FINALISTS 17 SEPTEMBER

2nd ANNUAL
PRO BONO
AWARDS CEREMONY
2015 ProBono.Org

National Director's Special Award

ALBERT MAKWELA
PRESIDENT OF ACAOSA

Albert Makwela started as a leader of a local civic organisation in Lephepane(Tzaneen) in 1986.Through a partnership, that included training and support from Lawyers for Human Rights, the civic was converted into a Community Advice Office (CAO) in 1991. Community stakeholders named it Relemogile, a Northern Sotho name, which means 'we have realised'. Operations formally started in September 1993.

In 1996, he was finalist in the Limpopo Sowetan/Aggrey Klaaste youth leader of the year competition. In 1999, he was appointed to the National Community Based Paralegal Association (NCBPA) to develop the cluster model and coordinate the activities of CAOs in Limpopo, until the NCBPA closed its doors around 2004/5. In 2007, he was approached by the National Alliance for the Development of Community Advice Offices (NADCAO) to re-organise Limpopo CAOs. In 2006, he was runner up in DTI National Consumer Champions Award (Non-Profit category), which he won later in 2007 through his work in the Relemogile Advice Office.

While running the Relemogile Advice Office in Tzaneen, he was elected as interim President of the Association of Community Advice Offices of South Africa (ACAOSA) council for a year. He is presently, through ACAOSA, serving on the Department of Social Development Ministerial Task Team regarding the unlawful deductions on social grant beneficiaries' accounts. At the ACAOSA AGM in 2013, he was re-elected as president of the ACAOSA council for a 3 year term.

Through the Probono.Org Community Advice Office Support Project, he has been coordinating, organising and establishing a panel of private attorneys in towns in Limpopo and linking them with marginalised communities through CAO outreach programmes. During the course of 2015 he has organised workshops in Mafefe, Mankweng, Matlala and Blood River. No mean feat as he has to organise attorneys to drive hundreds of kilometres with him to reach these far flung small rural towns. He has built up a committed group of pro bono attorneys in Polokwane, Tzaneen and Makhado. He has driven for miles and miles between these towns, to Sekhukhune, Musina, Thohoyandou and others, ceaselessly trying to increase the legal services available to the people in these impoverished towns, with exceptionally high unemployment and huge social and legal problems.

Outstanding Law Student at a University Law Clinic

Kyle Damian Lupke

Kyle is a 2015 LLB graduate from the University of KwaZulu-Natal, Howard College. He has demonstrated a passionate commitment to providing legal assistance to the poor. Not only did he work in the clinic but he further volunteered his services to participate in the law clinic's rights awareness workshops held in 2014.

His personal attributes include hard work, dedication, integrity and courtesy. The University's law clinic provided a platform for him to practise his passion for law.

His inspiration to reach out to the indigent derived from the humbling consultations he had with people in the law clinic. He was called, a call he gladly acceded to.

HUMAN RIGHTS CHAMPION

RURAL WOMEN'S ACTION RESEARCH PROGRAMME

The proudest achievement of the Rural Women's Action Research Programme (RWAR, at the Centre for Law and Society, University of Cape Town) to date has been the victory against the Traditional Courts Bill. An intensive campaign against the Bill, in collaboration with key partners in the Alliance for Rural Democracy and with the Legal Resources Centre acting as legal representative for the Alliance, resulted in the Bill's lapsing in the National Council of Provinces in early 2014. The campaign serves as an example of advocating for democracy and social justice through engagement with Parliament and law-making processes, rather than through litigation. The law-making process provided the ideal forum for the foregrounding of people's own stories, which was vital to the success of the campaign.

The Traditional Courts Bill was first introduced in the National Assembly in 2008. After public hearings revealed serious opposition to the Bill on the grounds of its unconstitutionality, the Bill was eventually withdrawn. Late in 2011, those involved in the original opposition to the Bill were surprised to learn that the Bill (entirely unchanged) was being reintroduced in Parliament at the beginning of 2012, this time in the National Council of Provinces.

In preparation for the reintroduction of the Bill, RWAR assisted in the formation of an alliance of organisations to campaign against the Bill. The Alliance for Rural Democracy was born and RWAR was placed at the centre of the campaign's administration.

Key dangers presented by the Bill had been identified through RWAR's research with people living in traditional community areas. While it was being promoted as a recognition of customary law, the Bill instead entrenched a distorted version of customary law based on colonial and apartheid understandings of the powers of traditional leaders. The Bill included a provision that made it a criminal offence to fail to appear before a traditional leader, who was designated as presiding officer of the court, when summoned.

