social and Cultural Rights. Lilian Chenwi attended the UN Signature Ceremony of the OP-ICESCR held at the UN headquarters in New York in September.

The **Project**, together with the Women's Legal Centre, also wrote to government departments and South Africa's Permanent Mission in Geneva, requesting that the government supports the creation of a UN special rapporteur on laws that discriminate against women. The letter was endorsed by 33 organisations and institutions (including the Commission on Gender Equality and the South African Human Rights Commission) and seven key individuals. A member of the **Project** further submitted comments on AIDS Accountability International's draft Gender Reporting Index and draft AIDS Accountability Business Ranking.





Finally, a member of the **Gender Project** formed part of a group of civil society organisations compiling a 'shadow report' in response to the government's report to the Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The South African government submitted a consolidated second, third and fourth report to the Committee in 2009; the second and third reports were long overdue.

## Outreach activities

One of the Centre's core activities is to disseminate its expertise and research results to the broader community through education programmes, training workshops, publications and its website.

## Education programmes



Trudi Fortuin with LLM graduates

A unique Master's programme in Local Government and Decentralisation was officially launched in February, consisting of courses on intergovernmental relations, local government, the law relating to good governance, and an internship served at a municipality or a government department. The course attracted both practitioners and newly graduated students from South Africa and other African countries.

The Centre continues to participate in the presentation of the LLM in Human Rights and Democratisation in Africa for students from across the continent. It is organised by the Centre for Human Rights at the University of Pretoria, and the other partner universities are Addis Ababa University,

Catholic University of Cameroon, Eduardo Mondlane University, Makerere University, University of Ghana and University of Mauritius. In the second semester, the Centre hosted six students who completed two LLM courses and their dissertations.

Staff expertise was in high demand and researchers offered lectures to post-graduate students at the Universities of the Western Cape, Cape Town, Stellenbosch, Pretoria, Fribourg and the Sudan.

## Lay publications

An important dimension of the Centre's mission is to disseminate our research results to a broad non-academic audience. This community outreach activity is done through lay publications.

### Article 40

Three editions on child justice developments in South Africa with a circulation of 3 500 copies, were disseminated to practitioners, magistrates, judges and all organisations concerned with child justice. This publication, focusing in 2009 on information sharing regarding the imminent implementation of the Child Justice Act, remains well received among practitioners and is often quoted in research.





## Article 19

The publication advocating a ban on corporal punishment had two editions with a circulation of 1 500 copies per edition. The focus and distribution was the Southern African region, and a second regional representative, elected to the editorial board, assisted in this regard.

### *CSPRI Newsletter and CSPRI 30 Days/Izinsuku/Dae*

Six issues of the *CSPRI Newsletter* were disseminated, dealing, among other things, with guidelines for the prevention and treatment of HIV in arrested, detained and sentenced persons; the state of Uganda's Prisons; South Africa and the UN Committee against Torture; the relationship between assault and overcrowding in South African prisons; and improved monitoring and reporting to promote and protect the rights of prisoners under the African human rights system. Eleven issues of the monthly media monitoring newsletter, *CSPRI 30 Days/Izinsuku/Dae*, were published. These publications are disseminated electronically to more than 1 200 subscribers in South Africa and beyond.

### *Local Government Bulletin*

With the completion of the 10th volume of the *Local Government Bulletin* in 2008, the **Local Government Project** dedicated 2009 to the celebration of the 10-year anniversary. The 46 editions of the *Local Government Bulletin* have detailed the transformation of local government by keeping local government practitioners informed of important policy and legal developments. A 900-page compilation was produced and made accessible by means of an index and a CD-ROM.

