

Foundation for Human Rights & Department of Justice and Constitutional Development

Discriminatory and unfair legislation scoping exercise

Final report 4 February 2013 - 31 March 2013

Prepared by Centre for Human Rights



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List of Abbreviations

ACMS	-	African Centre for Migration and Society
ALN	-	Aids Legal Network
ASAPA	-	Association of South African Professional Architects
CALS	-	Centre for Applied Legal Studies
CASE	-	Community Agency for Social Enquiry
CBO	-	Community Based Organisation
CDLP	-	Centre for Disability Law and Policy
CER	-	Centre for Environmental Rights
CHR	-	Centre for Human Rights
CLC	-	Centre for Child Law
CLS	-	Centre for Law and Society
CRPD	-	Convention on the Rights of Persons with Disabilities
CSMI	-	Centre for Sustainability in the Mining Industry
CSVR	-	Centre for the Study of Violence and Reconciliation
DHA	-	Department of Home Affairs
DOJCD	-	Department of Justice and Constitutional Development
DRPI	-	Disability Rights Promotion International
DSP	-	Department Social Development
EWT	-	Endangered Wildlife Trust
FHR	-	Foundation for Human Rights
GBVP	-	Gender Based Violence Programme
GRB	-	Gender Responsiveness Budgeting
HIV	-	Human Immunodeficiency Virus
IHRI	-	International Human Rights Initiative
LGBTI	-	Lesbian, Gay, Bisexual, Transsexual and Intersexual
LHR	-	Lawyers for Human Rights
LRC	-	Legal Resources Centre
MAG	-	Mapungubwe Action Group
NGO	-	Non-Governmental Organisation
NMMU	-	Nelson Mandela Metropolitan University

NPA	-	National Prosecuting Authority
NRF	-	National research Foundation
PASSOP	-	People Against Suffering, Oppression and Poverty
R2E	-	Right to Education
RCT	-	Research and Rehabilitation Centre for Victims of Torture
RRU	-	Refugee Rights Unit
RWAR	-	Rural Women's Action Research Programme
SADA	-	South African disability Alliance
SADSAWU	-	South African Domestic Service and Allied Workers Union
SAHRC	-	South African Human Rights Commission
SAJHR	-	South African Journal on Human Rights
SALRC	-	South African Law Reform Commission
SAPS	-	South African Police Service
SERI	-	Socio-Economic Rights Institute
SLP	-	Social and Labour Plan
SWEAT	-	Sex Workers Education and Advocacy Taskforce
SWOP	-	Society of Work Project
TAC	-	Treatment Action Campaign
TCB	-	Traditional Courts Bill
UCT	-	University of Cape Town
UNVFVT	-	United Nations Voluntary Fund for Victims of Torture
UP	-	University of Pretoria
USAID	-	US Agency for International Development
UWC	-	University of Western Cape
WCWA	-	Wonderkop Community Women's Association
WWF	-	World Wildlife Trust

Introduction

The Foundation for Human Rights (FHR) in partnership with the Department of Justice and Constitutional Development (DOJCD) is undertaking a scoping exercise of research currently being undertaken on discriminatory and unfair legislation and discriminatory practices that impact on marginalised and vulnerable groups. The purpose of the exercise is to identify research being undertaken in this field, pinpoint gaps for further research and to ensure that any interventions do not amount to duplication. The Centre for Human Rights at the Faculty of Law, University of Pretoria, is conducting the scoping exercise on behalf of FHR and DOJCD.

FHR mandated the project team to undertake the exercise over the course of two months (1 February 2013 to 31 March 2013). This report forms part of the project, which entailed delivering two reports – an interim progress report on 28 February 2013, and a final report on 31 March 2013. This is the final report, including all the information collected over the course of the two months.

Directly below we provide a brief overview of the contracted institution (University of Pretoria, Faculty of Law) and the project team leading the exercise. We then briefly describe the identified institutions for purposes of the exercise and list the contributing parties. We explain the methodology used in the scoping exercise and then set out the gathered research according to the dominant prohibited ground of discrimination that the various research projects focus on. The report concludes by answering questions specifically indicated in FHR's communications and project briefing.

