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**SOUTHERN AFRICA
LITIGATION CENTRE**

ANNUAL REPORT





Photograph: SALC

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Mission

The Southern Africa Litigation Centre (SALC) promotes and advances human rights and the rule of law in the southern Africa region primarily through strategic litigation and capacity building.

Vision

SALC envisions a region in which domestic and regional courts are strong, independent and fully functional and in which they uphold and enforce the rule of law and human rights. To that end, SALC works with domestic lawyers in each jurisdiction who are litigating public interest cases involving human rights and the rule of law. SALC works in Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe. SALC supports lawyers in a variety of ways, including, as appropriate, providing legal research and drafting, training and mentoring, and monetary support. While SALC aims primarily to provide support on a case-by-case basis, its objectives also include the provision of training and the facilitation of legal networks within the region.



Letter from SALC's Executive Director

The Zimbabwe Torture Docket case was one of the more significant victories for SALC during the period of this annual report. The case took years to reach finality and has provided clear direction on South Africa's role in the fight against the most serious crimes under international law. This position is that South Africa should act to prevent impunity and ensure accountability for serious international crimes committed outside its borders by non-South Africans.

SALC pursued this case for many reasons: Zimbabwe is South Africa's neighbour; Zimbabwean refugees and migrants have been fleeing to South Africa for several years on account of political persecution; South Africa is a signatory to the Rome Statute and has international obligations to prevent impunity for serious international crimes; SALC has a mandate to promote human rights and strengthen the rule of law.

Pursuing the Zimbabwe Torture Docket case was an exercise in patience and tenacity. Investigations are currently underway and we expect the administration of justice to follow its course. On the 30th October 2014, a unanimous Constitutional Court held that the South African Police Services (SAPS) have a duty to investigate allegations of crimes against humanity committed in Zimbabwe, by Zimbabweans, against Zimbabweans, based on the allegations detailed in a dossier compiled by SALC together with the Zimbabwe Exiles Forum. The Court also ordered the SAPS to begin investigations without further delay.

In the judgment Justice Majiedt tackled the issue on appeal which

concerned the extent to which the SAPS have a duty to investigate allegations of torture that amount to crimes against humanity, committed in Zimbabwe, by and against Zimbabwean nationals. The Court's task, was to establish South Africa's domestic and international powers and obligations to prevent impunity, by ensuring that perpetrators of international crimes committed by foreign nationals beyond South Africa's borders are held accountable. Justice Majiedt's written judgment commenced as follows: During the course of South Africa's transition to a democratic state, former President Nelson Mandela outlined what was to become South Africa's future foreign policy. He stated:



“South Africa’s future foreign relations will be based on our belief that human rights should be the core concern of international relations, and we are ready to play a role in fostering peace and prosperity in the world we share with the community of nations. . . . The time has come for South Africa to take up its rightful and responsible place in the community of nations. Though the delays in this process, forced upon us by apartheid, make it all the more difficult for us, we believe that we have the resources and the commitment that will allow us to begin to make our own positive contribution to peace, prosperity and goodwill in the world in the very near future.”¹

¹ Mandela “South Africa’s Future Policy: New Pillars for a New World” (1993) 72 *Foreign Affairs*.

The case which has become known as the Zimbabwe Torture Docket case is a landmark ruling by the highest court in the country. The case started in 2008 when SALC submitted a dossier to the National Prosecuting Authority (NPA) containing comprehensive evidence of the involvement of eighteen Zimbabwean security officials in perpetrating torture, and requested the NPA and the SAPS to initiate an investigation. It was SALC’s well considered view that the NPA had an obligation to investigate cases of alleged international crimes under the Implementation of the Rome Statute of the International Criminal Court Act. South Africa is obliged to investigate and prosecute anyone who commits a crime against humanity as



defined by the International Criminal Court. After both the NPA and SAPS refused to initiate an investigation, SALC together with the Zimbabwe Exiles Forum took this decision on review to the North Gauteng High Court. On 8 May 2012 Judge Hans Fabricius ruled in SALC's favour and ordered the NPA and SAPS to initiate an investigation. This decision was taken on appeal to the Supreme Court of Appeal by the NPA and SAPS. On 26 November 2013, the Supreme Court held that SAPS is both empowered and required to investigate the crimes against humanity detailed in the dossier. In January 2014 only SAPS applied for leave to appeal the Supreme Court decision. The matter was heard in the Constitutional Court and on 30 October 2014, the Constitutional Court unanimously ruled that SAPS have a duty to investigate and ordered that investigations begin without delay.

There were two issues which were central to the judgment, the first is that in terms of international and domestic law, the presence of the suspect is not required for

investigations but is required for prosecution; and secondly universal jurisdiction is applicable, but must be subject to the principles of subsidiarity and practicability.

There has been much debate in international circles about the ability to try a person in absentia via universal jurisdiction.² However, the debate has largely centred on the legality of holding trials, rather than initiating and/or conducting investigations.

The Court drew a clear distinction between investigation and prosecution of international crimes on the basis of universal jurisdiction. Whereas the dominant position in international law suggests that the presence of the accused in a state is a prerequisite to prosecution, there is no such presence requirement as a prerequisite to investigation. This is ground breaking.

In terms of domestic law, the Court ruled that the Constitution requires the presence of an accused during his or her trial, and that it is silent on whether presence is required for investigations. In the Court's view,

² Florian Jessberger in A Cassese et al (eds) *The Oxford Companion to International Criminal Justice* (OUP: 2009) esp 555-558.

the exercise of universal jurisdiction, for purposes of the investigation of an international crime committed outside South Africa's territory, may occur in the absence of a suspect without violating the Constitution or international law. The Court then noted several reasons for following this approach, including that requiring presence for an investigation would render futile South Africa's attempts to combat extraterritorial crimes against humanity, because it would not be practicable to initiate charges or prosecution against an accused, who is only temporarily within the state, without a certain level of prior investigation.

Justice Majiedt concluded the judgment by making it clear that South Africa would not be a safe haven for perpetrators of crimes against humanity and that the nation must honour its international and domestic law commitments. Finding that the refusal to investigate was wrong in law, the Court dismissed the appeal and ordered that an investigation commence without delay.

The case is of great significance in developing South Africa's obligations internationally but also to the development of international criminal justice and the exercise of universal jurisdiction. SALC's persistence and tenacity have paid off and we await the dividends.

In closing, the period under review in this annual report has been a period of transition for SALC as we said goodbye to Nicole Fritz, SALC's founding Executive Director who was with the organisation from 2005 to 2015. SALC remains indebted to Nicole for her vision and strategic direction which has created the solid foundation of this remarkable regional NGO. I took over the reins from Nicole in February 2015.

Kaajal Ramjathan-Keogh



SALC Highlights

March 2014- February 2015

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Preventing Impunity: The Zimbabwe Torture Docket Case

In October 2014, the Constitutional Court of South Africa delivered its judgment in the Zimbabwe torture case, *National Commissioner of the South African Police Service v Southern Africa Litigation Centre and Another*, ruling in favour of SALC and its partner in the litigation, the Zimbabwe Exiles Forum (ZEF).

The case concerns the investigative powers and obligations of South Africa's Prosecuting Authority (NPA) and police services in relation to alleged crimes against humanity perpetrated in Zimbabwe by Zimbabweans, with SALC and ZEF arguing that the South African authorities must undertake an investigation of those crimes detailed in the dossier submitted to them by SALC in 2008.

SALC's submission of the dossier had been compelled by recognition that the victims had little prospect of securing justice in Zimbabwe and that, with the impending 2008 Zimbabwe elections, there was likely to be an escalation of violence. The dossier documented incidents of torture committed against the political opposition on a widespread and systematic basis, amounting to a crime against humanity. It also set out the international and domestic law prescribing South Africa's

obligations to investigate and prosecute crimes against humanity, specifically noting that as the alleged perpetrators travelled into South Africa on a regular basis, South Africa's International Criminal Court Act (ICC Act) required that the authorities initiate an investigation.

On appeal from the High Court which had set aside the NPA's and police's decision not to investigate, the Supreme Court held that the authorities have the competence to investigate international crimes even if they are committed outside South Africa's territory. The Court went further, finding that investigation could be initiated even in the absence of the accused, and that "adopting a strict presence requirement defeats the wide manner in which our legislation is framed and does violence to the fight against impunity."

Importantly, the Court acknowledged that authorities would not be required to investigate where there existed no realistic prospect of the perpetrators' presence in South Africa. This was not the case in respect of the alleged perpetrators of the crimes documented in the torture dossier and as such, the Court ordered that an investigation commence.



Photograph: SALC

Despite the Supreme Court of Appeal ruling, the state took the matter on appeal to the highest court in South Africa, the Constitutional Court. This Court unanimously ruled in SALC and ZEF's favour indicating that the authorities had a legal duty to investigate the crimes detailed in the dossier. Supporting the Supreme Court of Appeal's findings with regard to presence, the Constitutional Court took the international law implementation a step further by laying down solid ground for the application of universal jurisdiction.

The Constitutional Court judgment is of major significance as it is definitive and it provided well-articulated and constructively considered provisions that have

shaped international criminal law jurisprudence in South Africa.

The Court made it clear that South Africa's "international and domestic law commitments must be honoured" and that the nation "cannot be seen to be tolerant of impunity for alleged torturers."

This case – the first to deal with South Africa's domestic ICC Act – provides substantive and practical content to South Africa's Rome Statute obligations and yields not only the prospect of justice for those tortured in Zimbabwe, but other victims of international crimes where there exists the real possibility that the perpetrators may be present in South Africa. The case also underscores that international justice is not only secured at the

international level but also, perhaps more meaningfully and in line with SALC's vision, within domestic jurisdictions.

Securing Access to Healthcare for Prisoners

SALC is working with local lawyers and civil society organisations in *Tapela and Another v Attorney General* to challenge the government's policy of denying non-citizen prisoners free HIV treatment.

According to Botswana's 2012 National HIV & AIDS Treatment Guidelines, HIV-positive persons with a CD4-count below 350 cells / μ L are eligible for initiation on antiretroviral treatment (ART). Citizen prisoners receive ART at state expense, as well as viral load and CD4 count testing to determine their eligibility for ART. In contrast, however, a policy of the Botswana government explicitly withheld the provision of state-funded ART to foreign prisoners. The policy was reflected in a Presidential Directive, which was applied to the effect that while foreign prisoners were treated for opportunistic infections arising from untreated HIV infection, viral load and CD4 count testing and the provision of ART was denied.

