

Annual Report 2010

Centre for Applied Legal Studies



Centre for Applied Legal Studies

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INTRODUCTION AND MISSION STATEMENT

CALS was founded in 1978 within the School of Law at the University of the Witwatersrand and was a pioneer in the advancement of human rights in South Africa during the apartheid years and during the drafting of our Constitution. Considerable progress has been made under the post-apartheid dispensation in entrenching rights in policy frameworks. However, the more intractable problems of implementing these rights in the face of limited resources and insufficient state capacity is an ongoing problem. CALS' recent work has therefore increasingly been to focus on issues of implementation and enforcement of rights. In 2010, CALS had four Programmes operating, namely: Basic Services, Education, Environment and Gender. In each of these Programmes, we engage in a combination of research, advocacy and strategic litigation activities where necessary, in order to ensure sustainable justice for all those who live in South Africa.

*CALS remains committed to its mission of
“Ensuring human rights and sustainable justice for all communities”*

DIRECTOR'S NOTE

CALS enjoyed a busy and productive year in 2010 spanning all of its Programmes. This was managed on a relatively streamlined staff component, and despite the downturn in available funding afflicting the non-profit sector generally. The output achieved by CALS in this period was by no means accidental. It came about through a carefully-planned and implemented restructuring strategy for the organisation, designed to enable it to meet both internal and external challenges. The achievements in 2010 required dedicated work by all members of staff across all four Programmes.

One of the innovations of the restructuring of CALS was to enable staff to work flexibly across different Programmes and on different projects as the need arose. We also focused on a mix of longer-term and short-term projects so that output was on-going, projects were completed and staff members were freed up to become involved in different projects. As was fitting in the year of the Soccer World Cup, we were enormously assisted in our endeavours by our international interns, who rose to all of the challenges thrown at them. It was indeed a year of dedicated team effort by everyone at CALS.

The details of our work are contained in the body of this report. As always, we aimed in 2010 to undertake projects and activities that would advance human rights at many different levels. Some of the impact of our work, such as our housing litigation, was immediate and directly experienced by our clients. In other arenas, such as our involvement in the Vele Colliery case, and our education and gender work, the impact will be more incremental. As this report shows, after over 30 years in existence, CALS remains a relevant, active and significant player in the human rights field in South Africa.

Prof. Raylene Keightley, Director

ACKNOWLEDGEMENTS

The work that CALS does is only possible because we receive support from a variety of quarters. To all those that have been part of our work in 2010, you are far too numerous to mention by name, but we sincerely thank all of you. We would also particularly like to thank the following organisations (in no special order) for their valued contribution:

<p>Ford Foundation Norwegian Centre for Human Rights Claude Leon Foundation Atlantic Philanthropies Gauteng Department of Education Development Bank of Southern Africa Soul City Institute Bateleurs The number of counsel who have assisted us and generously given their time in court.</p>
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CALS STAFF AND INTERNS

STAFF

Director:	Prof. Raylene Keightley
Head of Programmes:	Vandana Cowley
Head of the Gender Programme (Part-time):	Prof. Bonita Meyersfeld
Head of the Litigation Unit:	Mary-Anne Munyembate
Economist:	Darlington Mushongera
Attorney:	Lisa Chamberlain
Attorney:	Kathleen Hardy
Attorney:	Osmond Ngomezulu
Attorney:	Teboho Mosikili
Researcher:	Constance Kupe
Researcher:	Bekezela Moyo
Researcher:	Blessing Mushohwe
Candidate Attorney:	Makwatla Pale
Operations Manager:	Tahera Timol
Finance and Project Co-ordinator:	Nazreen Sacoor
Administrative Assistant:	Anneline Maasdorp
Finance Officer:	Mafere Kubushi



Cals staff members

INTERNS, FELLOWS AND VOLUNTEERS

Volunteer:	Dorothee Guenehex
Volunteer:	Deborah Brand
Intern:	Tim Capozzi (Boalt Hall School of Law, University of California: Berkeley, USA)
Intern:	Lindsay Senese (Osgoode Hall Law School, York University, Canada)
Intern:	Ardavan Mohajer (Osgoode Hall Law School, York University, Canada)
Intern:	Salima Burke (University of Virginia Law School, USA)
Intern:	Anshu Budhrani (University of Pennsylvania Law School, USA)
Intern:	Rodd Izadnia (Columbia Law School, USA)
Intern:	Chelsea Purvis (Yale Law School, USA)
Intern:	Tumisang Ntlaloe (Wits School of Architecture, South Africa)
Intern:	Surprise Khoza (Wits School of Architecture, South Africa)
Fulbright scholar:	Gerald Dickinson (College of the Holy Cross, Massachusetts, USA)



World Cup Fever

FINANCIAL STATEMENTS

CALS' 2010 financial statements may be found in the Annexure at the end of this report.



BASIC SERVICES PROGRAMME

The build-up to the 2010 Soccer World Cup was categorised by mass forced evictions in the inner city as the City of Johannesburg and various private landowners sought to prepare for the massive influx of tourists visiting our shores for this prestigious event. The year presented interesting opportunities for engagement with the City around housing policy reform – an opportunity facilitated by CALS’ litigation successes in 2008 with *Olivia Road* and later in 2010 with *Blue Moonlight* (discussed below under litigation). These cases provided a solid platform for meaningful engagement to take place between CALS and the City in a less adversarial climate.