Other provisions made it possible for a traditional leader to deprive people of their customary entitlements, including land rights and community membership, and to enforce punishments such as forced labour or banishment. A traditional leader's decision would have the same status as a Magistrate's Court decision, appeals and reviews were only permitted in limited circumstances, and legal representation was not permitted at all. One provision even inhibited the ability of women to speak for themselves in traditional courts. As presiding officer of the court, a traditional leader was also effectively given the power to determine the content of customary law. This rendered the traditional leader law-maker, judge and policeman concurrently – a blatant affront to the democratic principle of the separation of powers. Civil society organisations in the Alliance further pointed to the Bill's potential impact on marginalised groups within traditional communities, such as children, LGBTIQ individuals and women.

These points of concern formed the foundation for a massive media campaign, dubbed "Stop the TCB", and where they chose to do so civil society organisations were able to draw on RWAR's research in the formulation of their own submissions to Parliament.

When it was announced that each provincial legislature would be responsible for conducting consultation on the Bill, RWAR coordinated the processes of making written submissions, attending hearings and monitoring public participation by partners in the Alliance through a dedicated logistics manager. When it was announced that national public hearings would be held in September 2012, RWAR convened a workshop of national Alliance partners and community leaders in preparation for the hearings.

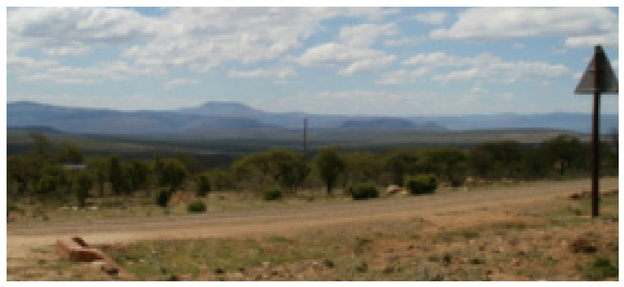
RWAR's approach emphasised the importance of people speaking to the content of the Bill in their own voices. This was vital in the first instance because these voices are authentic authorities on living customary law, but also because the experience would build the confidence of individual activists or community leaders coming from a struggling CBO sector. Community leaders and civil society representatives spoke out against the Bill tirelessly and with conviction – fortified by shared opposition within the Alliance and beyond. This approach proved very effective, and resulted in changes both in the public opinion and in the views of provincial legislature members.

Despite its successes, the campaign against the Bill was not without difficulty. Coordination efforts were continuously hampered by sudden changes in the schedules or locations of provincial hearings, while political power was used to shut down the contributions of those opposing the Bill during oral submissions.

People who described how the Bill would negatively impact their lives were intimidated or told that their input was untrue or irrelevant. The NCOP committee responsible for dealing with the Bill repeatedly stalled the discussion of negotiating mandates submitted by provincial legislatures, since these reflected clearly that most provinces either rejected the Bill outright or were doubtful of the constitutionality of several of its provisions. Without North West's original negotiating mandate – and related public views – ever having been discussed by the NCOP committee, an unusual second round of provincial hearings was held in that province and resulted in a change in its negotiating mandate from rejection to support for the Bill. The Alliance suspected that this was an attempt by North West to conceal strong public opposition to the Bill in reaction to the weight of political pressure in favour of the Bill.

When the provincial negotiating mandates were eventually discussed in early 2014, it was apparent that the mandates of provinces were irreconcilable with one another and a parliamentary law advisor bravely explained to the NCOP committee that the Bill was unconstitutional. It was also clear that the Bill would not garner enough votes in the NCOP committee to progress to the next stage of the legislative process. Without any fuss, the Bill was allowed to lapse quietly before the rising of Parliament for the May 2014 national elections. Although a procedural rule of Parliament that had required the Bill to be revived at the beginning of 2014 was cited as the official reason for its lapsing, those in the Alliance understood that it was to prevent the embarrassing situation of a committee vote rejecting the Bill outright. RWAR, along with partners in the Alliance, claimed the victory after more than two years of campaigning against the Bill.

Although the victory was won through engagement with Parliament, the threat of litigation by the Alliance was ever present. There were strong arguments for the unconstitutionality of the Bill's content, and, having monitored and recorded the parliamentary process since the Bill's reintroduction in 2012, there were also arguments against the procedures used by Parliament. Yet, the campaign was determined that litigation would only be used as a last resort – preferring instead for the views of people to be foregrounded through public participation processes.