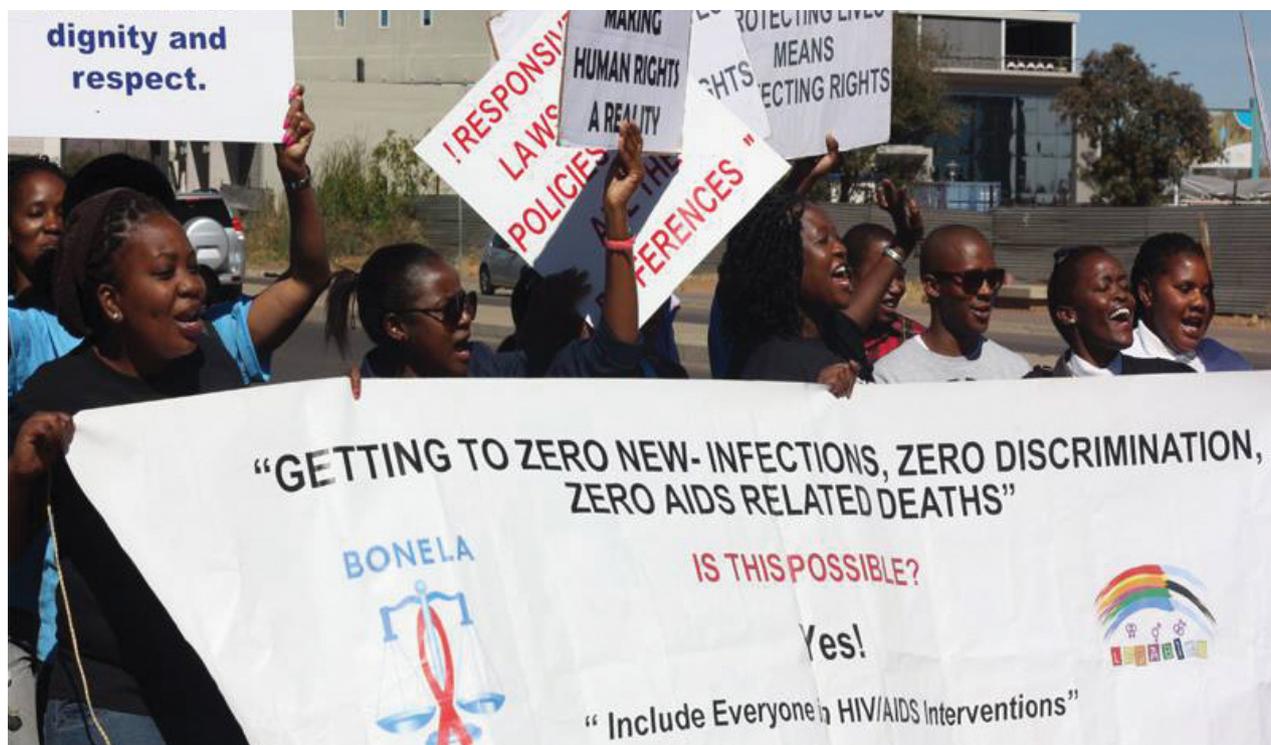
SALC worked with the Botswana Network on Ethics, Law and HIV/AIDS (BONELA) to challenge this government policy. BONELA and two HIV-positive non-citizen prisoners filed a challenge to the policy in the Gaborone High Court. They argued that the policy was unlawful for violating the state's

common law duty of care towards prisoners, the Prisons Act, and the prisoners' constitutional rights.

The State failed to file a response and default judgment was granted in the applicants' favour. The default judgment was rescinded with the parties consent on 19 March 2014, and the matter set down for hearing.

The matter came before Sechele J in the Gaborone High Court on 10 June 2014. The applicants' expert evidence on the nature of HIV and the impact of ART, particularly in prison contexts, was entirely uncontested. The applicants argued that nowhere in the legal framework concerning imprisonment in Botswana is discrimination between prisoners, on the basis of citizenship or otherwise, sanctioned. The policy, issued in terms of a Presidential Directive, could not determine policy contrary to the legislative and constitutional framework, it was argued. It was further argued that the policy violated the prisoners' rights to life, freedom from inhumane and degrading treatment, and to equality and freedom from discrimination in an unjustifiable manner.

The state raised a number of technical defences, arguing that any deviation from the



Photograph: BONELA

procedural rules of the Court, no matter how trivial, nullified the proceedings. The state also argued that there was no legal provision conferring upon prisoners a right to medical care. It was argued that no constitutional rights were infringed but that, in any case, any infringements incurred were in the public interest based on financial considerations.

On 22 August 2014, Sechele J delivered a landmark judgment in the applicants' favour, affirming that foreign prisoners have a right to HIV treatment at state expense.

The Court dismissed the state's procedural defences, holding that courts must not sacrifice substance over form and should not lightly turn away a party who seeks "shelter under the sanctuary

of the Constitution". The Court considered the applicants' evidence and found that ART is not only a medical necessity but a life-saving therapy. Withholding ART would increase the likelihood of HIV transmission to other inmates, including citizen prisoners, as well as the transmission of opportunistic infections.

The Court held that the policy was unlawful in terms of the common law, the Prisons Act and the Constitution, unjustifiably infringing on the prisoners' rights to life, equality, and freedom from inhumane and degrading treatment. Inmates retain the residuum of their human rights when their liberty is removed through imprisonment. It held that under domestic legislation, prison authorities are not only obliged to

take measures to restore the health of prisoners but also to prevent the spread of disease. Imposing any limit to the rights of non-citizen prisoners, could never be justifiable in a democratic society when the consequence of the deprivation in question resulted in the prisoners becoming more infectious to others. In addition, the state had failed to raise any evidence to discharge the onus on it to prove that the budgetary constraints it alleged were valid or had any weight in justifying the unlawfulness of the policy.

The government was ordered to immediately enroll all foreign prisoners who meet the treatment criteria on ART.

Advocating for the Rule of Law in Swaziland

SALC's work in Swaziland in 2014 was spurred on by a deteriorating respect for rule of law and an escalating suppression of free expression.

Swaziland, a tiny kingdom bordered on all sides by South Africa and Mozambique, gets little international attention, and, with a media that is heavily government controlled, independent voices are few and far between. The Nation, a monthly magazine edited by Bheki Makhubu, is the only independent publication in the country, and has been noted for its harsh criticism of government. The Nation has regularly been a target of the state machinery, and in 2013, Makhubu and the magazine were charged with contempt of court by scandalising the court after Makhubu wrote and published an article in 2009 calling on newly appointed judges to uphold constitutional values. A one-year jail term and heavy fine were drastically reduced by the Supreme Court on appeal in early 2014. However, by that stage Makhubu had been charged with contempt of court again – this time alongside human rights lawyer, Thulani Maseko – in connection with articles the pair had written for The Nation which questioned

the manner in which the then Chief Justice Michael Ramodibedi had handled a case against a government official.

While Makhubu and Maseko's articles may well have been critical of the judiciary, and Ramodibedi in particular, the pair argued that it was not their comments that scandalised the judiciary, but the judicial conduct itself. And they were right. The judiciary under Ramodibedi made a mockery of the independence of the judiciary, operating as a fiefdom and dispensing justice arbitrarily, but almost always in favour of the state. One way in which this was managed was by the Chief Justice issuing a practice directive that he would allocate all cases – which allowed him to place sensitive matters before pliant judges. There was none as pliant as Judge Mpendulo Simelane – a former High Court registrar, elevated to the bench without the requisite qualifications. Simelane presided over Makhubu and Maseko's criminal trial despite his personal involvement in the incident that Makhubu and Maseko wrote about

in the allegedly contemptuous articles. After a three month trial, characterised by a series of questionable legal decisions (including Simelane's refusal to recuse himself from hearing the matter and insisting that Makhubu and Maseko be rearrested after another High Court judge had ordered their release after finding that their arrest and detention was unconstitutional), Simelane convicted and sentenced the pair to a two-year jail term, without the option of a fine.

Makhubu and Maseko's case was the first in a series of deeply disturbing charges brought against individuals expressing dissatisfaction with the way Swaziland is governed. In April, a group of supporters of the People's United Democratic Movement (PUDEMO) gathered to protest against the charges against Makhubu and Maseko at the High Court and seven of them were arrested and charged with terrorism, sedition, and subversion. In Swaziland, the terrorism legislation empowers the Attorney General and Justice Minister to declare organisations as terrorist groups merely if they believe the organisation is engaged in terrorist activity. One consequence of such a declaration is that any person who then supports such an organisation is deemed to be committing a terrorist act. In 2008



Photograph: SALC

PUDEMO was declared a terrorist group, and the fact that these seven PUDEMO members were wearing t-shirts with PUDEMO logos printed on them was enough for them to be charged with supporting a terrorist group, an offence that carries a fifteen year prison sentence.

A few weeks later, at a May Day gathering, Mario Masuku and Maxwell Dlamini were present at a gathering and spoke about their discontent with the political system in Swaziland. They were arrested on terrorism, sedition, and subversion charges, and detained. After their initial bail application was refused by Simelane a month after their arrest, they brought a fresh application for bail in October 2014. The way this bail application was handled illustrated just how far the Swazi judiciary had fallen from being an independent and impartial decision-making institution. The bail application had been allocated to the duty judge hearing opposed bail applications, but on the

morning of the hearing Masuku and Dlamini's attorney was informed that a different judge would be hearing the matter. In that judge's chambers, the legal representatives were told that the Chief Justice had instructed him to ensure that the matter was not heard by any judge other than Simelane, and the matter was therefore postponed until Simelane was available. Not surprisingly, despite strong legal arguments in favour of their release, Simelane dismissed their application for bail.

Although 2014 was a dispiriting year in Swaziland, and the litigation SALC supported seemed inevitably destined to end in victory for the government, our experience taught us valuable lessons in the alternative side of strategic litigation: sometimes, it is the process of litigation, and not merely the result, that gives it value. Although SALC did not support Makhubu and Maseko's criminal trial in the High Court we did monitor the case, and wrote

extensively on the proceedings.