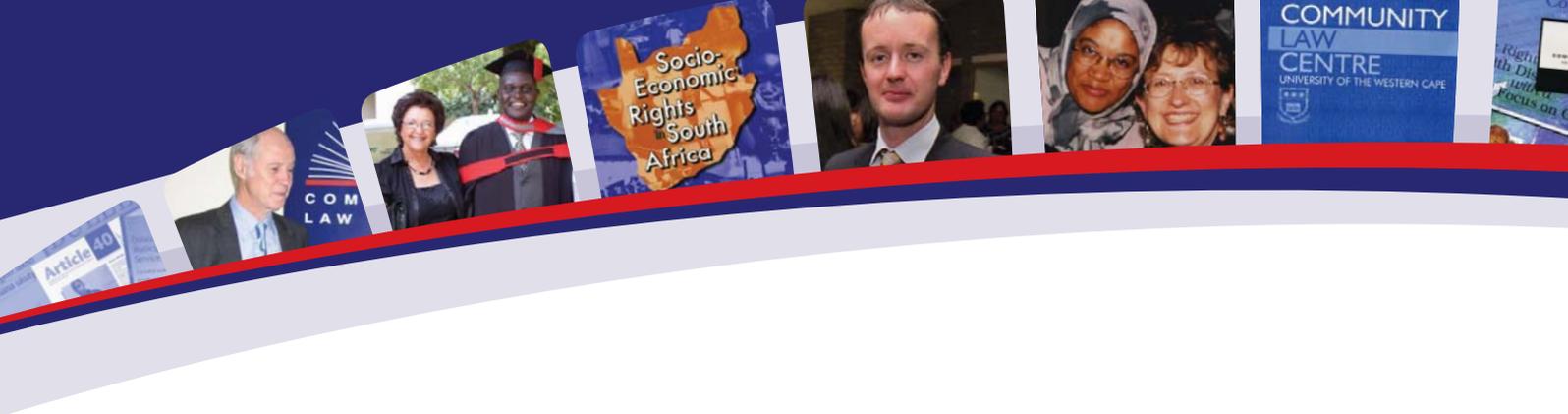
Five issues of the *Local Government Bulletin* were produced in 2009 and 11 000 copies of each issue were disseminated to all municipalities and a wide array of government departments and institutions. The *Bulletin* discussed matters such as the 'Turn-Around Strategy', the effects of the Planning Commission on local government, proposed constitutional amendments, critical court cases, etc. Over two thirds of municipalities were paid up subscribers, which made the *Bulletin* self-sustaining as far as production costs were concerned.

### *ESR Review*

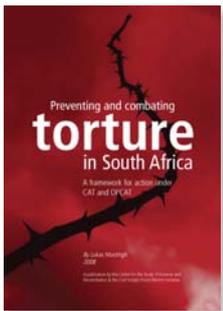
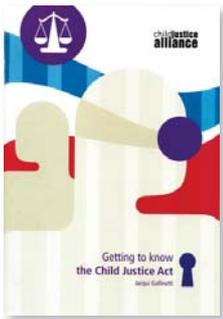
Four issues of the *ESR Review*, with 2 500 copies of each of the first three issues and 3 000 of the fourth issue, were distributed both nationally and internationally. The *ESR Review* makes developments with regard to socio-economic rights accessible to a broad audience.



Nico Steytler, Elroy Africa and Jaap de Visser at the 10 year anniversary of the *Local Government Bulletin*



## Other lay publications



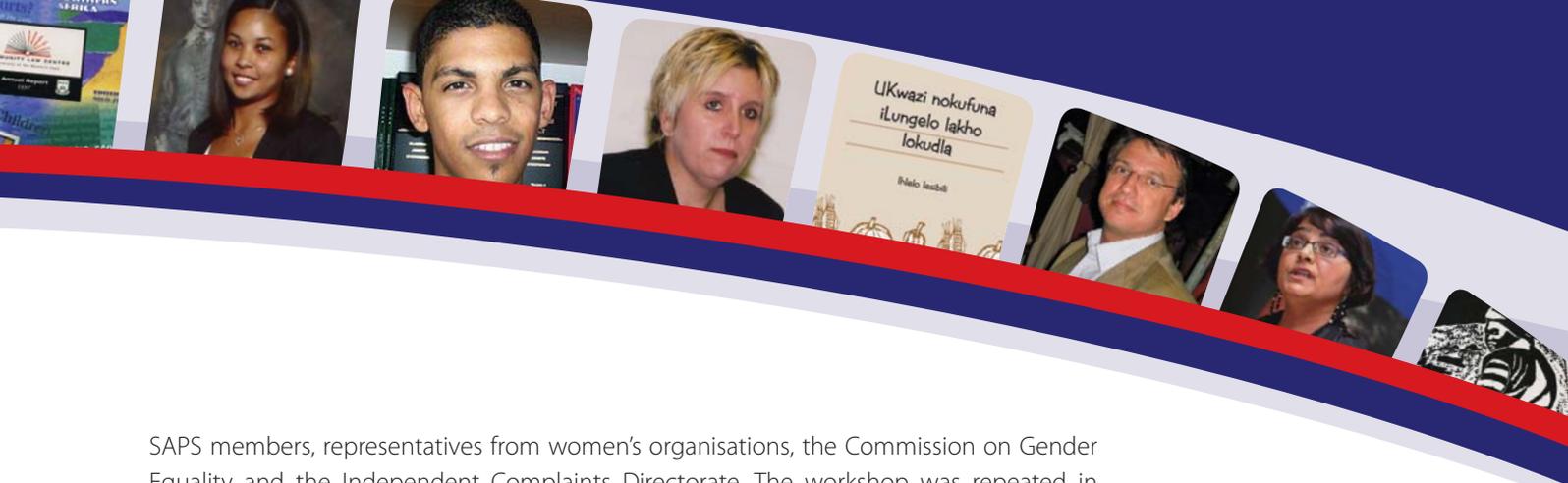
- A user-friendly booklet on the provisions of the Child Justice Act called *Getting to know the Child Justice Act*. Approximately 3 000 copies were widely distributed to practitioners, the courts, the police and social workers.
- A user-friendly guide on the Convention against Torture and how it applies to South Africa.
- *Claiming economic, social and cultural rights at the international level*, providing useful and accessible information on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocol to the ICESCR, with a circulation of 3 000 copies.
- *Security, peace and dignity: The right to have access to housing of women who are victims of gender-based violence*, Socio-Economic Rights Project Research Series 5, with a circulation of 2 000 copies. It focuses on government's obligations in relation to access to housing for women experiencing gender-based violence.
- *From the global to the local: The role of international law in the enforcement of socio-economic rights in South Africa*, Socio-Economic Rights Project Research Series 6, with a circulation of 2 000 copies. It explores the vital role of international human rights law and jurisprudence, including the United Nations and African human rights systems and policy frameworks, in advancing socio-economic rights at the domestic level in South Africa.
- *Child poverty and children's rights of access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis*, Socio-Economic Rights Project Research Series 7, with a circulation of 2 000 copies. Drawing insights from international human rights law, it analyses the significance of, and correlation between the right of access to food for children and their right to basic nutrition as defined under sections 27(1)(b) and section 28(1)(c) of the Constitution, respectively.