Project Team

The exercise was for the largest part facilitated and carried out by Professor Anton Kok and Mr Josua Loots. Professor Kok has published widely on the topic of equality. He completed his doctorate on the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 in 2008. He was appointed as the Programme Coordinator for the LLB degree for 2008 and 2009, and as Deputy Dean of the Faculty of Law, University of Pretoria, in 2010. He acted as Dean of the Faculty for ten months in 2011. His main areas of specialisation are equality legislation, human rights and legal education. Professor Kok acted in a supervisory role in the scoping exercise for the Foundation. Mr Loots administered all communications, data and reports for the project. He holds an LLM in Human Rights and Democratisation in Africa, and is currently also involved in projects with the Centre for Human Rights, which is a reputable NGO and academic department based in the Faculty of Law, University of Pretoria. His areas of interest include international law, international human rights, medical law and human rights in business.

Identified Institutions

For this exercise, the team focused on two main sources – academic institutions and civil society. Targeted academic institutions mainly consist of law faculties based at universities, as well as research units/ departments within the different faculties of law. As many of the units are also registered as NGOs (such as the Centre for Human Rights), they would also fall under ‘civil society’. Civil society would mainly include NGOs, independent academia, foundation societies and community organisations. For the first part of the exercise (February 2013), the focus was mainly on academic institutions, and the second part of the project (March 2013) focused on civil society institutions and organisations.

The following academic institutions were identified and contacted for the purposes of the study:

Nelson Mandela Metropolitan University	-	Port Elizabeth
North-West University	-	Potchefstroom
Rhodes University	-	Grahamstown
University of Cape Town	-	Cape Town
University of Fort Hare	-	Alice
University of Johannesburg	-	Johannesburg
University of Kwa-Zulu Natal	-	Pietermaritzburg
University of Limpopo	-	Turfloop (Sovenga)
University of Pretoria	-	Pretoria
University of South Africa (UNISA)	-	Pretoria
University of Stellenbosch	-	Stellenbosch
University of the Free State	-	Bloemfontein
University of Venda	-	Thohoyandou
University of Western Cape	-	Cape Town
University of Zululand	-	Mhlathuze
Wits University	-	Johannesburg

The following civil society institutions were identified, contacted and contributed to this scoping exercise:

African Centre for Migration and Society
Aids Legal Network
Centre for Applied Legal Studies
Centre for Child Law
Centre for Disability Law and Policy
Centre for Human Rights
Centre for the Study of Violence and Reconciliation
Community Agency for Social Enquiry
Community Law Centre
Khulumani Support Group
Lawyers for Human Rights
Legal Resources Centre
Nelson Mandela Children's Fund
People Against Suffering, Oppression and Poverty
Sex Workers Education and Advocacy Taskforce
South African Law Reform Commission
Women's Legal Centre

Numerous online civil society databases were consulted to identify the above-mentioned institutions, as well as many other institutions not listed. In some cases the organisations did not exist anymore, or did not respond to any of our communications. It should be noted that a comprehensive and updated civil society database, organised and facilitated by one institution or umbrella authority, does not exist. Having such a database will improve the ability to facilitate cooperation between different institutions and organisations, and will make the dissemination of information much easier and more accessible.

Methodology

The methodology followed in this scoping exercise consisted largely of desktop research. However, personal and telephone interviews were held with academic members of staff in some instances, in particular with those who were easily accessible. As soon as the team received its mandate, emails were sent out to all the above-mentioned organisations and institutions, including a project description letter. These emails were followed up shortly afterwards with telephone calls. The first week of the exercise were mainly dedicated to identifying the relevant researchers at all the different institutions and organisations. After identifying the main researchers and contact persons, another letter was sent out containing a description of the project, as well as some questions to guide researchers in providing the project team with the necessary information. These questions were based on those included in the project briefing, as provided to us by FHR. Numerous telephone calls were made afterwards to expedite the process as far as reasonably possible.