SALC did support Masuku and Dlamini's application for bail, and their subsequent filing of a challenge to the constitutional validity of the Suppression of Terrorism Act and the Seditious and Subversive Activities Act. Although none of the cases resulted in victories for freedom of expression in 2014, the attention that they garnered served to keep Swaziland in the international spotlight, and raise awareness of the lack of respect for rule of law in that country. The litigation also gave the activists an opportunity to set out their arguments on why the officials' conduct was contrary to Swaziland's own constitution, as well as international law. In a country where free expression is so limited, the space provided by court proceedings is invaluable. SALC will therefore continue to put pressure of the Swazi government to uphold its domestic and international human rights obligations through the courts.

Fighting for Gender Equality in Succession to the Office of Chieftainship in Lesotho

On 10 September 2014, Senate Masupha, the Federation of Women Lawyers (FIDA-Lesotho) and SALC submitted a Complaint to the African Commission on Human and Peoples' Rights (African Commission) against the Kingdom of Lesotho (Lesotho) challenging Lesotho's law that provides for male-only succession to chieftainship.

Ms Masupha, FIDA Lesotho and SALC are challenging section 10 of the Chieftainship Act of 1968 (Chieftainship Act), a law of Lesotho, which denies daughters the ability to succeed to the office of chief solely on the basis of their gender.

The Complainants argue that the blanket exclusion of all first-born children who are women from chieftainships, as provided under section 10 of the Chieftainship Act, and the decision of the Lesotho Court of Appeal upholding section 10 of the Chieftainship Act, violates the African Charter and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). In particular, the Complainants argue that section 10 of the Chieftainship Act and the decision of the Lesotho Court of Appeal, upholding it, violate the right to non-discrimination; equality and equal protection of the

law; dignity and not to be subjected to cruel, inhumane and degrading treatment; equal access to public service; property; access to health; culture; as well as the obligation to end discrimination against women and to reform discriminatory laws; obligation to eliminate harmful practices; the right to participate in political and decision-making processes; the right to equal economic opportunity; the right to health, including sexual and reproductive health; the right to live in a positive cultural context; and the right to equal inheritance protected under the African Charter and the Maputo Protocol.

At the 17th Extra- Ordinary Session, which took place in Banjul, The Gambia from 19th to 28th February 2015, the African Commission determined that the Complaint revealed a prima facie violation of the African Charter and decided to be seized of the complaint. The African Commission further called upon the Complainants to present evidence and arguments on admissibility within two (2) months in accordance with Rule 105(1) of its Rules of Procedure. After presenting the required evidence and arguments on admissibility, the Complainants will wait for the African Commission's decision on admissibility of the complaint before presenting evidence and



Photograph: SALC

arguments on the merit of the complaint.

Ms Masupha, the first born female child of a chief, had previously challenged the law in the Lesotho Constitutional Court and Court of Appeal arguing that the law violated her constitutional rights. SALC intervened as *amicus curiae* (friend of the court) and argued that section 10 of the Chieftainship Act, which denied the first-born daughter the ability to succeed to chieftainship solely on the basis of gender, violated the right to equality and non-discrimination under the Lesotho Constitution and contravened Lesotho's regional and international obligations. The domestic courts upheld section 10 of the Chieftainship Act finding that it did not amount to unfair discrimination.

Securing Women's Access to Health Services Post Sexual Violence

On 25 March 2014, the Supreme Court of Zimbabwe ordered the government to compensate a rape victim, after the State failed to prevent a pregnancy resultant from the rape.

A victim of rape is eligible for an abortion under Zimbabwe's Termination of Pregnancy Act. The applicant was raped in 2006. She sought emergency contraception within 72 hours of her rape to ensure that the rape did not result in a pregnancy. Despite emergency contraceptives being legal in Zimbabwe, the applicant failed to access emergency contraception on time due to delays at the police station and their failure to provide proper information about how to access it.

Upon discovering that she was pregnant, the applicant sought a lawful termination in terms of the law, but due to misinformation and unnecessary judicial delays, she was unable to obtain the court order allowing the termination in time and eventually gave birth. The applicant brought an action against the Ministers of Health, Justice and Home Affairs for pain and suffering endured, as well as maintenance of the child. The basis of her claim was that the employees of the respondents had been negligent

in their failure to prevent the pregnancy, and subsequently, to facilitate its termination.

In a decision handed down in December 2012, the High Court dismissed her claim and held that her misfortune was due to her ignorance as to the correct procedure to follow, and that it was not the duty of the relevant officials to give guidance to her on this, so that the respondents were neither directly nor vicariously liable. She appealed the decision to the Supreme Court.

SALC provided technical support to the Zimbabwe Women Lawyers Association (ZWLA) who brought the case on behalf of the applicant in the Supreme Court appeal.

In the Supreme Court, the Court held that the police failed in their duty to assist the appellant timeously in having her pregnancy prevented by the doctor. The Court also found that the doctor had failed to carry out his professional duty to avert the pregnancy when it could have been reasonably prevented. The Court decided that the unlawful omissions took place within the course and scope of their employment, so that the said respondents were vicariously liable to compensate the appellant in respect of the harm occasioned through the failure to prevent her



pregnancy.

The Court however also found that the duty of the prosecutors and magistrate to act reasonably in the performance of their functions did not extend to the giving of legal advice, whether accurate or otherwise, to the appellant. Therefore, the prosecutors and magistrate cannot be held liable for failing to take such reasonable steps as may have been necessary for the issuance of the requisite certificate for the termination of pregnancy.

While the Zimbabwean Supreme Court has been criticised for its failure to show greater commitment to women's rights, this judgment makes very important pronouncements that can be used as a stepping stone to further advance the women's sexual and reproductive rights in Zimbabwe. The Court made important pronouncements as to the importance of international standards that protect a woman's

right to protect and control her biological integrity. Whilst clarifying that international instruments cannot operate to override or modify domestic law unless and until they are internalised and transformed as rules of domestic law, the Court found that it was proper and instructive to have regard to them as embodying norms of great persuasive value in the interpretation and application of domestic statutes and common law. Within the context of the discussion on the role of international standards, the Court made some admissions that the Zimbabwean Government may be failing in its obligations under international human rights standards; particularly the Convention on the Elimination of all forms of Discrimination Against Women and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Criminal Defence of Two Men Accused of Sodomy in Zambia

On 3 July 2014, two young men charged under section 155 of the Penal Code with the offence of having carnal knowledge of each other against the order of nature, better known as sodomy were acquitted.

In May 2013 two young men were arrested in Kapiri Mposhi, Zambia. They were charged under section 155 of the Penal Code with the offence of having carnal knowledge of each other against the order of nature, better known as sodomy. Zambia's Penal Code carries the highest penalty for this offence in the southern African region, fifteen years to life imprisonment. At the time of arrest both men were 21 years of age. They did not know that they would spend the next year behind bars waiting for their trial to come to a conclusion. They were finally acquitted by Magistrate John Mbuzi on 3 July 2014.

The arrest of the two men came in the wake of a wave of anti-gay rhetoric in the country. During that time, the two young men were brought to a police station in Kapiri Mposhi after an interaction with their neighbour. The police were quick to charge them under section 155 and the media were even quicker to start spinning lies about the accused, claiming that they were engaged to be married

or caught in the act. With each new news report the stories about the accused were further embellished and by June 2013, Magistrate Mbuzi had to order the media to refrain from spreading rumours and conducting a trial by media. The two men were refused bail as a direct result of the media reports that were circulated about them. During the trial, these reports proved to be untrue. The impact of negative media has been lasting and the two men have been unable to return home after their eventual acquittal.

The fact that two innocent men remained in custody for more than a year is a shameful indictment of the criminal justice system in Zambia. From the start, the men were bombarded with obstacles in their quest for a fair trial. They were forced to plead before they had obtained a legal representative. They were lucky to obtain a qualified lawyer from Lusaka who was willing to defend their right to a fair trial despite the risks this might have for his professional career. Throughout the trial, the defence's lawyer was unable to access evidence held by the prosecution, including witness statements and medical reports. This basically amounted to a trial by ambush.

The trial commenced on 10



June 2013 and the prosecution eventually concluded its case on 24 January 2014 after numerous postponements. The prosecution called eight witnesses, none of whom had any knowledge of sexual relations between the two accused. The police officers who testified relied on hearsay evidence without having conducted investigations. The medical evidence presented in the trial also reflected a lack of objectivity by State medical officers. Medical officers conducted intrusive examinations of the accused, without their consent and in the absence of their legal representatives. The medical doctors were not trained in forensic medical examinations and their conclusions were ill-informed and not supported by medical science. The Magistrate's ruling

rejected the medical evidence as being inconclusive and emphasised that circumstantial evidence is insufficient to prove anal penetration, which is an essential requirement for a conviction. As such, the accused were acquitted of the crime of sodomy.

SALC provided support to the accused and their lawyer for the duration of the case.

Defending Freedom of Expression on LGBT Rights

On 15 May 2015, the High Court of Lusaka confirmed Kasonkomona's acquittal, reiterating the Magistrates Court ruling, which distinguished between soliciting someone to engage in same-sex sexual acts, which is currently a criminal offence in Zambia, and advocating for the rights of persons from sexual minorities. Paul Kasonkomona is a Zambian human rights activist who was prosecuted for sharing his views on the rights of sexual minority groups.

In many countries, whether your freedom of expression is respected or not continues to depend on the views you hold. The prosecution of Zambian human rights activist, Paul Kasonkomona, for his views on the rights of sexual minority groups, is such an example.

In its Resolution on Human Rights Defenders in Africa in 2011, the African Commission called on States to recognise the role of human rights defenders to promote the rights in the African Charter on Human and Peoples' Rights, and urged States to release human rights defenders who were arbitrarily detained and put an end to judicial harassment and other acts of intimidation against human rights defenders. Most recently, in a Resolution in 2014, the African Commission called on State Parties

"to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals and criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities."

