

FINALISTS

6 SEPTEMBER

HUMAN
RIGHTS NGO

Centre for Environmental Rights

Defending South Africans' Constitutional right to a healthy environment

The Centre for Environmental Rights (CER) is a non-profit environmental rights law clinic that helps communities to defend their Constitutional right to a healthy environment. Its attorneys use the law to strengthen the voices of communities affected by environmental injustice, pollution and mining, and to hold companies and the state to account for environmental degradation.

The CER advocates and litigates for transparency, accountability and compliance with environmental laws within a growing portfolio of programmes that includes – but is not limited to – its Mining Programme, which promotes environmental compliance, transparency and accountability in SA's mining sector; the Pollution and Climate Change Programme, which supports civil society in decisions on pollution, waste and land use; and its Corporate Accountability Programme, which helps ensure environmental justice and accountability in the business sector.

The CER first opened its doors as a two-member strong organisation in 2010. Today it employs a team of twenty predominantly environmental lawyers and its initiatives remain collaborative and long-term by nature. In 2015, CER worked on the following campaigns:

- **Fighting for clean energy:** Leading various legal challenges – together with its partners groundWork and Earthlife Africa Johannesburg – to discourage investment in new coal-fired power stations; accelerate the retirement of SA's existing dirty coal infrastructure; and enable a just transition to renewable energy systems for the people of South Africa. Recently, the CER's actions saw the Minister of Environmental Affairs order the addition of a climate change impact assessment to the original environmental impact assessment for the proposed Thabametsi coal-fired power station in Limpopo. The CER has opposed authorisation for several other proposed stations, and appealed three such environmental authorisations arguing, inter alia, that the authorising of new coal-fired power stations is contrary to the right to a healthy environment and would breach the state's obligations to mitigate against climate change.

- **Defending the right to breathe clean air:** CER attorneys worked with community organisations on the Mpumalanga highveld to challenge the poor air quality in that area, particularly the emissions from Eskom's many coal-fired power stations on the highveld that threaten people's health and well-being. CER represented a group of NGOs and community organisations which resisted industry's attempts to secure the relaxation of pollution restrictions applicable to Eskom and

other industrial facilities.

- **Holding corporates accountable:** In September 2015, the CER published Full Disclosure – The Truth About Environmental Compliance in South Africa, an online research report which demonstrated, with evidence, that many listed South African companies which are hailed as leaders for their approach to environmental, social and governance issues, not only frequently commit serious breaches of environmental laws, but also often fail to disclose this – or the risks associated with these breaches – to shareholders. An updated version of Full Disclosure will be published in September 2016.

- **Pushing for transparency:** Access to information is not only essential for the exercise of environmental rights, but also central to the success of all CER Programmes. Regulated through the Promotion of Access to Information Act, 2000 (Act 2 of 2000) (PAIA), the CER has, since its establishment, advocated for greater transparency in environmental governance and access to understandable information. In April 2016, the CER welcomed the Department of Environmental Affairs' decision to make copies of environmental licences available to the public automatically, without requiring the submission of a PAIA request – a step it proclaimed a "victory for environmental rights". Reassured and encouraged by this development, CER attorneys continue to campaign for automatically available, online public access – not only to environmental licences, including those held by the Department of Water and Sanitation, and the Department of Mineral Resources – but also to reports and data that demonstrate whether companies are complying with the conditions of their environmental licences.

- **Challenging mining in protected areas:** CER instituted legal action on behalf of eight civil society and community-based organisations against the Minister of Mineral Resources following his grant of a coal mining right inside the Mabola Protected Environment, which is not only a protected area, but also a national freshwater ecosystem priority area in the Mpumalanga grasslands. This application is being opposed by the Minister of Mineral Resources, the Department of Mineral Resources and the mining company. The CER awaits answering affidavits from these parties which will set out the basis of such opposition.

- **Safeguarding the seabed:** 2015 also saw the introduction of CER's Safeguard our Seabed project, due to concerns over the impact of seabed mining, after the Department of Mineral Resources granted prospecting rights offshore, covering 10% of South Africa's Exclusive Economic Zone. The prospecting areas overlap critically endangered ecosystems that are not found anywhere else, and key spawning areas for South Africa's fish stocks that are a major source of food for the country and are the foundation for South Africa's considerable and renewable fishing industry. Our commercial fishing industry employs around 27 000 people directly. And there are approximately

8 078 small-scale fishers in South Africa – who directly rely on fishing for livelihood and food security.

Visit our website at <http://cer.org.za/>, or our social media platforms at <https://www.facebook.com/CentreEnvironmentalRights> and <https://twitter.com/CentreEnvRights> for more about the CER's work.



MOST IMPACTFUL INITIATIVE

Hogan Lovells police brutality legal clinic

In 2011, following the death of Andries Tatane at the hands of police officers after he led a service delivery protest, there was an outcry from the public on the extensive powers of the police. This led to ProBono.Org and Hogan Lovells partnering to start a police brutality clinic staffed by attorneys from Hogan Lovells.