Few initial responses were received and the responses were usually of a general nature. We then provided the set of questions to researchers again. Although the original document contained project information on research being undertaken on the topic of unfair and discriminatory *legislation*, researchers were advised to submit any research projects on the topic of 'discrimination against marginalised and/ or vulnerable groups'. In an attempt to offer further guidance and specificity in the exercise, marginalised and vulnerable groups were identified to include LGBTI, people living with HIV, women and children, refugees, immigrants and people living with disabilities. The research is set out in the next section of the report, and it is recommended that the Foundation determine whether it falls within the purview of its work.

Research Summaries

Although all of the researchers were provided with questions and guidelines, not all of them responded with all the necessary details. As some researchers only provided the research data itself, abstracts will be included where specific questions were not answered. Where possible, we present the research under the following headings:

- i. Title of the Research;
- ii. Name of researcher(s);
- iii. Nature of discrimination;
- iv. Research coordinating individuals/ institution;
- v. Progress/ status of research;
- vi. Potential support from the FHR.

The research summaries are set out 'thematically'. These themes are based on the different grounds of discrimination as set out in Section 9 of the Constitution of South Africa. Some grounds were also drawn from case law or practice, such as HIV Status. In other areas of research, the core issue were set out as the ground of discrimination, usually when a fundamental right was denied. These include issues such as the right to access to water, access to basic services and the right to basic education. Of specific interest was the broad scope under which 'ethnic/ social origin' could be interpreted to include refugees and asylum seekers, as well as communities living in poor conditions and being marginalised as a result thereof.

The research abstracts/ summaries were provided by the researchers themselves, and often did not include more than what is set out in this report. These abstracts were merely edited by the project team to provide clarification on the different projects. All the information is set out according to different research projects. In most cases the projects are receiving funding in some form from an institution or foundation, as we primarily targeted on-going research projects. Where researchers provided proposed projects, it is indicated under the 'status' heading of the particular summary.

Access to Justice

1. Law and Poverty/ Access to Justice project	
Researchers:	Anton Kok and Louis Botha (University of Pretoria)
Abstract/ summary:	<p>The researchers recently submitted an article for publication in SAJHR (written in collaboration with Ms Isolde de Villiers) regarding the themed edition on Law and Poverty. The article focused mainly on access to justice and whether the equality courts can assist the poor to improve their livelihood. A key part of the article was an empirical study conducted at the Durban equality court, in which all the cases received by the Durban equality court in 2009 were analysed, specifically analysing the profile of litigants and the outcome in these cases. Subsequently, another +-270 cases lodged at this equality court (covering the years 2003-2005 and 2007-2008) were collected with a view to continuing an analysis of these cases in the same manner as the 2009 cases. Selected cases from equality courts in Mpumalanga have also been obtained after courts visits, which were facilitated by the Department of Justice.</p>
Aspects of discrimination involved:	<p>Access to justice; Gender; Race (Any person who struggles to access justice (the equality courts in this instance), but also the groups identified in the study as being the ones who have suffered the most discrimination, hate speech and harassment. For instance, at the Durban Equality Court it was found that black females most often lodged claims based</p>

	on unfair discrimination, hate speech or harassment. This was not the main focus in the article submitted for the SAJHR, but the researchers hope to use this data later when they analyse the other +-270 cases that were sourced from the Durban Equality Court and further information gathered from any other equality court.)
Research coordinating individuals/ institution:	All research were conducted as part of a post-doctoral research project for which Professor Anton Kok received funding from the University of Pretoria's Research and Development Programme. This funding had now ceased. The main purpose of this research project was to determine whether the equality courts are succeeding in fulfilling the aims of the Equality Act and to identify courts that had received a large number of cases so that more detailed research can be conducted about cases received the relevant court.
Progress/ status of research:	Article submitted to South African Journal on Human Rights for publication. On-going research.
Potential support from the FHR:	The FHR could greatly assist the research by providing funds, which would enable the researchers to visit more equality courts around the country and to make copies of the case files at these courts. The majority of equality court judgments are heard at magistrate's court level but are not easily accessible. The only way to source these cases is by going to equality courts around the country as was done with Durban and with some of the courts in Mpumalanga, and to make