## Workshops and training programmes

Along with its other dissemination strategies, the Centre has sought to engage directly with stakeholders on the basis of its research results. It provides not only for verification of results but also for the empowering of government officials and civil society. The **Children's Rights Project**, under the banner of the Child Justice Alliance, facilitated one-day provincial workshops in Cape Town, Johannesburg, Durban, Port Elizabeth, Nelspruit, Upington and Polokwane, introducing the provisions of the Child Justice Act to various NGOs, civil society organisations and government officials. It also, in collaboration with the Department of Social Development, hosted three pilot workshops to test the efficacy of the training materials produced by the **Project**.

On completion of research, the results are routinely presented not only to stakeholders who may act upon the results, but also to those who were the subject of such research. For example, the **Gender Project** hosted a workshop on the research findings on the training of SAPS members on the Domestic Violence Act. The workshop was attended by





SAPS members, representatives from women’s organisations, the Commission on Gender Equality and the Independent Complaints Directorate. The workshop was repeated in Oudtshoorn for the benefit of station commissioners in the south Eastern Cape, where a part of the research took place. The **Project** also presented its findings to the SAPS provincial commissioner of the Western Cape and two senior staff members.

**CSPRI** hosted a seminar in Pretoria releasing its research report, *An assessment of the impact of HIV/AIDS on correctional system governance with special emphasis on correctional services staff*, and it was well attended by DCS staff from all nine provinces. In order to stimulate debate, CSPRI also hosted three roundtable discussions with stakeholders, focusing on prison oversight, the annual report of the Judicial Inspectorate for Correctional Services and the White Paper on Corrections in South Africa.

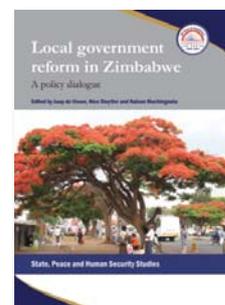
The Centre also responded to the needs of practice. By 1 July 2010, every municipality had to implement the Municipal Property Rates Act of 2004. In the run-up to this important deadline, the **Local Government Project** hosted an international seminar on municipal property rates that attracted municipal officials, property valuers, academics and students.

In celebrating the 10th Anniversary of the *Local Government Bulletin*, the Project brought together key stakeholders at a conference to discuss the future of local government. The Conference, opened by the acting Director-General of the Department of Cooperative Governance and Traditional Affairs, reading the speech of Minister Sicelo Shiceka, drew together politicians and officials across the three spheres of government, academics and civil society representatives to debate political accountability, parliamentary oversight, community participation and district municipalities. The Conference concluded with a session on international comparisons of systems of local government, with particular emphasis on decentralisation in Ethiopia, Uganda and Zimbabwe.

The international dimension of the Project’s work was further evidenced by the **Project’s** hosting of a Policy Dialogue on the Future of Local Government in Zimbabwe, in Harare, which brought together a diverse spectrum of local government practitioners and politicians to discuss local government reform in Zimbabwe. This seminar, opened by the Minister for Local Government, was aimed at complementing the constitutional review process currently underway in that country. The seminar was a key milestone in an ongoing research project, involving the compilation of a book on the future of local government in Zimbabwe.