Research

Research Paper – *Suitable Alternative Accommodation*

This research paper sought, by way of two case studies, to determine whether accommodation provided for by the City qualified as ‘suitable accommodation’ in line with the precepts of the Constitution, particularly the rights to family life, dignity, freedom and privacy. The case studies focused on the occupiers who were relocated by way of agreement in *Olivia Road* and those of the lesser known case of *Chestnut Hill Investments v Maite and Others*. In the former matter, occupiers were relocated to the refurbished MBV Hospital building in Hillbrow which had individual family units. In the latter matter, occupiers were relocated to the MOTH Building in Johannesburg CBD which comprised gender-segregated, large, dormitory-style accommodation.

Research Paper – *A Room of One’s Own: Formalisation, Gender and Vulnerability in the Olivia Road case, inner city Johannesburg*

This research report investigated the gender implications of housing formalisation from derelict inner city buildings. The research was conducted with specific focus on the two buildings to which the *Olivia Road* occupiers were relocated.

Research Paper – *Development Bank of South Africa: An evaluation of the efficiency and effectiveness of municipal entities as mechanisms for municipal service delivery*

This research project was conducted for the DBSA by Raylene Keightley and Vandana Cowley, with the assistance of Darlington Mushongera and Deborah Brand. It involved an assessment of the existing legal framework for service delivery by Municipalities in South Africa, in light of the challenges facing municipalities in fulfilling

their constitutional obligations to provide essential services. The project focused particularly on the role and function of ‘municipal entities’, as defined in the relevant legislation, for achieving service delivery obligations. The mechanism of municipal entities arose out of the fact that many municipalities are unable to deliver services using their own in-house resources, and that Municipalities may attempt to improve service delivery by corporatising the service delivery mechanism – i.e. by creating a municipal company, or municipal entity, that will provide the service. This mechanism is contentious for a range of reasons, but is nonetheless in use in a number of large municipalities.

The report included an evaluation of the extent to which the present framework governing municipal entities may impede efficient and effective municipal service delivery, as well as recommendations on appropriate legal and policy changes to improve the efficiency and effectiveness of municipal service delivery through municipal entities in respect of the gaps identified.

In its report, CALS noted that it is critical to appreciate that, in examining and analysing the efficacy of municipal entities as service delivery mechanisms, due account should be taken of the challenging context within which municipalities must meet their obligations. In particular, care should be taken to ensure that an appropriate distinction is drawn between those shortfalls inherent in the legal and policy framework itself, and those shortfalls that can more accurately be ascribed to the contextual challenges posed in the implementation of the relevant laws and policies.

In its recommendations, CALS pointed to the need not to change the legal or policy framework in any intrinsic way, but to recognise the imperative to find solutions for a more effective implementation of these laws. There is a need to simplify complex mechanisms in implementing the laws so

as not to dilute their effect. Further, the need to ‘upskill’ all stakeholders within the local government arena to enable them to fully enjoy their rights and fulfil their obligations is the key to efficient and effective mechanisms, including municipal entities, in the challenging task of ensuring the delivery of an acceptable level of basic services to all.

Advocacy

CALS’ housing rights-related advocacy strategy in 2010 was dominated by engagement with the City, particularly regarding *Chestnut Hill Investments*, *Josana Court* (discussed under litigation) and *Olivia Road*. The gist of this lobbying involved practical issues related to the provision of housing to the inner-city poor. In particular, CALS advocated the development of:

- a practical policy detailing meaningful engagement as was contemplated in *Olivia Road*;
- a policy providing for emergency accommodation for occupiers evicted at the instance of a private landowner; and
- a policy detailing best practices in relation to what constitutes suitable emergency accommodation.

Litigation

In 2010, CALS’ Litigation Unit was responsible for approximately 17 active cases in the area of Basic Services, primarily around the protection of housing rights. Many of the cases dealt with in 2010 resonated with one of CALS’ on-going litigation goals, namely the provision of security of tenure for poor people living in informal environments, by enforcing the state’s duty in the event of homelessness ensuing from an eviction. Cases pursued for this end included: *Blue Moonlight Properties 39 (Pty) Ltd*; *Sailing Queen Investments CC*; *Olna Investments Pty (Ltd)*; *Ekurhuleni Metropolitan Municipality* and *Joe Slovo*. Some of the litigation highlights of the year are summarised below.

Blue Moonlight Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue and Another (SGHC)

The *Blue Moonlight* matter stems from an application by a private-landowner for the eviction of approximately 60 people living in an abandoned textile factory in Berea. On behalf of the occupiers, CALS successfully brought an application in 2008 which sought to:

- join the City of Johannesburg as a party to the proceedings;
- declare that the City has a constitutional duty to provide alternative accommodation to occupiers who

would be rendered homeless through an eviction; and

- declare that the City must file a report detailing the steps that it is currently undertaking in compliance with its obligations.