Paul Kasonkomona appeared on a television show in April 2013, where he spoke about the importance of respecting the rights of sexual minorities if the State is to effectively address the HIV epidemic. Kasonkomona was immediately detained and only days later he was charged with the obscure offence of "soliciting for immoral purposes". This offence, dating back to the English Vagrancy Act of 1898, had never before been used in this manner. In February 2014, after the prosecution had presented its case against Kasonkomona, the Magistrate ruled

that the State had not made out a *prima facie* case and acquitted Kasonkomona.

The Magistrate made an important distinction between committing a same-sex sexual act, which is prohibited by the Penal Code, and advocating for law reform:³

"[F]rom the evidence on the record the accused was not engaging anyone to practice homosexuality. What I heard was that he was advocating for the rights of those already practicing it to be protected. By way of analogy, if someone was to go on television and advocate that the law on defilement should be amended will they be soliciting for immoral purposes? Or if someone was to engage the public by stating that the death sentence should be abolished, will they also be soliciting for immoral purposes? The answer is not. It is through debate that people share information and ideas whether good or bad."

This finding was very similar to that made by Judge Rannowane in the Botswana High Court when, on 14 November 2014, he ordered the State to register an LGBT



Photograph: SALC

organisation: "In a democratic society asking for a particular law to be changed is not a crime, neither is it incompatible with peace, welfare and good order."

In an unusual step, the State appealed Kasonkomona's acquittal. Essentially, the State argued that the prosecution of Kasonkomona constituted a justifiable limitation of his right to freedom of expression since this limitation is reasonably required in the interests of public morality. The State did not rely on the evidence of its own witnesses on appeal, and Justice Mulongti, on 15 May 2015, confirmed Kasonkomona's acquittal, reiterating the ruling of the Magistrate which distinguished between soliciting someone to engage in same-sex sexual acts, which is currently a criminal

offence in Zambia, and advocating for the rights of persons.

The laborious criminal process that Kasonkomona had to endure to secure his acquittal applies to many other activists across Africa. Even if the charges against activists, such as Kasonkomona, are fundamentally weak, the States' actions in prosecuting them have major implications for freedom of expression in those countries. In Zambia, Kasonkomona's arrest and ongoing court proceedings, over the past two years, had the effect of silencing many critical voices on human rights issues for fear of similar persecution.

³ *The People v Paul Kasonkomona, Lusaka Magistrates Court, Case No. 9/4/13 at R10, Ruling delivered on 25 February 2014. The ruling is available at <http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2014/03/Kasonkomona-Ruling.pdf>*

Advancing the Best Interests of the Child in Adoption

On 2 February 2015, the High Court of Botswana delivered a judgment emphasising the centrality of the child's best interests in all matters concerning the child. The case was brought by the biological father of a child born out of wedlock, who challenged the section of the Adoption Act that excluded the requirement of his consent to his child's adoption merely because he was not married to the child's mother when the child was born.

Under Botswana's Adoption Act, both biological parents are required to consent to the adoption of a child, if the child's parents are married. However, if the child is born out of wedlock, only the mother needs to consent to the child's adoption, regardless of the circumstances of the biological father's relationship with the child. Adoption terminates all parental rights and obligations between the child and her biological parents.

The applicant in this case was the biological father of a child born out of wedlock. He had developed a relationship with the child from her birth and had sought to provide for her and protect her from harm throughout her life. The father had previously obtained court-ordered visitation rights to the child, as it had been determined it was in the child's best interests to sustain a

relationship with him, despite the biological mother's wishes to the contrary.

The applicant discovered that the child's mother had or was in the process of having the child adopted by the mother's new romantic partner. Under law, the absence of the applicant's consent to the child's adoption was of no relevance and he risked having his relationship with his daughter legally terminated against his wishes. The applicant therefore filed a challenge to the section of the Adoption Act that excluded the requirement of his consent to his child's adoption merely because he was not married to the child's mother when the child was born.

SALC worked with the Botswana Network on ethics, Law and HIV/AIDS (BONELA) and Uyapo Ndadi, a private lawyer, to support the applicant's case. The Gaborone High Court heard legal arguments on 15 September 2014, before Dingake J.

Mr Ndadi, for the applicant, argued that on the facts before the Court, the father in this case had played a consistent role in ensuring the child's growth, wellbeing and care. It was argued that the Act discriminated against the applicant



on the basis of his marital status and sex and subjects the applicant to treatment that is inhumane and degrading in a process which infringes his right to a fair hearing. The limitation of the father's rights, it was argued, were constitutionally unjustifiable because it does not advance the child's best interests. The relevant section of the Act was therefore unconstitutional and unlawful.

The respondents to the case did not oppose the application. However, the Court invited the Attorney General to make submissions on the constitutional challenge. Mr David Moloise, for the Attorney General, argued that the Act was not discriminatory and to the extent that it is, the discrimination is justifiable and reasonable, taking into account the common law and customary law origins of the law which provide that parental power

of a father is acquired through wedlock and establishes the principle of a child's "legitimacy".

On 2 February 2015, the High Court delivered judgment in the applicant's favour. The Court emphasised the centrality of the child's best interests in all matters concerning the child. It held that the Act unduly discriminates against unwed fathers on the basis of gender and marital status. The Court declared the relevant section of the Adoption Act unconstitutional to the extent that, in all cases, it does not require the consent of the biological father to the adoption of his child born out of wedlock. The Court ordered that the applicant's child in this case may not be adopted without his consent.

Protecting the Integrity of the South African Refugee System

In Consortium for Refugee and Migrant Rights in South Africa v The President of the Republic of South Africa and Others, SALC supported the Consortium for Refugees and Migrants in South Africa (CoRMSA) in challenging the asylum granted to suspected war criminal, Rwandan General Nyamwasa, by South African authorities.

SALC and CoRMSA submitted a legal opinion to authorities detailing the illegality involved in the award of asylum. After no meaningful response was received, an application for judicial review of the decision to grant asylum was made. Of greatest concern was that South African and international law explicitly exclude persons suspected of committing international crimes from eligibility for refugee status.

Asylum was given to Nyamwasa in 2010 immediately after an attempt was made on his life. SALC and CoRMSA do not dispute that Nyamwasa faces threat, and do not suggest that he be returned to Rwanda, where he faces criminal charges but where it is likely that his life would be endangered. However, he faces two separate indictments, from Spain and France, for alleged involvement in international crimes, linked to his past high-level command of the Rwandan Patriotic Army (RPA). A

United Nations report also details war crimes and crimes against humanity committed by the RPA forces under his command, during and directly after the Rwandan genocide of 1994.

The case was launched in an attempt to maintain the integrity of the South African refugee system and to prevent suspected perpetrators of egregious crimes from finding sanctuary in South Africa. It represents the first time that a South African court has the opportunity to provide practical and substantive content to the refugee exclusion clause, and foregrounds the following issues:

- The proper interpretation and administration of South Africa's Refugees Act in accordance with international law;
- The intersection between refugee law and international criminal law and the detection and apprehension of persons accused of international crimes;
- South Africa's obligation to ensure that it does not become a safe haven for perpetrators of international crimes;
- South Africa's constitutional mandate to ensure accountable, transparent and rational decision making.



Final legal arguments were heard in this case on 17 May 2013. On 26 September 2014 the High Court ruled that Nyamwasa was entitled to refugee status and that insufficient cause had been shown to believe that Nyamwasa was involved in the alleged crimes. Leave to appeal before the High Court was denied and CoRMSA, with SALC's support, will petition the Supreme Court of Appeal.

SALC Advocacy

Conference: Civil society initiatives to secure accountability for international crimes at a domestic level

In June 2014, SALC hosted a two day regional advocacy conference, focused on civil society initiatives to secure accountability for international crimes at a domestic level.

Many African countries need to address accountability for international crimes. The existing backlash against the International Criminal Court (ICC) and the lack of an African regional accountability mechanism designed to handle international crimes mean that there is little forward movement in this project. Given the situation, SALC convened a meeting of civil society actors from throughout Africa to discuss ways in which civil society can ensure accountability for international crimes through the use of local courts and how they might strategically advocate for the domestication of ICC legislation.

The conference was also aimed at reviving the international criminal justice debate in Africa and reinvigorating the discourse with new and fresh ideas. Other objectives included developing alternative strategies to combat international crimes domestically.

The conference was attended by

34 civil society representatives from Africa and beyond, including The United States of America, Belgium, Mali, Sierra Leone, Ivory Coast, Uganda, Kenya, Tanzania, Zambia, Malawi, Botswana, Zimbabwe, South Africa, Lesotho, Democratic Republic of Congo (DRC) and Nigeria, who came to share their experiences, best practices and strategies to best support the African international criminal justice project.

The conference provided a platform for information sharing and strategising. The substance of the meeting also provided the content for SALC's latest international criminal justice publication. "Civil Society in Action: Pursuing Domestic Accountability for International Crimes."

SADC Tribunal

Following the adoption of the new SADC Tribunal Protocol by the SADC Summit in August 2014, SALC worked with other civil society organisations in raising concern about the removal of the human rights jurisdiction and individual access to the Tribunal through a letter to SADC heads of state and governments. At the end of August 2014, civil society organisations agreed to work individually and as part of a coalition to call for the reinstatement of the SADC

Tribunal with its original mandate. In December 2014, SALC prepared a submission to the Special Rapporteur on Independence of Judges and Lawyers regarding the retrogressive step taken by the heads of states in the new SADC Tribunal Protocol, as well as the continued interference with independence of the judiciary. The submission was signed by SALC, SADC Lawyers Association and the International Commission of Jurists.

United Nations level

In 2014, SALC began to intensify its advocacy work at the United Nations level, including through interaction with Special Rapporteurs and the submission of shadow reports. SALC made a submission to the Committee on the Elimination of all forms of Discrimination against Women (CEDAW) regarding Namibia on 20 October 2014. As well as a report to CEDAW on Malawi on 10 February 2015.