MOST IMPACTFUL CASE

MGUNGUNDLOVU COMMUNITY V THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM AND 5 OTHERS (LCC10/2011)

This claim was a claim for restitution of land in terms of the Restitution of Land Rights Act of 1994 for a community residing at Mgungundlovu Ward 24, Lorholweni, District of Bizana, Eastern Cape Province. The community is a part of the Amadiba Community / the Amampondo Nation. The community consisted of 100 households.

The community claimed a piece of land in Bizana, Eastern Cape Province which was approximately 650 hectares of beachfront property. The land had, since time immemorial, belonged to the community in terms of customary law who had resided on it, cultivated it, grazed their cattle on it and used its natural resources to survive.

In 1979 the land was, unbeknownst to the community, registered in the name of the Transkei government so that it could be leased out to an entity that subsequently became the Transkei Sun International Limited. It was agreed that the property would be let for a period of 50 years (subsequently extended until 2079) at a rental of R30 000 per annum so that a hotel and casino could be established. In terms of the lease, the lessor would remove the community from the land to give vacant occupation.

The community's village, homes, fields and ancestral graves were bulldozed and no compensation was paid to them for their rights in the land and the destruction of their homes and livelihood. They were not formally relocated but the majority were forced to seek refuge in the closest community where the land was rocky, of inferior quality and devoid of access to water and the sea.

The removal of this community from their land was as a result of racially discriminatory laws and practices. From evidence uncovered, it became apparent that the lease had arisen out of a corrupt relationship between the lessor and lessee. This explained a lease that was grossly in favour of the Transkei Sun.

The first plaintiff lodged the land claim on or about 23 September 1995. In 2008, after two failed attempts by two sets of other attorneys, the matter was taken on by Patrick Bracher of Norton Rose Fulbright SA on a pro bono basis. Nicki van't Riet managed the case under his supervision. Summons was issued in 2011.

It took just under five years of continuous hard work, commitment and endless resources to get the matter ready to the point of its foreseen two-month long trial, some 19 years after the claim was lodged.

There were countless challenges in the case which was classified by the leading land claims specialists and the Land Claims Commission as the largest and most complex land claim in the country at the time. The team faced a plethora of interlocutory applications between 2013 and 2014, mainly around eliciting discovery from the defendants, amendments and the joining of the State President.

Disbursements were prohibitively high and approximately R5 million was carried by the firm as a result of the community being indigent. This money has not yet been paid out in full by the Land Claims Commission.

The appointed judge, who was by that stage well versed in the matter, was compelled to recuse herself, having been called upon to do so by the second defendant after it heard that the judge's daughter was a candidate attorney at one of Norton Rose Fulbright's offices.

The community was at many points during the litigation experiencing upheaval. This was a result of mistrust of its community leaders and the time it was taking for the matter to be resolved. Physical violence and other criminal acts were a huge threat where the police had to intervene. Elections for a new land claims committee had to be arranged through the IEC.

The official documents supporting the claim were over 35 years old and spread out in various archives and government departments all over the country. Obtaining the evidence to support the claim was an enormous challenge for the legal team.

Eighty four witnesses to the transaction and corruption had to be traced, subpoenad and managed. Eight expert witnesses needed to be briefed and managed. Nine pre-trial conferences were held.

Norton Rose had to find a venue at no cost big enough to accommodate the entire community and close enough to be accessed by the legal teams and court. A full, operating court room was set up in a church in rural Eastern Cape.

SETTLEMENT OF THE MATTER

Four days into the trial, an offer was negotiated and the matter was settled on an unprecedented basis. Ownership of the claimed land will be restored to the community by the Minister of Rural Development and Land Reform and a Community Property Association (CPA) established to take transfer of the restored land.

The long lease given to Transkei Sun International (Transun) by the State until 2079 at a non-market related rental is to be cancelled and a new lease agreement concluded in terms of which the claimed land will be leased by the CPA to Transun for R4 million per annum escalating at 6% per year.

The community is to be given R50 million compensation by the Department of Rural Development, R29 million of which will be put into the CPA for community development and each of the 100 households will receive R96 000 compensation. The remaining R11 million will be used to purchase 28,4% shares in Transun and the community will be given representation on the board of directors of Transun.

This settlement will change the lives of hundreds of people, not only in the Mgungundlovu community but in the wider Bizana community via various community development projects. It will change lives not only immediately, but for generations to come. It is an example of how the law can be used to break cycles of poverty.

NORTON ROSE FULBRIGHT