The first and last issues were decided on 12 September 2008 when Masipa J ordered the City to be joined and further that it was to file a report detailing compliance with its constitutional obligations with the Court within two months of the order being granted. This matter was subsequently reported in the South African Law Reports at 2009 (1) SA 470 (W).

On 4 February 2010 the main application was heard before Spilg J. The matter turned on whether the City had a constitutional and statutory duty to provide emergency accommodation to the occupiers of *privately owned property* who would be rendered homeless should the eviction order be granted. The Court found that indeed such an obligation existed and that the current practice of not affording such occupiers protection was unconstitutional. In addition, the City was, somewhat controversially, ordered to pay constitutional damages to the landowner. The matter was immediately taken on appeal and is to be heard by the Supreme Court of Appeal on 18 February 2011.

City of Johannesburg v Occupiers of Josana Court and Others (SGHC)

The *Josana Court* matter is the evolution of the case of *Mohale v Occupiers of Josana Court and Others* which was initially taken on by CALS in order delineate the City’s obligations towards occupiers who faced eviction at the instance of a private landowner. In 2008, the City expropriated the property in question and through the Johannesburg Development Agency (JDA) sought to have it demolished in order ‘rejuvenate’ the suburb of Bertrams. In the wake of the *Olivia Road* decision, the City attempted to engage with the occupiers regarding their relocation. Unfortunately, the process was marred by the City’s attitude regarding sourcing accommodation. The City proposed two forms of alternative accommodation: firstly, those who could afford to pay an excessive rental (which translated into none of the clients) could reside in a flat unit with communal kitchen and ablution facilities; secondly, everyone else was offered large dormitory styled accommodation in which dormitories were divided according to gender. The occupiers, with CALS’ assistance, objected to this latter type of accommodation arguing that it does not amount to suitable, alternative accommodation. This engagement continues.

EDUCATION PROGRAMME

Education is broadly recognised in South Africa as an important vehicle for social and economic development. This is demonstrated by a number of policies that have been promulgated with a view to improving access to, and quality of, education regardless of socio-economic standing or location within the country. The emphasis of these policies has been on redress and ensuring that the previously disadvantaged segments of the South African community receive improved educational opportunities and resources that result in improved academic performance. Education not only provides children and families with a pathway out of poverty, but it can also yield even bigger returns through its impact on sectors such as the provision of healthcare. Education can also provide communities with increased economic opportunities and help promote the civic participation that is critical to building democracies.

To improve access to and quality of education for marginalised learners there is a need for:

- consistent and collaborative support from all relevant stakeholders in government, academic institutions, private companies, Non-Governmental Organisations (NGOs), Faith-Based Organisations (FBOs) and Community Based Organisations (CBOs); and
- the government to take responsibility – in all tiers of the Department of Education (DoE) - for the creation of a platform that allows all relevant stakeholders to play their role in ensuring equitable provision, access and delivery of quality education in South Africa.

CALS' Education Programme therefore seeks to facilitate improved access to education opportunities for school children in marginalised segments of society, and thereby uphold their constitutional education rights.

Research

GDE Project Phase 1: Audit of research done on education issues in Gauteng since 2004

CALS undertook this research audit on behalf of the Gauteng Department of Education (GDE) in order to facilitate the development of a research agenda for the Gauteng City Region Academy within GDE. Phase 1 of the research audit involved taking stock of existing research in the field of education in Gauteng. This phase was completed in March 2010 and pulled together existing research to produce a comprehensive database of the research in education in the Gauteng province dating back to 2004. The result of Phase 1 is a catalogue of 600 research articles on various aspects of education in the country.

GDE Project Phase 2: Analysis of research done on education issues in Gauteng since 2004

Phase 2 of this Project involved the analysis of the pieces of research that were collated in Phase 1. This analysis

involved interrogating the content of each research article according to the following criteria:

- Which of the GDE's Key Strategic Goals (KSGs) were addressed by the research
- The main theme of the article
- Sample size and methodology applied by the researcher
- Findings and recommendations of the research

In the process of this extensive analysis of available research material, CALS identified knowledge gaps that exist in the current research database and recommended themes for research priorities in line with the GDE KSGs. The Phase 2 report thus aims to form the foundation of a knowledge management system at GCRA. The analysis tool was designed to ensure that the research done in Gauteng by a variety of stakeholders is both coordinated, and accessible to policy makers and other interested parties. Once the Report was completed, a dissemination

workshop was held to train a range of stakeholders (including the DoE, NGOs, CSOs and universities) on how to use the analysis tools.

Research Report – From Farm Schools to Hostel Schools: A Lived Reality

In 2010, the Education Programme embarked on a comprehensive research and advocacy project building on earlier CALS work on rural education and farm schools. The Hostel Schools Project aimed to interrogate the implementation of the national Department of Basic Education’s initiative involving the creation of consolidated ‘hostel-schools’ in larger rural education centres as opposed to non-viable farm schools. The objective was to scope the complex factors involved in the relocation of learners from their homes and to ascertain the benefits and challenges of this government initiative. Desktop research was done to contextualise the research parameters and relevant themes that were used to develop the research questionnaires. An extensive review of the legal and policy frameworks relevant to the formulation of the policy of hostel schools by the government was undertaken.