From 28 to 31 October 2014, SALC conducted an advocacy mission to the UN in Geneva. During this mission, SALC attended the Universal Periodic Review of Angola and met with the UN desk officer for southern Africa, representatives of the following special procedures: the Special Rapporteur on

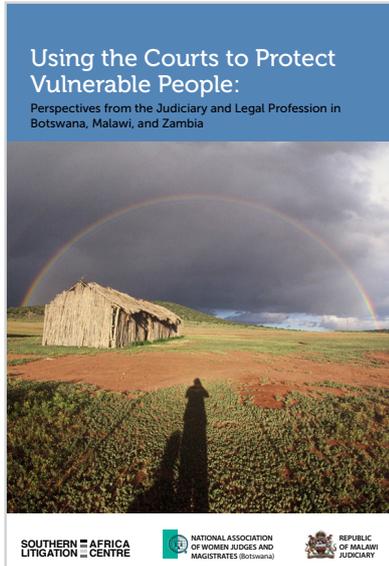


Photograph: SALC

Freedom of Expression; Special Rapporteur on Freedom of Peaceful Assembly; Special Rapporteur on Human Rights Defenders; Special Rapporteur on the Independence of Judges and Lawyers; as well as, the Working Group on Arbitrary Detentions and CEDAW.

Following the meetings in Geneva, SALC sent a communication to the Special Rapporteur on Independence of Judges and Lawyers regarding the new Southern Africa Development Community (SADC) Tribunal Protocol; as well as to the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism regarding the use of counter-terrorism laws in Swaziland in violation of human rights.

SALC Publications



Using the Courts to Protect Vulnerable People: Perspectives from the Judiciary and Legal Profession in Botswana, Malawi, and Zambia

In February and March 2014 SALC, the National Association of Women Judges and Magistrates (Botswana) and the judiciaries in Malawi and Zambia co-hosted judicial colloquia on the rights of vulnerable groups. The colloquia provided a unique opportunity for judges to discuss and debate the development of constitutional jurisprudence in their courts.

The papers presented at the various colloquia were published

in a publication which was loosely organised around three overlapping themes: The role of the judiciary in protecting the rights of vulnerable groups; The use of international and regional law as a tool for judges to develop jurisprudence on the rights of marginalised and vulnerable groups in domestic courts; and the right to equality and non-discrimination. The publication was launched in early 2015 at seminars attended by the judiciary, civil society and legal profession in Malawi, Zambia and Botswana respectively. A full copy of the publication is available on SALC's website.



Advocacy Toolkit on the African Court on Human and Peoples' Rights

In December 2014, SALC released an advocacy toolkit on the African Court on Human and Peoples' Rights. The toolkit, entitled, "Justice for all: Realising the Promise of the Protocol establishing the African Court on Human and Peoples' Rights," was released as the first in the SALC handbook series and is geared towards civil society groups interested in engaging with the African Court on Human and Peoples' Rights. It explains the place of the African Court within

African human rights enforcement mechanisms; the jurisdiction and functioning of the court and how the court can be accessed.

While reference is made to the Protocol on the Statute of the African Court of Justice and Human Rights, which has not come into effect, its main focus is on the existing African Court. The existing court is currently not vested with criminal jurisdiction and excludes the immunity proposed in the amendment to the Protocol on the Statute of the African Court of Justice and Human Rights.



Civil Society in Action: Pursuing Domestic Accountability for International Crimes.

Drawing from the outcomes of the conference on civil society initiatives to secure accountability for international crimes at a domestic, the publication provides useful insight and information on domestic accountability for international crimes.

This publication canvases successful case studies of civil society pursuing domestic accountability for international crimes and it outlines existing legal frameworks and addresses challenges faced with the investigation and prosecution of international crimes in Africa.

Among the recommendations are that existing penal codes be harmonised with international

criminal law and the specific assistance to the ICC include the relocation of witnesses, incarceration of convicted perpetrators and the lawful detention of ICC fugitives. Other recommendations include better collaboration between civil society organisations, targeting parliamentarians to positively influence policy, training judges, prosecutors and lawyers in matters of international criminal justice, and capacity building in terms of the investigation of crimes by civil society organisations.

The report forms part of SALC's broader effort to develop national and regional strategies that will result in southern African and African civil society acting in concert to reverse the tide of impunity for the perpetrators of international crimes.

SALC Docket:

Our Cases March 2014 – February 2015

Botswana

Ramantele v Mmusi and Others (Court of Appeal) Challenging a customary law which provides only for male inheritance.

Thutho Rammoge and others v Attorney General

(High Court) Challenging the refusal to register an LGBT organisation (LEGABIBO).

Tapela and Others v Attorney General (High Court)

Challenging government policy refusing HIV treatment to non-citizen prisoners.

Khwarae v Keaikitse and Others

(High Court) Challenging the exclusion of a requirement for the biological father's consent in the adoption of his children born out of wedlock.

Lesotho

Masupha v The Senior Resident Magistrate for the Subordinate Court of Berea and Others

(African Commission Submission) Challenging a discriminatory law which provides only for male succession to chieftainship

Masupha v The Senior Resident Magistrate for the Subordinate Court of Berea and Others

(Court of Appeal) Challenging a discriminatory law which provides only for male succession to chieftainship.

Malawi

In Re Butao and Others v State (the State v Officer in Charge of Mwanza Police and Others) (High Court) Challenging mandatory HIV testing of sex workers while in police custody.

In the Matter of the Registered Trustees of the Women and Law in Southern Africa Trust (Malawi) v Attorney General (Constitutional Court) Strengthening women's property rights at time of divorce.

Republic v Chiwisi and Others (High Court and Supreme Court) Challenging the constitutionality of the offence of sodomy and the jurisdiction of the High Court in constitutional matters.

Namibia

Government of the Republic of Namibia v LM and Others (Supreme Court) Challenging the coerced sterilisation of HIV-positive women.

South Africa

Consortium for Refugee and Migrant Rights in South Africa v The President of the Republic of South Africa and Others (High Court) Challenging South Africa's decision to grant refugee status to an individual accused of war crimes.

Mail and Guardian Media Limited and Others v Chipu NO and Others (Constitutional Court) Amicus intervention on the effect of absolute confidentiality in South African refugee law on South Africa's adherence to its international criminal law obligations.

National Commissioner of the South African Police Service v Southern Africa Litigation Centre and Another (Constitutional Court) Challenging South Africa's refusal to investigate crimes against humanity committed in Zimbabwe.

Zambia

Mwanza and Another v Attorney General (High Court) Asking the government to provide HIV-positive prisoners on treatment with adequate food, ventilation and living conditions.

People v Paul Kasonkomona (Magistrates Court and High Court) Criminal defence of activist arrested for speaking about gay rights, and challenging the constitutionality of the offence of soliciting for immoral purposes.

People v P M and J M (Magistrates Court) Criminal defence of two men accused of sodomy in Kapiri Mposhi, including challenging the veracity of medical evidence in such cases.

Zimbabwe

E K v Commissioner of Police (High Court) Claim for damages by an alleged sex worker who has been abused by the police.

Mapingure v The State (Supreme Court) Challenging government failure to ensure timely access to emergency contraception and termination of pregnancy services.

Mushapaidze v St Anne's Hospital and Others (Constitutional Court) Challenging the forced disclosure of an employee's HIV status and her eventual dismissal due to her HIV status.

RN v Commissioner of Police (High Court) Claim for damages by transgender person who has been abused by the police.

SALC Staff



Nicole Fritz
Executive Director

Nicole Fritz obtained her LL.B. (cum laude) from the University of the Witwatersrand and thereafter completed an LL.M. in international legal studies at New York University School of Law as a Hauser Global Scholar. She has taught constitutional and international law at the University of the Witwatersrand School of Law and human rights law at Fordham University School of Law in New York. She has also worked at Fordham's Crowley Program in International Human Rights. She served as law clerk to Justice Richard Goldstone at the Constitutional Court of South Africa. Currently, she is an extraordinary lecturer at the University of Pretoria's Centre for Human Rights and at the University of the Witwatersrand School of Law.

Nicole left SALC in February 2015.



Kaajal Ramjathan-Keogh
Executive Director

Kaajal Ramjathan-Keogh joined SALC at the end of the reporting period for this report, in February 2015. She obtained her B.Proc LLB degrees from the University of Natal (now University of Kwa Zulu Natal). She was employed at Lawyers for Human Rights from 2002- 2014 where she initially headed the Immigration Detention Monitoring Unit and was thereafter appointed as Manager of the Refugee and Migrants Rights Programme, which position she held from 2007- 2014. She was the board chairperson of the Consortium for Refugees and Migrants in South Africa from 2007-2011. She was the Southern African regional representative for the International Detention Coalition (IDC) and sat on the IDC's Advisory Panel from 2008- 2014. Kaajal is a founding member of

the secretariat of the African NGO Taskforce which is a network of organisations working on refugee protection in Africa. The Taskforce has been working on actively capacitating local NGOs on aspects of refugee protection. She has significant experience and expertise in the fields of asylum, migration, refugee protection, citizenship and statelessness. Kaajal was previously employed at the International Organization for Migration.



Priti Patel
Deputy Director and HIV
Programme Manager

Priti Patel graduated with a B.A. in history from Columbia University in 1997 and received her J.D. from New York University School of Law in 2002. Before joining SALC, she was an attorney in the Law and Security Program at Human Rights First. In that capacity, she led field missions to Afghanistan, monitored military commission trials at Guantanamo Bay, and worked on amicus briefs to the US Supreme Court. She also served as a law clerk to then Chief Justice Arthur Chaskalson and Justice Catherine O'Regan at the Constitutional Court of South Africa from 2002 to 2003 and was a Fulbright scholar in Durban, South Africa in 1998. Since 2007, she has been involved in numerous cases in southern Africa strengthening the rights of people living with and affected by HIV.

Priti left SALC in December 2014.



Anneke Meerkotter
The LGBT and Sex Worker
Rights Programme and
Litigation Director

Anneke Meerkotter joined SALC in February 2012 as the LGBT and Sex Work Programme Lawyer and was promoted to the position of Litigation Director in 2015. She previously worked as executive director at the Tshwaranang Legal Advocacy Centre in Johannesburg, South Africa until May 2010. Prior to that, she worked as a public interest lawyer at Tshwaranang Legal Advocacy Centre and at the AIDS Law Project (Centre for Applied Legal Studies). She has also worked as a researcher at the Community Law Centre (Gender and Children's Rights Projects) based at the University of the Western Cape. Anneke obtained her B.Proc and LL.B. degrees at the University of the Western Cape. She clerked at the Legal Resources Centre and was admitted as an attorney of the High Court in 2003. She obtained her M.Sc in Sociology (Gender, Sexuality and Society) from the University of Amsterdam in 2011.