At times, training of officials and politicians was the Centre’s explicit aim. Nico Steytler and Jaap de Visser conducted training on federalism for Sudanese academics and government officials in two separate training sessions in Khartoum. They also conducted training for the Western Cape Provincial Parliament on the functioning of provincial parliaments and supervision of local government respectively. Jaap de Visser conducted training for municipal councillors and officials in George, Oudtshoorn and Mossel Bay, focusing on the delineation of responsibilities within municipalities.

The Centre also used seminars to build networks and common agendas between civil society organisations. The **Socio-Economic Rights Project** hosted a seminar on litigating socio-economic rights at the international level and introducing the OP-ICESCR. Its objectives were to raise awareness of the OP-ICESCR and various procedures it establishes; to provide a forum where institutions and organisations working on socio-economic rights can discuss, reflect and share experiences on enhancing the implementation of socio-economic rights



## Outreach activities



and effective litigation strategies; and to provide a forum for networking and to initiate future collaboration among the participating institutions and organisations. A second seminar was held on gender, HIV and AIDS in South Africa that aimed at taking stock of recent developments and reflecting on progress, setbacks and challenges on dealing with HIV and AIDS in a women's context. It thus fostered conversation between the different categories of stakeholders involved in work and efforts around HIV/AIDS in South Africa.

## Funders

Core funding and project activities	Ford Foundation
Children's Rights Project:	Save the Children Sweden United Nations Children's Fund (UNICEF) Open Society Foundation for South Africa (OSF)
CSPRI:	Embassy of Finland Open Society Foundation of South Africa (OSF-SA) Open Society Institute for Southern Africa (OSISA) Rockefeller Brothers Fund
Local Government Project:	ICCO Austrian Development Cooperation Charles Stewart Mott Foundation
Socio-Economic Rights Project:	Norwegian Centre for Human Rights, University of Oslo
LLM in Human Rights & Democratisation in Africa Dullah Omar Memorial Lecture	Centre for Human Rights (University of Pretoria) Webber Wentzel





## Income and expenditure statement

	2009	2008
<b>Income</b>		
Funders	7 485 105.97	6 872 331.78
Consultancies	1 914 038.32	3 227 088.72
Other	156 502.60	531 637.51
<b>TOTAL INCOME</b>	<b>9 555 646.89</b>	<b>10 631 058.01</b>
<b>Expenditure</b>		
Advertising	50 327.96	17 456.07
Audit Fees	40 366.00	77 533.67
Bank Charges	623.60	1 686.22
Computer Equipment	92 585.21	147 941.66
Conferences, Seminars & Workshops	595 810.25	325 628.91
Consultation Fees	1 526 942.45	1 524 788.25
Functions & Catering	84 175.67	90 388.99
Litigation	799.00	0.00
Partner Activities	62 750.00	80 747.72
Photocopying & Postage	278 987.38	294 572.71
Post-Graduate Bursaries	591 304.10	313 565.55
Publications	1 642 153.33	1 128 903.80
Research	46 000.00	85 113.95
Returned to Funder	12 316.21	217 882.90
Salaries	4 179 016.14	3 816 751.91
Staff Development	32 535.65	64 658.46
Stationery	193 432.65	153 913.17
Subscriptions & Books	133 476.42	184 158.31
Telephone	64 028.46	62 260.81
Travelling	815 574.68	1 146 605.09
Website	47 124.90	36 421.00
<b>TOTAL EXPENDITURE</b>	<b>10 490 330.06</b>	<b>9 770 979.15</b>
<b>CLOSING BALANCE FOR YEAR</b>	<b>-934 683.17</b>	<b>860 078.86</b>
Surplus carried forward from previous year	5 979 171.13	4 917 869.38
Prior Year Adjustment	60 474.66	201 222.89
<b>NET CLOSING BALANCE 2009</b>	<b>5 104 962.62</b>	<b>5 979 171.13</b>

Income and expenditure



## Staff activities

### 1. Books, chapters in books and articles

#### Books

Steytler, Nico (ed), 2009, *Local Government and Metropolitan Regions in Federal Systems*, Montreal, Kingston: McGill-Queen's University Press, 464pp.

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## Mission statement

The Community Law Centre, established in 1990, works to realise the democratic values and human rights enshrined in South Africa's Constitution. It is founded on the belief that our constitutional order must promote good governance, socio-economic development and the protection of the rights of vulnerable and disadvantaged groups. Given the need for regional integration to encourage development in Africa, the Centre also seeks to advance human rights and democracy in this broader context. Based on high quality research, the Centre engages in policy development, advocacy and educational initiatives, focusing on areas critical to the realisation of human rights and democracy in South Africa and Africa in general.