The provinces of KwaZulu-Natal, Free State and North West were selected for further field research and, in consultation with relevant provincial education officials, one hostel school in each of the three provinces was identified. The literature review conducted as part of this Project allowed for a background on the historical reasons for the presence of small rural and farm schools and the need for these to be rationalised in keeping with the principles of the new democratised dispensation in SA. It also contains an update of how the policy of hostel schools is faring in the 3 provinces that were part of this study. Both these reviews enabled the definition of the criteria against which the success or failures of the hostel schools could be measured.

The action-based research for conducting interviews with participants at the research sites was carried over to 2011.

Advocacy

Seminars and Workshops

- A dissemination workshop on *An Analysis of the Existing Research done on Education in Gauteng Province since 2004: Phase 2 Report* was held in July 2010.
- A dissemination workshop on *Beyond the School Gates: Accessing Education in Rural Areas* was held in November 2010.





ENVIRONMENT PROGRAMME

The Environment Programme at CALS works towards making the environmental right contained in the Constitution a tangible reality for all who live in South Africa. The Programme adopts as the basic premise of its work that a healthy environment is critical for the development of all people, especially poor and marginalised communities who have limited options in terms of choosing the environment in which they live. In keeping with CALS' history of rights-based research, advocacy and strategic litigation, the Environment Programme seeks to engage with all those charged with the implementation of the environmental right, as well as those affected by the failure to adequately give effect to it. The work of the Programme is driven by the need to facilitate access to the processes through which communities can be involved in combating unacceptable environmental degradation.

Major projects

2010 has seen the Environment Programme involved in three major projects:

- The Vele Colliery Project
- The Coal Mining and Communities Project
- AgriSA v Minister of Mineral Resources (acting as *amicus curiae*)

Vele Colliery Project

The underlying focus of this project is section 24 of the Constitution, which enshrines the environmental right in terms of which everyone has the right:

- to an environment that is not harmful to their health or wellbeing and
- to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
 - prevent pollution and ecological degradation
 - promote conservation and
 - secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



The problem, however, is that the inclusion of this right in the Constitution is no guarantee of its effective implementation. A comprehensive suite of legislation has been passed in an attempt to achieve the delicate balance between the sustainable use of natural resources on the one hand, and socio-economic development on the other. The complexities inherent in achieving this balance are only beginning to be understood. In addition, much of the relevant legislation and the regulatory framework established by such legislation have yet to be tested in the courts. The Vele Colliery Project provides a unique opportunity, as a real life case study, to test the practical implementation of the regulatory framework that seeks to strike this balance between the environment and economic development of an industrial nature.

The Mapungubwe Cultural Landscape (MCL) is an area in northern Limpopo that was home to the first African state. In 2003, the MCL was declared a World Heritage Site by UNESCO on the basis of its immense archaeological

and cultural significance. The MCL also forms the South African core component of the Greater Mapungubwe Transfrontier Conservation Area (TFCA) which is the result of a trinational agreement between South Africa, Zimbabwe and Botswana. Despite the sensitivity of the area, in February 2010 the Department of Mineral Resources (DMR) granted a mining right to Limpopo Coal Company (Pty) Ltd to mine for coal a few kilometres to the east of the Mapungubwe National Park. In March 2010, DMR also approved the Environmental Management Plan (EMP) submitted by Limpopo Coal. This coal mine - Vele Colliery - will utilise both opencast and underground mining methods operating 24 hours a day, 7 days a week, for 30 years.

The decisions to grant the mining right and approve the EMP were taken despite significant concerns and in some cases outright objection to the Colliery expressed by a diverse array of sources including other government departments, the South African Heritage Resources Agency, SANParks,





community groups and environmental NGOs during the required public participation and intra-governmental consultation processes. Furthermore, in November 2010, UNESCO was so concerned about the threat posed to the MCL that it sent a delegation to South Africa to investigate the extent of the threat posed by Vele Colliery.

The Vele Colliery Project thus developed out of recognition of the need for civil society to take action in order to protect the integrity of this very special and immensely sensitive landscape. In February 2010, CALS was approached by a coalition of organisations who had been independently involved as interested and affected parties in the early stages of the project. The Coalition sought out CALS' expertise to both co-ordinate their activities and thereby maximise the leverage of their collective action, and to provide value-add of a legal nature. The Coalition consists of the Mapungubwe Action Group, the Association of Southern African Professional Archaeologists, the Endangered Wildlife Trust, Peace Parks Foundation, the World Wide Fund for Nature South Africa, BirdLife South Africa and the Wilderness Foundation of South Africa.

Some of the Coalition's concerns are that:

- The Vele mining area is in close proximity to a proclaimed World Heritage Site and the Trans Frontier Conservation Area. Mining at Vele will significantly erode the sense of place of the area which is a feature of both its cultural importance and its natural beauty.
- The area has significant cultural and heritage value. South Africa has a duty to preserve the Mapungubwe heritage (which includes the sense of place of the surrounding area) for its own citizens, for the rest of the world and for future generations.
- The cumulative effect of the erosion of sense of place

is important. There is a coal seam running right across northern Limpopo and if the Vele Colliery is allowed to proceed, this will impact on all future development decisions in the region.