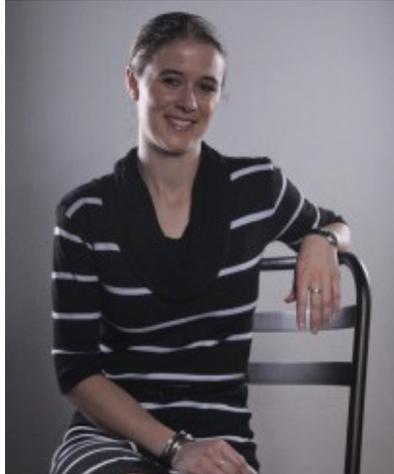
Nyasha Chingore-Munazvo
Lawyer, Sexual and
Reproductive Rights
Programme

Nyasha Chingore-Munazvo holds an LL.B. from the University of Zimbabwe and an LL.M. in human rights and democratisation in Africa from the Centre for Human Rights at the University of Pretoria. Prior to joining SALC, Nyasha was a researcher and project manager at the AIDS and Human Rights Research Unit at the University of Pretoria.



Jacqui Groeneweegen
Finance Director

Jacqui Groeneweegen holds a BCompt from the University of South Africa. She started off as an audit clerk and became the financial accountant for an audit practice. Thereafter she and two partners ran their own accounting practice for eleven years where they provided a full spectrum of tax, accounting, payroll and company secretarial services. She rejoined the corporate sector for five years as the financial manager for a recruitment company before joining SALC.



Caroline James
Lawyer, Media Defence Programme

Caroline James holds B.A. and LL.B. degrees from the University of the Witwatersrand. She has previously worked for Lawyers for Human Rights in Johannesburg, South Africa. Prior to joining SALC, she was a judge's clerk at the South Gauteng High Court.



Angela Mudukuti
Lawyer, International Criminal Justice

Angela Mudukuti graduated with an LL.B from the University of Pretoria in 2009 and completed an LL.M in Transitional Justice, International Criminal Law and Anti-Corruption Law at the University of the Western Cape, in conjunction with the Berlin based Humboldt-Universität. Prior to joining SALC, she worked at the International Criminal Court in The Hague, and worked under the supervision of Prof. Cherif Bassiouni at the International Institute for Higher Studies in Criminal Sciences (ISISC) in Italy. Prior to that, Angela worked in private practice, assisting with civil and criminal matters.



Annabel Raw
Lawyer, HIV Programme

Annabel Raw holds a BA Law from the University of Pretoria, an Honours degree in International Relations from the University of the Witwatersrand and an LLB from the University of South Africa. She obtained an LLM in International Human Rights and Humanitarian Law from Lund University, Sweden, in cooperation with the Raoul Wallenberg Institute of International Human Rights and Humanitarian Law. Prior to joining SALC, Annabel worked at the Constitutional Court of South Africa as a Law Clerk and Assistant to Justice Thembele Skweyiya.



Pamela Timburwa
Office Manager

Pamela Timburwa graduated with a bachelor of business administration from the University of South Africa and has a qualification in secretarial studies from BIC Academy. Prior to joining SALC, she worked at the Nelson Mandela Institute for Rural Education and Development as a Research Support Administrator and at Africa University as a secretary.



Muluka Miti-Drummond
Regional Advocacy Director

Muluka Miti-Drummonds holds a BA and LLB from the University of Venda and an LLM from the University of Pretoria. She also has an MSc degree in Development Management from the Open University in the United Kingdom. Prior to joining SALC, she worked at Amnesty International in London as the Researcher for Portuguese and Spanish Speaking African Countries. She has also worked as a consultant for the International Organisation of Migration, a law expert and lecturer at the Catholic University of Mozambique and as an Assistant at the University of South Africa.

SALC Trustees



Lord Abernethy (Justice Alastair Cameron)

Lord Abernethy was called to the Bar at Inner Temple, London, in 1963 and admitted as a member of the Faculty of Advocates (Scottish Bar) in 1966. He was made Queen's Counsel (Scotland) in 1979 and was elevated to senator of the College of Justice in Scotland (Judge of the Supreme Court) in 1992, where he served until 2007. He has held many senior positions in national and international organisations, including the International Bar Association (IBA), and serves as a judge of the Court of Appeal of Botswana.



Keith Baker

Keith Baker is a London solicitor and has been an individual member of the IBA for approximately 25 years, specialising in cross-border private client work. He is a past chair of the Individual Tax and Private Client Committee and a past treasurer of the former Section on General Practice.



Zohra Dawood

Zohra Dawood has degrees in law and a master's degree in economic history. She worked for a decade as chief researcher for a land rights organisation. After 1994, she worked with the Department of Land Affairs and Agriculture, where she was involved in policy formulation and implementation, including negotiations and settlement of land claims. She has been an adviser to cabinet members and was an adviser to the Presidency of Nelson Mandela. She also worked for the Department of Defence in drafting its legislation and policies on land and environment. In 1999, she joined the Open Society Foundation (OSF) as the deputy executive director of the Open Society Foundation for South Africa, and was the executive director from 2001-2012.



Rahim Khan

Abdool Rahim Khan has been an attorney since 1977. He was admitted as an attorney of the High Court of South Africa (T.P.D.) in 1977 and as an attorney of the High Court of Botswana in 1981. Rahim has been in private practice from 1982 to date. He was a law lecturer at the University of Botswana from 1980 to 1982 and a part-time lecturer with Barclays Bank of Botswana from 1984 to 1985. He has been an acting chief magistrate of Gaborone in 2000 (September to December), 2002 (March to June), 2003 (January to April) and 2012 (March to May). He is a member of the Legal Aid Board Botswana, Railways Properties Board, Basil Read Botswana, Norilsk (Botswana), and Auto Sueco (Botswana), amongst others. He is a former honorary Swedish consul to Botswana (2007 to 2012). He is a board member of Freedom under Law, a South African non-governmental organisation.



Beatrice Mtetwa

A prominent lawyer and human rights defender, Beatrice Mtetwa has appeared in numerous high-profile political cases in Zimbabwe. In a country where law is often used as a weapon of persecution, she has defended those targeted, at great personal risk. She is a past president of the Law Society of Zimbabwe and is the recipient of numerous human rights awards.



Sternford Moyo

Sternford Moyo has been a legal practitioner in Zimbabwe for 34 years. He is the Chairman and Senior Partner of Scanlen & Holderness, Chairperson of Stanbic Bank Zimbabwe Limited, Chairperson of Schweppes Zimbabwe Limited, Chairperson of African Regional Forum of the International Bar Association, Former President of the Law Society of Zimbabwe and the SADC Lawyers Association, Former Co-chair of the International Bar Association's Human Rights Institute and Director of Alpha Media Holdings (Pvt) Ltd and PPC Zimbabwe Ltd.



Dr Phillip Tahmindjis

Dr Phillip Tahmindjis was a professor of law teaching human rights in Australia, North America and Hong Kong, as well as a consultant to government and private industry on human rights and discrimination issues. He was a member of the Queensland Anti-Discrimination Tribunal and has published four books and numerous articles in this field. He is currently the co-director of the IBA's Human Rights Institute and has undertaken capacity building with bar associations in Afghanistan, Bhutan, East Timor, and Swaziland; human rights training in Iraq, Nepal, and Palestine; and human rights fact-finding missions in Pakistan, Russia, and Syria.

SALC Donors and Partners

Anonymous	Action for Southern Africa (ACTSA)	Lesotho
Ford Foundation	African Women's Development and Communications Network (FEMNET)	Foundation for Human Rights
Freedom House	AIDS and Rights Alliance of Southern Africa	Front Line Defenders
Open Society Foundations	American Bar Association (ABA)	Gays and Lesbians of Zimbabwe
Open Society Initiative for Southern Africa	Amnesty International	Gigi Reid
Open Society Justice Initiative	Anton Katz SC	Gilbert Chama
Sigrid Rausing Trust	Association for Justice, Peace and Development (AJPD), Angola	Gilbert Marcus SC
Trust Africa	Association for Women, Law and Development (Associação, Mulher, Lei e Desenvolvimento, MULEIDE) – Mozambique	Gregory Jonsson
United Nations Democracy Fund	Botswana Network on Ethics, Law and HIV/AIDS	Health Plus for Men
United States Department of State	Bwalya Mubanga	Hephzibah Rajah
	Centre for Human Rights Education, Advice and Assistance	Howard Varney
	Centre for Human Rights, University of Pretoria	Human Dignity Trust
	Centre for the Development of People	Human Rights League of Mozambique (Liga Moçambicana dos Direitos Humanos)
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	Chipo Mushota Nkhata	Institute for Human Rights and Development in Africa (IHRDA)
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	Federation of Women Lawyers-	Kenneth Mwansa
		Khotso Nthontho
		Kucaca Phulu
		Lawyers for Human Rights
		Legal Assistance Centre



Legal Resources Foundation-
Zambia

Lesbians, Gays and Bisexuals of
Botswana

Lesego Nchunga

Leslie Sibanda

Lilian Kiefer

Lisa Rimli

Malawi Law Society

Mandala Mambulasa

Mannasseh Phiri

Max du Plessis

Namibia Women's Health Network

Natasha Bassingthwaite

National Association of Women
Judges (Botswana)

Ngwako Hamilton Maenetje SC

Pacharo Kayira

Pakachere Institute of Health and
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Paul Kasonkomona

Perpetua Dube

Rafael Marques de Morais

Robin Palmer

Rock of Hope

SADC Lawyers Association

Sexual Rights Centre

Shepherd Chisala

Sian Maseko

South African Tamil Federation

Southern Africa Development
Community Lawyers' Association
(SADCLA)

Sunday Bwalya Nkonde SC

Susannah Cowen

T.M. Maieane

Tamil Federation of Gauteng

Trans Bantu

Treatment Advocacy and Literacy
Campaign

Tshiamo Rantao

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Women and Law in Southern Africa
- Lesotho