	copies of case files at the court's premises. Financial support is required to cover copying, travel and accommodation expenses when research is done at courts outside the Gauteng area.
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2. Effectiveness of the First Phase equality courts	
Researchers:	Anton Kok and Louis Botha (University of Pretoria)
Abstract/ summary:	A survey was conducted in 2009 of what used to be known as "first phase equality courts", ie courts that were first designated as equality courts by the Department of Justice. The researchers are in the process of finalising an article on the findings of their survey, and to deal with the potential effectiveness of equality courts. The article will be submitted for publication in 2013. The purpose of this survey was also to establish which equality courts had received the most cases so as to approach these courts first when conducting an empirical study on the effectiveness of equality courts and the types of cases that have been received by them.
Aspects of discrimination involved:	Access to justice (Any person who struggles to access justice (the Equality Court in this instance), but also the groups identified in the study as being the ones who have lodged the majority of cases based on unfair discrimination, hate speech or harassment.)
Research coordinating individuals/ institution:	All research were conducted as part of a post-doctoral research project for which Professor Anton Kok received funding from the University of

	<p>Pretoria's Research and Development Programme.</p> <p>The main purpose of this research project was to determine whether the equality courts are succeeding in fulfilling the aims of the Equality Act and to identify courts that had received a large number of cases so that more detailed research can be conducted about cases received the relevant court.</p>
Progress/ status of research:	Articles to be submitted for publication in 2013 and beyond
Potential support from the FHR:	The FHR could greatly assist the research by providing funds, which would enable the researchers to visit more equality courts around the country and to make copies of the case files at these courts. See project 1 above as well.

3. Small Claims Court Project	
Researchers:	Mohamed Paleker (University of Cape Town)
Abstract/ summary:	<p>At present there are 259 Small Claims Courts in South Africa. The government has a vision of introducing a Small Claims Court in all of the 389 Magisterial districts. Small Claims Courts are perhaps the single most important vehicle for fostering access to the courts for the poorest of the poor. These courts can make a significance difference to women (and by implication children), those living with physical and health challenges, refugees and immigrants. However, to fully impact on marginalised and vulnerable communities, Small</p>

	<p>Claims Courts have to be significantly overhauled.</p> <p>Mr Paleker serves on the Rules Board for Courts of Law, as well as the Ministerial Task Team for Small Claims Courts, and thus has insight into the obstacles facing these courts. To this extent, he has embarked on a research project to critically investigate all aspects that hamper the proper functioning of Small Claims Courts. It is hoped that the research will feed into the Civil Justice Reform Project, which has been announced by the Minister.</p>
Aspects of discrimination involved:	Access to justice
Research coordinating individuals/ institution:	Individual (University of Cape Town)
Progress/ status of research:	On-going
Potential support from the FHR:	<p>Research funding will assist to:</p> <ul style="list-style-type: none"> • Engage with experts to assist in interdisciplinary research • Undertake further field research with a view to generate empirical data and statistical information • Source research materials • Arrange workshops, conferences and seminars to broaden local knowledge and identify scholars <p>Contract the services of additional researchers</p>

Age (Children)

4. Children Rights Project	
Researchers:	Julia Sloth-Nielsen (University of Western Cape)
Abstract/ summary:	<p>Prof Sloth-Nielsen is undertaking research on various issues of children's rights:</p> <ul style="list-style-type: none">a) Article analysing leading children's rights cases in the period 2008-2012.b) Project on harmonisation of South African law with the Convention on the Rights of the Child and the African Charter.
Aspects of discrimination involved:	Age (Children); Gender
Research coordinating individuals/ institution:	It differs from project to project, but involves among others the Nelson Mandela Children's Fund.
Progress/ status of research:	Mostly completed; some articles still to be published.
Potential support from the FHR:	Researcher indicated that financial support is always welcome.