- The area is situated on the confluence of a shared water course with Zimbabwe, Botswana and Mozambique. As it is situated in a water-stressed region, the effect of the mine on both the quality and quantity of available water resources, is therefore of particular concern.

During 2010, CALS assisted the Coalition in lodging administrative appeals with DMR against both the decision to approve the mining right and the associated decision to approve the EMP. Several rounds of voluminous and highly technical submissions were filed by both sides. A decision on these appeals was expected by 1 December 2010 but by the end of the year, no decision had yet been forthcoming from DMR. In addition, on 3 August 2010, interdict proceedings were launched. An exciting dimension to this application is that the Centre for Child Law, based at the University of Pretoria, has applied to intervene as *amicus curiae* in the case. They see this case as an appropriate one in which to explore the intergenerational equity aspects of our constitutional environmental right.

There have been various other prongs to the case in terms of legal processes involving wrangles between Limpopo Coal and the Department of Environmental Affairs (DEA) resulting from unlawful activities in terms of the National Environmental Management Act engaged in by the mining company. This resulted in intervention by the Green Scorpions and ultimately the issuing of a Compliance Notice by DEA in August 2010 which effectively shut the mine down. Subsequently Limpopo Coal applied for rectification in terms of section 24G of NEMA. The water issues loom large in this Project and the Coalition



has also been instrumental in ensuring that an open public participation process is held in connection with the Integrated Water Use Licence Application submitted by Limpopo Coal.

Although the litigation component of this project is key, the Vele Colliery Project extends much broader than this. In addition to litigation, the Project involves a comprehensive research, documentation, dissemination and advocacy programme. The aim is to use the case as a basis for knowledge-building around the issues involved, engagement between all stakeholders (including mining houses and government) to find practical solutions to the problems posed and capacity-building among communities and public interest organisations whose concern is the protection of sensitive areas from unsustainable mining activities.

Ultimately, the project is aimed at identifying gaps in the existing regulatory framework and through the experience gained in the Vele Colliery case, to make practical recommendations for appropriate measures to remedy these gaps. All of this to ensure that that proper account is taken of the environmental context and that authorisation is granted only for truly sustainable mining projects. 2010 was an eventful year for this Project and many lessons have been learnt which can be taken forward in the work of the Environment Programme in this arena.

Coal Mining and Communities Project

Following our pilot project on *Coal Mining and Communities: an Environmental Rights Perspective*, in collaboration with the School of Law at the University of the Witwatersrand, 2010 saw CALS building on this earlier work and embarking on Phase II of this comprehensive research and advocacy project.

The pilot project undertaken in 2009 assessed the impact of coal mining activities on the Wesselson Community near Ermelo in the Mpumalanga Province of South Africa. A workshop was held in January 2010 whereby the research report, its findings, policy and practical recommendations was disseminated among representatives of a cross section of society. This cross section of society included government, affected communities, civil society organisations (CSO), different mining house representatives, as well as academics and professionals engaging in environmental matters. The objective of the workshop was to ensure that from this information sharing and exchange of views and ideas, CALS could map a way forward in our ongoing projects to determine the extent of the problem in the mining provinces of South Africa; to collaborate with government and others CSOs to work on mitigating the negative impact of coal mining activities through advocacy and/or strategic litigation; and to provide some point of contact for communities in crisis due to coal mining to try and redress their problems.



At the workshop various presentations were given that provided the participants with a comprehensive overall picture of the impact of coal mining on selected communities in South Africa. The presentations, broadly speaking, covered the following:

- Information on the current regulatory framework, key mechanisms and processes informing mining related activities in South Africa;
- The case study of the Wesselton Community in light of the regulatory framework and key balancing mechanisms while highlighting the apparent breaches;
- The views and experiences of the Communities themselves whereby they were provided with the opportunity to share their lived-realities around the impact of coal mining;
- A report on the state of water resources in South Africa, a water scarce country, and the effect of mining activities on the water system; and
- Facts and figures on the nature of the effect of acid mine drainage on major rivers, dams and irrigation schemes in the region.

It was interesting to observe that many of the stakeholders present discovered for the first time the extent to which

coal mining and its associated activities are impacting on communities, particularly the poor and vulnerable.

One of the recommendations made in the pilot study was recognition of the need to replicate the study in an additional four provinces where coal mining is reported to be taking place, namely KwaZulu-Natal, Limpopo, the Free State and the North West. The primary objective of extending the study to a second phase and following on the pilot study was to assess environmental rights in the context of the impact of mining activities and to identify the measures required to ensure a sustainable balance between environmental protection and socio-economic development.

The second phase got underway with team discussions and various stakeholder engagements to assist in the determination and location of the communities and in the identification of the reference persons within the communities. Simultaneously the team undertook a substantial amount of desktop research to provide the necessary background to the report as well as for the development of the questionnaire.

The action-based research for conducting interviews with participants in the identified communities was carried over to 2011.