Women and Law in Southern Africa
- Malawi

Women and Law in Southern Africa
- Mozambique

Women in Law in Southern Africa
-Zimbabwe

Yasmin Sooka

Zimbabwe Exiles Forum

Zimbabwe Lawyers for Human
Rights

Zimbabwe Women Lawyers
Association



Selected Conferences

SALC Judicial Colloquium on the Rights of Vulnerable Groups

6-7 March 2014
Mongochi, Malawi

SALC Judicial Colloquium on the Rights of Vulnerable Groups

28-29 March 2014
Gaborone, Botswana

NOREF-FORD FOUNDATION-SAIIA Seminar on Human Rights, Emerging Powers & International Governance: Civil Society Actors & Transnational Advocacy in the 21st Century

12-13 May 2014
Johannesburg, South Africa

SALC International Criminal Justice Regional Advocacy Conference on Civil Society and Pursuing Domestic Accountability for International Crimes

10-11 June 2014
Johannesburg, South Africa

United Kingdom Government Global Summit to End Sexual Violence in Conflict

10-13 June 2014
London, United Kingdom

UNAIDS Meeting on Sustaining HIV and Human Rights Programming in Challenging Contexts: Continued Criminalisation, Key Populations and Shrinking Resources

12-13 June 2014
Geneva, Switzerland

OSISA 2014 Public Policy Course

24 June 2014
Johannesburg, South Africa

United Nations Working Group: Business and Human Rights Forum

21 July 2014
Pretoria, South Africa

International AIDS Conference, Melbourne

22-25 July 2014
Melbourne Australia

IPAS Regional Lawyers Workshop on Access to Safe Abortion in Africa

26-27 August 2014
Nairobi, Kenya

United Nations Regional Business and Human Rights Forum

16-18 September 2014
Addis Ababa, Ethiopia



United Nations Office for Human Rights: Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies

23-24 September 2014
Geneva, Switzerland

SA HIV Clinicians Society Conference 2014

24-27 September 2014
Cape Town, South Africa

The Africa Regional Judges' Forum on HIV, Human Rights and the Law

14-15 October 2014
Johannesburg, South Africa

OSF, SALC, Human Dignity Trust Conference on Litigating to Decriminalise Homosexuality in Commonwealth Africa

10-12 November 2014
Durban, South Africa

Åbo Akademi Institute for Human Rights Advanced Course on Justiciability of Economic, Social and Cultural Rights: Theory and Practice

17-21 November 2014
Åbo, Finland

Åbo Akademi Socio-Economic Rights Justiciability, Study Visit

24-28 November 2014
Åbo, Finland

FCAA 2014 AIDS Philanthropy Summit

8-9 December 2014
Washington, United States

International Criminal Court Assembly of States Parties

8-17, December 2014
New York, USA

SALC Seminar on Using the Courts to Protect the Rights of Vulnerable Groups

12 January 2015
Gaborone, Botswana

AIDS and Rights Alliance of Southern Africa Regional Dialogue on HIV, TB and Human Rights in Prisons

5 February 2015
Kempton Park, South Africa

Centre for Human Rights, Sexual Minorities Course

11 February 2015
Pretoria, South Africa



Selected Articles & Publications

Annabel Raw

Human Rights Are Important in Health Crises

Business Day
19 August 2014

Anneke Meerkotter

Human Dignity, Religion and Homophobia

Pambazuka News
21 May 2014

Anneke Meerkotter

Reflections on Case of Two Men Accused of Sodomy in Zambia

76crimes.com
6 July 2014

Anneke Meerkotter

Malawi@50: Police Concerns

The Nation
15 July 2014

Anneke Meerkotter and
Chikosa Banda

Examining the Constitutionality of Rogue and Vagabond Offences in Malawi, in Using the Courts to Protect Vulnerable People

January 2015

Anneke Meerkotter and
Chiwoza Bandawe

Developing a Conceptual Framework against Discrimination on the Basis of Gender Identity, in Using the Courts to Protect Vulnerable People

January 2015

Caroline James

Swazi Judgment Deals a Heavy Blow to Freedom of Expression

Mail and Guardian
1 August 2014

Caroline James

Mad Hatters Rule in Swaziland Court

Business Day
7 November 2014

Nicole Fritz

Swaziland's Chief Justice Lives in Fairy-Tale World

The Sunday Independent
23 March 2014

Nicole Fritz

African Union Gives Immunity to Heads of State by Subterfuge,

Business Day Live
15 July 2014

Nicole Fritz

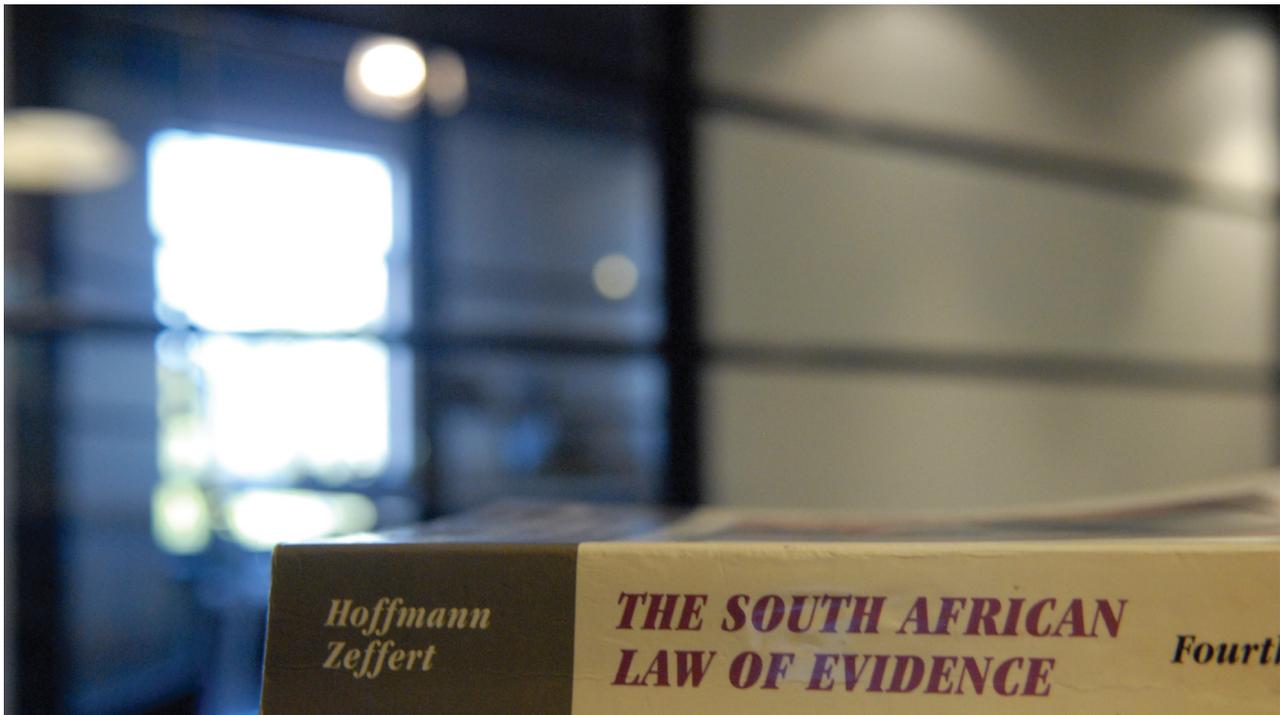
Israeli War Tactics Ignore Children's Innocence

The Sunday Independent
27 July 2014

Nicole Fritz

African Activists Wary Over Support from US

Business Day
12 August 2014



Nicole Fritz
Quiet Death of an Important SADC
Institution
Mail and Guardian
29 August 2014

Nicole Fritz
South Africa-The Courts: Lights
That Guide Our Foreign Affairs?
SAIIA Occasional Paper No 203,
October 2014

Nicole Fritz
SA's Power at Work in Zimbabwe
Judgment
Business Day
4 November 2014

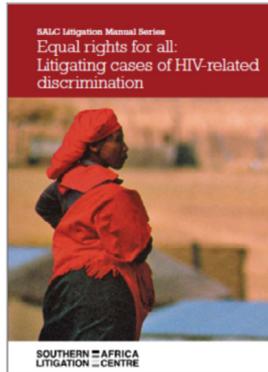
Nyasha Chingore-Munazvo,
A Win for Victims of Forced
Sterilization in Namibia
Open Society Foundation Blogs
17 December 2014

Priti Patel
Realising the full Potential of
Civil and Political Rights for
Marginalised Populations in African
Countries
January 2015



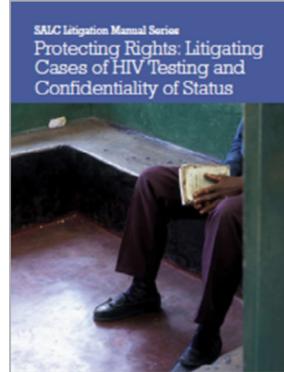
The SALC library

All SALC's publications can be downloaded from the SALC website.



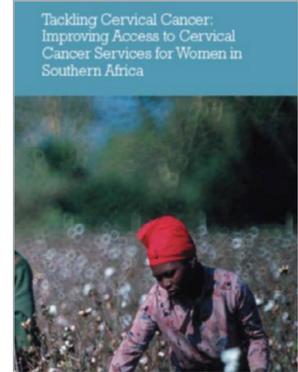
Equal Rights for All: Litigating Cases of HIV-Related Discrimination

This litigation manual provides private and public lawyers in southern Africa, who are litigating cases in domestic courts that challenge laws, policies and practices around HIV-related discrimination, critical legal information including relevant international, regional and comparative law.



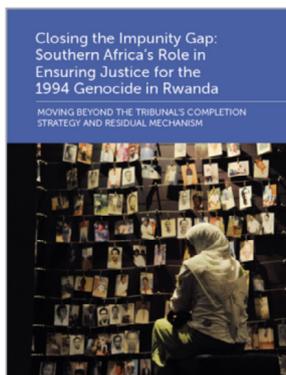
Protecting Rights: Litigating Cases of HIV Testing and Confidentiality of Status

This litigation manual provides private and public lawyers in southern Africa, who are litigating cases in domestic courts that challenge laws, policies and practices around unlawful HIV testing and breaches of confidentiality, critical legal information including relevant international, regional and comparative law.