5. The right to education and schools admissions policies	
Researchers:	Centre for Child Law (University of Pretoria)
Abstract/ Summary:	In 2012, the Centre became aware of certain learners in a Gauteng High School, with English as their medium of education, who were being treated

	<p>differently from the Afrikaans learners in the school. The Centre has involved itself in this case representing the children. Field research has been carried out to understand the exact circumstances of the group of children in question.</p> <p>From discussions and interviews with the children, it has become apparent that although the children are extremely happy with the tuition provided in the school they are unhappy about the way they are segregated from the “non-English” learners and even sometimes referred to in derogatory terms. The Centre continues its research with structured visits to the school in order to closely monitor and observe developments in relation to the children’s complaints. Information already obtained from the children has been presented in court and any new developments will be presented.</p>
Aspects of discrimination involved:	Age (children); Ethnic/ social origin; Language
Research coordinating individuals/ institution:	The Centre for Child Law
Progress/ status of research:	On-going
Potential support from the FHR:	The Centre receives funding from international and local donors. As it is always busy with numerous research projects, discussions with the FHR would be greatly welcomed to establish the types of support that the FHR can offer.

6. Learner pregnancy policies	
Researchers:	Centre for Child Law (University of Pretoria)
Abstract/ Summary:	<p>Certain schools in the Free State impose a leave of absence on some learners who became pregnant once they reached the eighth month of their pregnancy. The schools pointed out that, in terms of their policies on pregnancy, the learners are required to stay at home for a period of two years after childbirth.</p> <p>The Centre involved itself in the case of Welkom High School raising concerns about the constitutionality of the policies on pregnancy which one of the school pointed out was developed in accordance with guidelines provided by the Department of Education. Research carried out by the Centre has been mainly desktop research on international law and foreign law applicable to learner pregnancy. The result of this research has been submitted to the Constitutional Court in the Centre's capacity as "friend of the court".</p> <p>The Centre is conducting further research to support its submissions to the court in order to ensure that learner pregnancy policies do not continue to violate female children's constitutional rights.</p>
Aspects of discrimination involved:	Age (children); Gender; Sex
Research coordinating	The Centre for Child Law

individuals/ institution:	
Progress/ status of research:	On-going
Potential support from the FHR:	The Centre receives funding from international and local donors. As it is always busy with numerous research projects, discussions with the FHR would be greatly welcomed to establish the types of support that the FHR can offer.

7. Schools infrastructure and learner transport	
Researchers:	Centre for Child Law (University of Pretoria)
Abstract/ Summary:	<p>This project is primarily divided into two thematic areas:</p> <p>Schools infrastructure</p> <p>The problem with the lack of infrastructure or availability of poor infrastructure in schools, particularly in the rural areas of the Eastern Cape, has been on-going for more than a decade. The Centre entered into a case involving construction of buildings in seven schools in the Eastern Cape to allow children to obtain an education in suitable environment. Children in these schools were taught in dilapidated mud structures with no recreational and sanitary facilities. In an out of court settlement, the Department of Education agreed to a programme of infrastructure upgrading, which commenced in 2011. The Centre visited some of the schools during 2012 to monitor compliance with the settlement agreement.</p>

	<p>Learner transport</p> <p>Some learners in a school located in a village in the North West were unable to access education because there was no transport available to and from the school. Should their parents have sought private transport, it would have been at a cost, which would have been too high for the parents to bear. Following visits to the school and research on the exact circumstance of the children in question, the Centre was able to present the learners' case to the court which ordered that interim measures be developed to ensure learner transport is provided to the school while the Department of Education worked on permanent measures for learner transport to the school. The Centre's research work did not end there as the interim transport provided was truncated due to the department's failure to pay the driver. The Centre continues to work with the school in line with its monitoring and evaluation mandate.</p>
Aspects of discrimination involved:	Age (children); Ethnic/ social origin (Rural/Urban)
Research coordinating individuals/ institution:	The Centre for Child Law
Progress/ status of research:	Research is on-going as the problem appears to be systemic.
Potential support from the FHR:	The Centre receives funding from international and local donors. As it is always busy with numerous research projects, discussions with the FHR would be greatly welcomed to establish the types of