AGRI SA v Minister of Minerals and Energy and Other (CALS as amicus curiae), unreported

This case is a combination of two matters against the Minister of Minerals and Energy (the Minister) by Agri South Africa (Agri SA) and M A Van Rooyen (Van Rooyen), who were the holders of coal and clay rights over fixed properties until 1 May 2004, when the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) came into operation. The matter concerns the proper interpretation of the MPRDA and specifically whether certain of its provisions amount to expropriation (without compensation) of Agri SA and Van Rooyen's mineral rights. Further, whether or not Agri SA and Van Rooyen were entitled to compensation as contemplated in item 12 of schedule II of the MPRDA. Both plaintiffs are claiming compensation from the Minister in respect of their mineral rights which they allege have been expropriated under the MPRDA.

CALS was admitted as institutional *amicus curiae* on 9 December 2010 and is represented by the Legal Resources Centre. CALS seeks to assist the Court in the interpretation of both the MPRDA and section 25 of the Constitution. Given the potential of this case to result in a flurry of other claims, CALS is concerned that the issue of expropriation should be properly interpreted within a constitutional and human rights paradigm. The matter has been enrolled for hearing in February 2011.

Advocacy activities

CSO advocacy: conferences and workshops

Membership of a broader community is an important component of the work of the Environment Programme. The environmental sphere is generally characterised by an attitude of collaboration and the CALS Environment Programme has found it to be a very supportive space in which to operate. We have been fortunate enough to work with a number of other organisations involved in related work.

Civil Society Workshop to Promote Environmental Compliance, Transparency and Accountability in Mining: Focus on Implementation

CALS has joined an alliance, driven by the Centre for Environmental Rights, and consisting of a number of other civil society organisations and academic institutions, which has developed a 'Civil Society Legal Strategy to Promote Environmental Compliance, Transparency and Accountability in Mining'. On 26 October 2010, the alliance met to discuss the Strategy which consists of a series of interventions covering both litigation and advocacy activities and is being implemented jointly by the organisations involved. The Vele Colliery case is one of the interventions identified by the alliance as being of strategic importance. CALS is the lead organisation in this intervention. Lisa Chamberlain presented an update of where the case currently stands and shared some lessons learnt thus far.

Environmental Security seminar

On 10 November 2010, Vandana Cowley and Lisa Chamberlain attended a workshop hosted by the South African Institute for International Affairs and the Regional African Law and Human Security Programme at Jan Smuts House at Wits. The workshop examined the location of environmental security concerns in the international law context, discussed examples of African conflicts that have their genesis in environmental issues and probed the capabilities of regional institutions and their mechanisms, such as the AU and SADC, to address these problems. The link between environmental and security issues has not yet featured prominently in CALS work so the workshop served as a useful reminder of this backdrop.

CALS provides input at a Land, Human Rights and Mining Industry Convening

On 17 – 19 November 2010, Lisa Chamberlain and Prof

Bonita Meyersfeld (Head: Gender Programme) attended a Land, Human Rights and Mining Industry Convening hosted by the South African Human Rights Commission and the Institute for Human Rights and Business. The focus of discussions at the convening was land acquisition for business purposes, particularly for the extractives industry. Two prior convenings had already been hosted by the Institute – the first in India in June 2009 and the second in Colombia in May 2010. At this third convening in Johannesburg, discussions culminated in an analysis by all participants of a set of draft guidelines on the adoption of a human rights approach to land acquisition and land use prepared by the Institute. The guidelines are aimed at corporate entities and the idea is that they will assist business to understand the corporate responsibility to respect human rights in relation to the acquisition and use of land.

Collaboration with AWARD and Wits Law School

On 25 – 27 November 2010, Lisa Chamberlain attended a workshop at the Wits Rural Facility, which is also home to the Association for Water a Rural Development (AWARD) in order to explore ways in which CALS, AWARD and the Wits Law School might collaborate in future. Discussions in this regard are ongoing.

Government advocacy

In July 2010, CALS joined the Centre for Environmental Rights, along with a number of other CSOs operating in the environmental sector, including Wilderness Foundation, WWF South Africa, BirdLife South Africa, South Durban Community Environmental Alliance, Environmental Monitoring Group, Federation for a Sustainable Environment and the Endangered Wildlife Trust in writing to the Ministers of Mineral Resources and Environmental Affairs to request engagement around the government Task Team appointed to consider the issue of prospecting and mining applications in "sensitive" areas.

In keeping with its strategy of placing advocacy at the core of its activities where appropriate, the CALS Environment Programme, together with its alliance partners in this initiative, seeks to work with the newly appointment Task Team in order to identify constructive ways in which the NGO sector can be of assistance in relation to the development of criteria for identifying sensitive areas deserving of particular levels of protection from mining and prospecting activity in terms of section 49 of the Minerals and Petroleum Resources Development Act.

GENDER PROGRAMME

In March 2010, Professor Bonita Meyersfeld joined CALS as the head of the Gender Programme. Professor Meyersfeld is an expert in the field of domestic violence, in particular, international law and domestic violence. Under Prof Meyersfeld's leadership, CALS continued to build on its rich history of research and advocacy work in the gender rights arena. Some of the Gender Programme highlights for 2010 are described below.