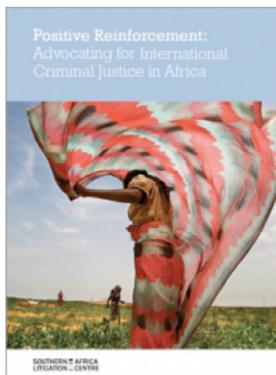
Tackling Cervical Cancer: Improving Access to Cervical Cancer Services for Women in Southern Africa

This research report details how southern African governments fail to adequately provide medical and other cervical cancer-related services to women and how such a failure may result in violations of a number of constitutionally-protected rights.



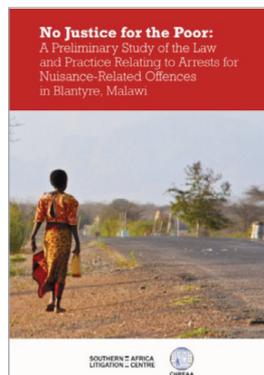
Closing the Impunity Gap: Southern Africa's Role in Ensuring Justice for the 1994 Genocide in Rwanda

This report outlines the legal obligations of southern African states that are triggered by the presence of genocide and international crime suspects in their borders and identifies and addresses challenges that southern African states need to overcome in ensuring that genocide suspects and international criminals living within their borders do not escape justice.



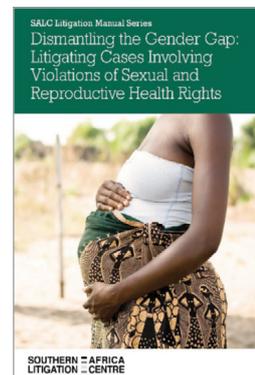
Positive Reinforcement: Advocating for International Criminal Justice in Africa

This report highlights the role and potential of civil society in securing principled support for international criminal justice in Africa. It highlights the challenges that African civil society organisations face and demonstrates how these can be overcome both domestically and regionally. It seeks to be a resource, guide and advocacy tool for African civil society.



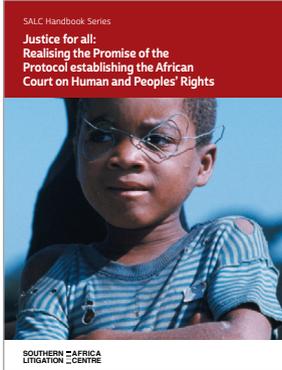
No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Malawi

This research report evaluates the extent of the police's enforcement of offences relating to idle and disorderly persons and rogues and vagabonds in Blantyre, Malawi. The research focuses on the arrest practices of the Blantyre and Limbe police stations and includes interviews with police officers, magistrates and sex workers.



Dismantling the Gender Gap: Litigating Cases Involving Violations of Sexual and Reproductive Health Rights

This litigation manual provides private and public lawyers in southern Africa, who are litigating cases in domestic courts challenging laws, policies and practices that violate sexual and reproductive rights, critical legal information including relevant international, regional and comparative law.



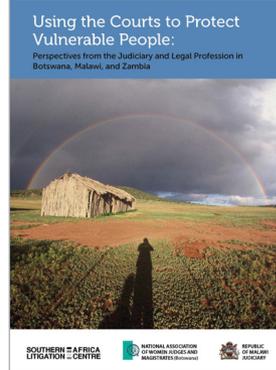
Justice for all: Realising the Promise of the Protocol establishing the African Court on Human and Peoples' Rights

This toolkit, the first in the SALC handbook series and targeted towards civil society groups interested in engaging with the African Court on Human and Peoples' Rights. It explains the place of the African Court within the African human rights enforcement mechanisms; the jurisdiction and functioning of the court and how the court can be accessed.



Civil Society in Action: Pursuing Domestic Accountability for International Crimes

The publication provides useful insight and information on domestic accountability for international crimes by canvassing successful case studies of civil society pursuing domestic accountability for international crimes and outlining existing legal frameworks and challenges faced in the investigation and prosecution of international crimes in Africa. The publication forms part of SALC's broader effort to develop national and regional strategies that will result in southern African and African civil society acting in concert to reverse the tide of impunity for the perpetrators of international crimes.



Using the Courts to Protect Vulnerable People: Perspectives from the Judiciary and Legal Profession in Botswana, Malawi, and Zambia

This publication presents papers presented at hosted judicial colloquia in Botswana, Malawi and Zambia on the rights of vulnerable groups. The papers are loosely organised around three overlapping themes: The role of the judiciary in protecting the rights of vulnerable groups; the use of international and regional law as a tool for judges to develop jurisprudence on the rights of marginalised and vulnerable groups in domestic courts; and the right to equality and non-discrimination.

SALC Financials



THE SOUTHERN AFRICAN HUMAN RIGHTS LITIGATION CENTRE TRUST
(TRUST NO: I TRUST 3935/05)

STATEMENT OF FINANCIAL POSITION AT 28 FEBRUARY 2015

	2015 R	2014 R
ASSETS	5,404,346	4,279,166
Non-current assets	237,646	272,581
Equipment	237,646	272,581
Current assets	5,166,700	4,006,585
Accounts receivable	108,425	107,125
Accrued income	660,531	894,761
Cash and cash equivalents	4,397,744	3,004,699
Total assets	5,404,346	4,279,166
 RESERVES AND LIABILITIES	 5,404,346	 4,279,166
Accumulated funds	593,656	453,657
Current liabilities	4,810,690	3,825,509
Accounts payable	252,652	286,605
Deferred income	4,558,038	3,538,904
Total reserves and liabilities	5,404,346	4,279,166

THE SOUTHERN AFRICAN HUMAN RIGHTS LITIGATION CENTRE TRUST
(TRUST NO: I TRUST 3935/05)

SALC STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 28 FEBRUARY 2015

	2015	2014
	R	R
INCOME	11,826,530	11,621 078
Grants and donations	11,662,171	11,483 059
Interest received	164,359	138,019
EXPENDITURE	11,686,531	11 639,260
Assets expensed directly	26,627	7,568
Advertising and marketing	32,122	-
Audit and Accounting Fees	33,844	29,543
Bank charges	12,789	10,819
Computer expenses	115,024	-
Consultancies	-	25
Depreciation	172,357	156,203
Equipment rental	1,252	1,642
Event costs	25,505	12,135
Insurance	6,539	7,555
Office supplies	48,715	18,883
Printing, postage and stationery	23,638	20,046
Project expenses	8,866,303	9,872,456
Publications, brochures and reports	40,974	-
Rent, water and electricity	524,832	692,064
Repairs and maintenance	3,464	2,918
Salaries and contributions	1,259,502	682,626
Subscriptions Periodicals & Licencing	12,628	10,303
Telephone, internet and email	106,331	42,356
Travel and transport costs	13,885	7,693
Travel and accommodation	360,200	64,425
(DEFICIT) FOR THE YEAR	139,999	(18 182)
BALANCE AT BEGINNING OF YEAR	453,657	471 839
BALANCE AT END OF YEAR	593,656	453 657

Ways to Give



Photograph: courtesy of Herman Potgieter's estate

SALC works hard to strengthen and promote the rights of those most marginalised in the southern African region. Please join us in doing this critical work. Give today.

Online donations can be made at: www.southernafricalitigationcentre.org

Donations by mail can be sent to:

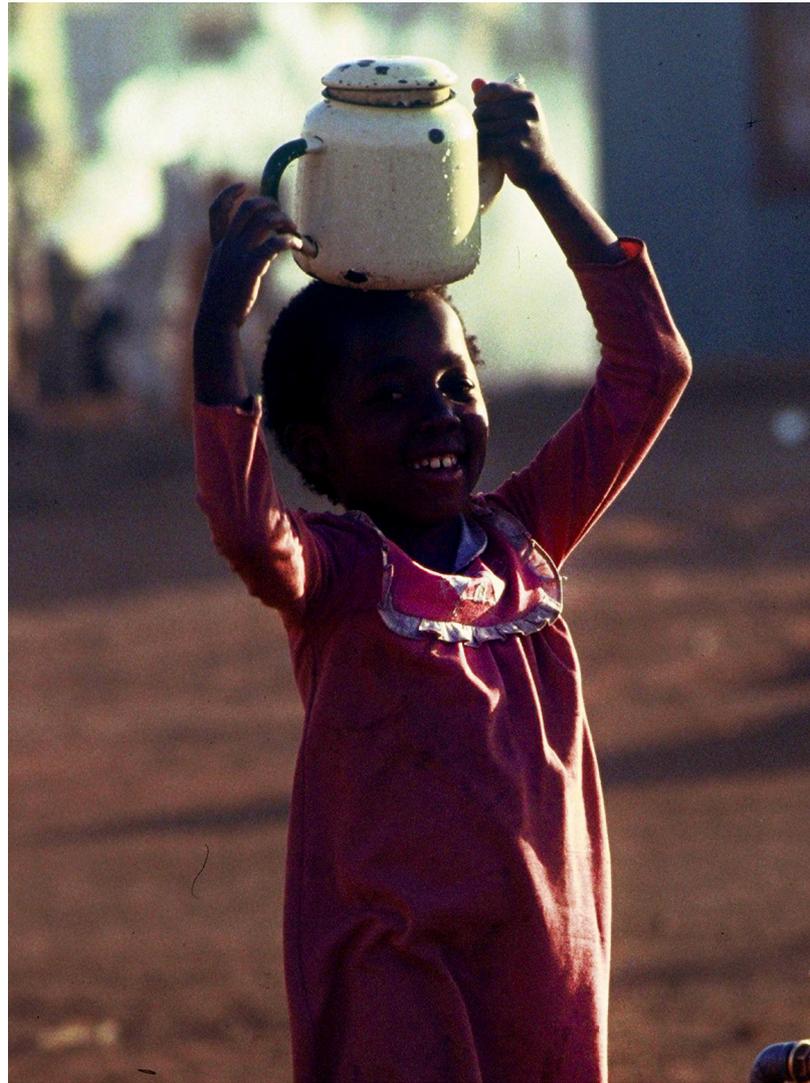
Southern Africa Litigation Centre
P.O. Box 122
Parklands, Johannesburg 2121

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**SOUTHERN AFRICA
LITIGATION CENTRE**

PROMOTING HUMAN
RIGHTS AND THE RULE OF
LAW IN SOUTHERN AFRICA



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