The purpose of the clinic was to provide pro bono legal advice to clients who have been victims of police brutality, have been unlawfully arrested or detained and to provide information/education on the powers of the police. The advocacy around the police brutality clinic was to make people more aware of their rights in the Constitution and how to protect them.

The clinic initially was held on one Tuesday morning a month and would assist between 3-5 people. Hogan Lovells embarked on a number of community workshops in 2011 and 2012 for community based organisations to inform people of their constitutional rights and of the services of the clinic. As the word got around, the clinic was increased to two Tuesday mornings a month and has continued on this basis since then.

So what does the clinic actually do?

The public who have had an encounter with the South African police services or the metropolitan police services can attend the clinic and consult with an attorney about their encounter. Advice is given on unlawful arrest, search and seizure, unlawful detention and assault by the police.

Once the case is evaluated, clients are then advised about the merits of their claim and any deficiencies, for example, prescription. In some instances clients are referred to other departments or organisations where necessary.

Hogan Lovells drafts complaints to IPID and does follow ups on investigations.

When requested, Hogan Lovells takes on matters against the police on a pro bono basis. In the four years since inception a number of matters have been successfully litigated on and clients have received compensation for their claims.

At the beginning of 2015, the firm was instructed by the Law Review Project to challenge the constitutionality of the search and seizure powers of the SAPS and the Metropolitan Police. This case is ongoing.

In May 2015, Hogan Lovells collaborated with the Wits Justice Project and assisted with providing the media with information on how to deal with instances where one is the victim of police brutality. Candice Pillay appeared on a number of community radio stations to inform people of their rights as well as the existence of the clinic and how we can assist.

On 4 June 2015, Krevania Pillay was invited to talk about the prevalence of police brutality on Eldos FM. Her interview discussed what to do if one is subjected to police brutality and provided information about the Police Brutality Clinic.

In July 2015, the cases of three Edenvale residents were brought to Candice Pillay for assistance by Carte Blanche television producer Kate Barry. Advice was provided to the residents and one matter was taken on. The stories of the residents were aired on Carte Blanche on 19 July 2015 and there was a huge response from viewers. Candice Pillay was invited to talk about what to do in the event of police officers abusing their powers on the John Robbie Show on Radio 702 on Wednesday 21 July 2015. The stories have been tweeted and re-tweeted and have appeared on all social media platforms since focussing on the work of the clinic and on the rights of citizens when confronted with abuse of power from the SAPS or Metro police.

Here are a few examples of cases the clinic has dealt with:

R DANSTER v THE MINISTER OF POLICE

In this matter the client was unlawfully shot five times by SAPS officials.

Candice Pillay was the instructing attorney on this case, and Chane Ismail assisted in conducting the trial at the Johannesburg High Court. On 9 March 2015, judgment was granted by Judge Tsoka in

favour of our client for an award for damages in the amount of R 217 000.00.

L MAKOTOKO v THE MINISTER OF POLICE

In this matter our client, who was an informal trader, was unlawfully arrested, detained and physically assaulted by SAPS officials.

Candice Pillay was the instructing attorney on this case and facilitated the matter at the Johannesburg High Court. On 6 August 2015 the matter was settled out of court and the client received payment for damages in the amount of R 40 000 00.

S.MULUADZI v THE MINISTER OF POLICE

The client in this case was an elderly domestic worker, who was unlawfully shot by a SAPS official whilst travelling on a Rea Vaya bus, while the police were in pursuit of another suspect.

Krevania Pillay was the instructing attorney on this case and facilitated the matter at the South Gauteng High Court. On 16 October 2015 the matter was settled out of court and our client received payment for damages in the amount of R 108 000.00.

The response to this clinic has been overwhelming and more people have come forward to speak out about their experiences and seek assistance from the clinic. It has also created a dialogue in society about the issue of police brutality, peoples' rights, what action they can take when their rights are infringed and where to go for help.

The firm has even been engaged by an NPO who had set up a complaints hotline known as "Good cop bad cop" and will be collaborating with them going forward.

The existence of the clinic since 2011 has empowered the lives of the people that have been assisted and whose matters have been successful in court.

The recent exposure of the police brutality cases in the media and the importance of knowing one's rights as set out in the Constitution and how to protect those rights, has focussed the spotlight on the significant impact of ProBono.Org and the Hogan Lovells police brutality clinic in this area of law.

ANNUAL PRO BONO AWARDS CEREMONY 2016



FIRM WITHOUT
pro bono dept

Cullinan & Associates Cape Town

Cullinan and Associates Inc is a medium size firm of ten lawyers based in Cape Town which specialises in environmental law. Despite the fact that the firm does not have a dedicated pro bono department, it has taken on a number of cases dealing with the protection of environmental rights. The firm has taken these cases on because the attorneys that work there believe that these matters involve important constitutional issues with the potential to set valuable precedents in South African courts relating to the environmental and the social rights of traditional communities. The firm also assists its clients to fundraise for these cases so that the firm is able to finalise matters successfully, some of which are highly complex and take years to resolve.