Media report on sex workers at the World Cup

2010 was an historic year for Africa but more especially for South Africa, as we hosted the 2010 FIFA World Cup. Hundreds of thousands of soccer fans filled the South African stadiums in hopes of watching their favourite teams score. But as the beer was poured, and inhibitions lost, many of these same fans would be looking to score for themselves outside the arena. South Africa's Drug Central Authority estimates 40 000 sex workers were on duty round-the-clock for the post game activities. In response, and in order to promote public awareness around this, CALS released a media report addressing issues such as the appropriate role for FIFA and the government, as well as the implications for South Africa's HIV pandemic.

CALS provides input on the Choice on Termination of Pregnancy Amendment Bill

On 28 May 2010, CALS gave oral evidence to the Parliamentary Committee on Private Members' Legislative Proposals and Special Petitions relating to the Honourable Dudley MP's legislative proposal pertaining to the Choice on Termination of Pregnancy Amendment Bill (the Bill). CALS also made written submissions on the Bill. Our concerns were primarily that the provisions of the Bill were inconsistent with the substance and purpose of the primary Act, which is to ensure that South African women have meaningful choice regarding reproduction and that this choice should include the safe termination of an unwanted pregnancy. Furthermore, that the provisions of the Bill were inconsistent with the broader constitutional goal of gender equality and the empowerment of South African women.

Specific aspects of the Bill which were addressed in CALS' submissions included the following:

- The requirement that facilities which provide pregnancy termination have access to ultrasound equipment would impose an unjustifiable and unsustainable financial burden on the organisations which provide terminations. Many of these organisations operate on donor money and are barely able to meet the needs of the many women who seek their services. Imposing this obligation on service providers would force many of them to shut down, resulting in a reduction in the number of clinics where women could access safe and legal termination.
- The inclusion of electronic pictures, diagrams and photographs of the foetus in counselling sessions is not about information but rather about dissuasion from termination of the pregnancy, which would be at odds with the objective of the primary Act which binds the state to provide reproductive health and safe conditions under which the right of choice can be exercised without fear or harm.
- The requirement that counselling cover the alleged dangers of breast cancer, depression and future difficulties in conceiving and bearing children is problematic because there is no evidence to prove a link between safe and informed termination and the conditions identified in the Bill.

Book launch: Domestic Violence and International Law (Hart Publishing)

Prof Meyersfeld launched her book entitled ‘Domestic Violence and International Law’, published by Hart Publishing in April 2010 at the Chalsty Centre at the Wits School of Law. She also subsequently launched her book at Chatham House in London and at Yale University in the United States.

The book provides a detailed legal analysis as to why a state should be accountable in international law for allowing women (and other marginalised or vulnerable groups) to suffer extreme forms of domestic violence, and how the system of international law can help individual victims. The argument is based on a theory of non-coercive state compliance with international law and the principle of state responsibility. It seeks to reformulate academic and political debate on domestic violence and the responsibility of states under international law, mapping the extensive recent developments in the UN, European, Inter-American, African and other global legal systems. It is based on empirical data combined with an assessment of whether or not domestic violence in its myriad forms is a violation of international human rights law and what possible benefit there could be in confirming such a principle.



Workshop on Feminist Legal Approaches to Adult Prostitution

Prostitution and the sex industry are topics that involve a complex range of issues. In the international arena they have resulted in a range of regulatory responses. In South Africa, the Law Reform Commission is looking at law reform measures best suited to the unique South African context. South Africa has a strong constitutional jurisprudence that protects the right to equality. However, there are also high levels of unemployment as well as the prevalence of HIV/AIDS which results in the disproportionate effect of inequalities on women.

On 22 February 2010, CALS hosted a workshop on adult prostitution, the object of which was to engage with these issues and discuss various approaches to prostitution adopted by other jurisdictions and how they might apply in South Africa. The workshop dealt specifically with the theoretical underpinnings of feminist legal approaches

to adult prostitution. Presentations were made by the following renowned gender experts:

Professor Bonita Meyersfeld

This presentation provided a framework on the international and transitional approaches to adult prostitution.

Professor Cathi Albertyn

This presentation was made from a law reform perspective by looking at the current situation in South Africa, the gaps and the status quo of law reform.

Professor Catharine MacKinnon

This presentation looked at the social realities which resulted in the adoption of the Swedish Model of legislation (which decriminalizes women involved in prostitution and criminalizes the buyer of sex) and how an understanding of these realities helps us to engage with the South African context.

SKILLS DEVELOPMENT

CALS is always conscious of the on-going need to develop the skills base of its staff. In this regard we are particularly fortunate to be located within the Wits University context which often puts us at the heart of cutting edge thought.

From July to November 2010, members of the Environment Programme Vandana Cowley and Lisa Chamberlain completed courses on Mining and Prospecting Law, and Land and Water Law offered by the Mandela Institute at Wits University (with Lisa receiving a distinction for her paper dealing with the challenges of public participation in the mining industry, an issue which looms large in the work of the Environment Programme). These courses explored a wide range of topics relevant to CALS' work and covered many aspects of environmental regulation and enforcement that could be developed into strategies in our work. Of particular benefit was the fact that many of the other attendees of the course were practitioners in the field, either as legal advisors, government regulators or scientists, which made class discussions around real-live scenarios informed and useful.