One of the matters which Cullinans has taken on involves the rights of AmaPondo communities in the Wild Coast region of the Eastern Cape. Cullinans has represented the Sigidi and Mdatya Communities in the Wild Coast for over ten years in opposing a limited access toll road being built through their ancestral land. Despite their client not having been able to raise funds to complete the case, Cullinans has remained committed to its Wild Coast community clients and has embarked on two interlocutory applications in the North Gauteng High Court and anticipates the main review to proceed in 2017.

Cullinans has gone above and beyond the duties usually expected of attorneys to their clients in this matter. In addition to carrying the burden of fees, it has had to withstand intimidatory tactics from the respondents, such as the launch of interlocutory proceedings on a number of spurious bases in which costs de bonis propriis were claimed against Cullinans. This interlocutory has since been withdrawn.

Details of the case

The communities being represented are opposed to both the construction of the toll road and a titanium mine on the red dunes next to the coast in the Amadiba Administrative Area which the road would facilitate. The case essentially involves the following rights:

- asserting the constitutional rights of local communities to be properly consulted in accordance with their customs and to have an effective role in decision-making that affects their lives and ancestral lands;
- asserting the right of local communities and their members to have access to the courts in circumstances where the chief is siding with the proponents of developments that the community oppose;
- preventing the construction of an uneconomic toll road through one of the most beautiful and unspoilt areas of South Africa which will set in motion a process of ribbon development and social disruption that will progressively degrade this area, its unique biodiversity and the culture of the amaMpondo people; and
- asserting the rights of local communities to prevent socially and ecologically destructive projects to which they have not consented, and exposing the fact that although the road has been justified on the basis that it will develop poor communities and create jobs, in fact it will enrich construction and mining companies at the expense of local communities.

Protecting the rights of traditional communities

This case has the potential to provide important legal precedents regarding the rights of communities living under a system of customary law relating to their ability to regulate their affairs

according to their customs while recognising the role and value of their voice within a participatory democracy. In particular this case seeks to establish that:

- the customary laws of traditional communities must be observed when consulting them, for example during an environmental impact assessment process;
- traditional communities have legal standing to litigate;
- chiefs and other statutorily recognised institutions cannot simply override the wishes of the people they are supposed to represent by terminating litigation without the consent of the people concerned.

Unlike in cases where customary law has needed to be struck down by courts or brought in line with the Constitution, the applicable amaMpondo customary law exhibits deep-rooted participatory democracy and respect for human and environmental rights. Cullinans is arguing that these should be applied by courts thereby demonstrating a real commitment to transforming the judiciary in line with constitutional imperatives rather than merely 'formal' recognition.

Rights of individuals, communities and authorities to dissent from chiefs

This case involves complex issues relating to the powers of Chief Lunga Baleni, the traditional council which he presides over, communities which fall within the jurisdiction of the traditional authority and the rights of individual members of such communities.

The right of communities and individuals to dissent from chiefs is an extremely important issue in South Africa where many communities have experienced traditional leadership which no longer acts in the interests of the people. The ability of individuals and communities to dissent from their leadership is essential given the history of Apartheid leaders using traditional leaders to further their own aims to the detriment of the communities.



National Director's Special Mention

Richard ("Bricks")
Mokolo



Bricks is a paralegal and activist, providing general advice to Orange Farm and the surrounding community in his capacity as a paralegal at the Orange Farm Human Rights Advice Centre. Bricks is a nickname he was given by his brother during a time when he was a professional soccer player. It means "strength," and has stuck. He is also a mediator and counsellor, facilitates workshops and seminars, and promotes access to justice through taking part in the programmes of community radio stations. He is both chairperson of the Association of Gauteng Advice Offices and serves on the National Council of the Association of Community Advice Offices SA (ACAOSA).

His paralegal work mainly focuses on disadvantaged and vulnerable groups within his community who need advice on their constitutional rights with regard to water, sanitation, housing, access to identity documents and birth certificates. As an activist he is involved as well in social movements that set out to protect social justice issues in the community such as land claims, domestic violence, racism and xenophobia. While running his own advice

office he believes that it is important to assist other communities to establish advice offices in their areas which is something he has facilitated, resulting in satellite offices having been established in areas surrounding Orange Farm, such as Sebokeng. He has even assisted in establishing an advice office in Jeppe, Johannesburg.

He is a critical thinker who likes to challenge people and their ideas, and believes that it is important to change people's pre-conceptions, clear their heads and bring them to new insights. This is why for him, it is important to have workshops and training sessions for members of the community.

When interviewed for a ProBono.Org newsletter, he described himself as "a defender of human rights," something that must be done independently of any political party. He believes in good leaders who show solidarity with the people in the community. "But I see so few of them." For him, a good leader stays with his or her community throughout his or her life acting like a shepherd who stays with his flock, despite the challenges.