CALS' commitment to academic endeavour in 2010 also included on-going support of our researchers, Constance Kupe, Bekezela Moyo and Blessing Mushohwe as they studied towards postgraduate degrees in the areas of children's rights and the use of indigenous knowledge systems. Kathleen Hardy, attorney at CALS, continued to work towards the completion of her LLM in International Law, with a thesis entitled 'An analysis of the domestic implementation of the repression of war crimes: A case study on Uganda'.

In addition, Prof Raylene Keightley participated in the academic community of the University by teaching Constitutional Property Law at the Law School, and presenting a paper entitled 'The challenges of litigating socio-economic rights in South Africa' at the Public Law in Three Nations Colloquium in New Zealand, which was later published in the New Zealand Law Review.

CONCLUSION

2010 has been a very productive year for CALS, with staff rising to all of the challenges they faced. Working together as a team, we have continued to advance human rights work across all four Programmes using the tools of research, advocacy and litigation. Our research outputs have included papers on housing rights, education issues, and environmental rights; as well as formal research reports like *From Farm Schools to Hostel Schools: A Lived Reality*; and the publication of Prof Meyersfeld's book *Domestic Violence and International Law*.

The dissemination workshops for our research papers have formed the core focus of our advocacy work, along with other workshops and roundtables we have held on issues ranging from mining rights to adult prostitution. In our advocacy work, we have strived for meaningful engagement with stakeholders, including our clients, partner organisations, academia, government and other public interest groups. Following on from these advocacy interactions, we have continued to make use of strategic litigation in our work, especially in the Basic Services Programme. Housing rights cases accounted for 17 of the cases handled by the CALS Litigation Unit, with a landmark judgment handed down by the Constitutional Court in the *Blue Moonlight* case.

Making use of these three tools, CALS has remained active in the human rights field in South Africa. We look forward to next year and continuing to promote social justice for all.

CENTRE FOR APPLIED LEGAL STUDIES - FINANCIAL MANAGEMENT REPORTS
For the period 1st January 2010 to 31 December 2010

	INCOME AND EXPENDITURE BY FUND										
	Total Actual	CALS General Admin	Directors Sundry	Atlantic Philanthropies #19123	Ford Foundation #565	Vele Consortium	Ford Foundation #1085	Atlantic Philanthropies - Nes & Farm Schools	Hivos	NCHR	SAJHR
TOTAL INCOME:	4,864,863	230,226	1,359,787	929,000	1,918,672	264,719	-	-	-	-	162,459
Donations	3,194,484	-	346,812	929,000	1,918,672	-	-	-	-	-	-
Royalties	151,374	-	-	-	-	-	-	-	-	-	151,374
Sundry Revenue	1,278,476	647	1,012,975	-	-	264,719	-	-	-	-	135
Interest	240,529	229,579	-	-	-	-	-	-	-	-	10,950
TOTAL EXPENSES:	3,539,566	627,356	996,159	155,475	873,361	237,427	123,130	388,036	45,861	2,033	90,728
Human Resources	2,224,929	750,281	571,679	69,931	697,499	-	90,828	-	-	-	44,711
Programme costs	1,165,884	-	422,447	85,544	59,792	237,427	31,867	290,990	-	-	37,817
Administration costs	148,753	148,753	-	-	-	-	-	-	-	-	-
Allocations to Admin costs	-	(271,678)	2,033	-	116,070	-	435	97,046	45,861	2,033	8,200
SURPLUS/(DEFICIT) FOR THE YEAR	1,325,297	(397,130)	363,627	773,525	1,045,311	27,292	(123,130)	(388,036)	(45,861)	(2,033)	71,731
Refund to KIT	(182,253)	-	(182,253)	-	-	-	-	-	-	-	-
BALANCE OF FUNDS B/FWD 1/1/2010	4,843,024	2,355,600	1,137,544	79,470	-	-	123,130	388,036	45,861	2,033	711,350
BALANCE OF FUNDS AT END OF YEAR	5,986,068	1,958,470	1,318,918	852,995	1,045,311	27,292	(0)	-	-	-	783,081

CENTRE FOR APPLIED LEGAL STUDIES

BALANCE SHEET AT 31 DECEMBER 2010

	Note	2010 R	2009 R
ASSETS		7,289,722	6,453,403
Current assets		7,289,722	6,453,403
Accounts receivable		30,580	214,166
Cash and cash equivalents		7,259,142	6,239,237
Total assets		<u>7,289,722</u>	<u>6,453,403</u>
RESERVES AND LIABILITIES		7,289,722	6,453,403
Accumulated funds		7,289,722	6,453,403
General funds		6,368,101	5,225,053
CALs General fund		5,986,069	4,843,021
Capital equipment replacement fund		10,274	10,274
Retrenchment reserve fund		371,758	371,758
Current liabilities		921,621	1,228,350
Accounts payable		896,652	1,163,318
Amount due to ALP			40,063
Leave pay provision		24,969	24,969
Total reserves and liabilities		<u>7,289,722</u>	<u>6,453,403</u>



Centre for Applied Legal Studies