	support that the FHR can offer.
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8. Contact and care of minor children	
Researchers:	South African Law Reform Commission (SALRC)
Abstract/ summary:	<p>The investigation focuses on the issue of care of and contact with minor children, including the role of alternative dispute resolution in family law disputes, the effect of <i>pendente lite</i> applications and the importance of a child-centered approach. It has become clear that the implementation in practice of relevant principles and concepts such as “best interest of the child” and “parental responsibilities and rights” as provided for in the Children’s Act must be addressed carefully, especially in so far as parents from different cultures and income groups are concerned. The object of the investigation is to develop an integrated approach to the implementation of family law in South Africa.</p> <p>The interests of all children, including children from customary and religious marriages and children living in rural areas have to be considered. Issues such as the fragmented court system, the cost of litigation, which inhibits access to justice for poor and disadvantaged persons and communities and accessibility to courts by all persons, will be addressed.</p>
Aspects of discrimination involved:	Age (children); Ethnic/ social origin
Research coordinating	The SALRC and its committees, including a Project

individuals/ institution:	Committee. The SALRC is also part of the Civil Justice Review Project (CJRP) of the DOJCD, although the exact nature of its involvement has not been clarified yet.
Progress/ status of research:	Although the project has been on the programme of the SALRC, it is has been dormant for some time. A researcher has now become available and an Issue Paper is being prepared for information and comment.
Potential support from the FHR:	Any inputs are welcome.

9. Gender Based Violence Programme	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVR)
Abstract/ summary:	<p>CSVR embarked on a research project, which focuses on women experiences of traditional-cultural practices, gender (in)equality and different forms of gender-based violence. The Programme (GBVP) seeks to understand the root causes of the different forms of the rampant gender-based violence in South Africa in order to contribute towards the creation of preventative and intervention strategies.</p> <p>The nature, extent, causes and consequences of different forms of violence whether against young and old men and women was also analysed. The various locations and settings where violence takes place and who the perpetrators are, were taken into</p>

	<p>account. The study presented a gendered analysis of traditional-cultural practices; social, cultural and economic forces that have shaped and informed women's lives in Kwa-Zulu Natal and in the Western Cape. Some of the narratives given by respondents also provide valuable insights into how issues of identity and culture are intersected with gender-based violence. The study paid special attention to violence and cultural practices in the family and focusing on practices like virginity testing, male circumcision, "ukuthwala", sexual control, traditional gender roles, early and forced marriages, witchcraft and many other practices which emerged as most harmful towards and discriminatory against women.</p> <p>Community and public settings like schools, religious institutions, traditional justice systems and the South African Police Services were also looked at in relation to their responses to sexual and gender-based violence as well as harmful traditional-cultural practices. The study also examined the extent to which the public institutions have perpetrated violence against women and the reasons behind that. Further attention was also paid to issues pertaining to gender inequalities, identity, discrimination based on their sex, and the patterns of violence.</p>
Aspects of discrimination involved:	Age (Children); Gender
Research coordinating individuals/ institution:	The Finnish Embassy

Progress/ status of research:	Finalizing the research report, which will be shared with other organizations and project partners.
Potential support from the FHR:	Lessons have been drawn from the studies, and the communities in questions have identified intervention strategies, which will be implemented to address the problem of SGBV in these communities.

10. CALS Education Project	
Researchers:	Centre for Applied Legal Studies (CALS)
Abstract/ summary:	<p>CALS intervened as <i>amicus curiae</i> in a case concerning the implementation of regulations to the minimum norms and standards for infrastructure in terms of the South African Schools Act 84 of 1994. CALS' submissions are based on the effects of the lack of sanitation on a girl learner's rights to access health care, safety and security, equality, privacy and dignity. CALS will soon be submitting comments on this issue in respect of the Department of Education's Proposed Minimum Norms and Standards. CALS is also participating in the South African Human Rights Commission's National Human Rights Day Conference on access to water and sanitation, with a view towards the possibility of participating as <i>amicus curiae</i> in future litigation around sanitation.</p> <p>CALS' Sanitation in Schools Project examines the disproportionate negative impacts of a lack of proper sanitation in schools on girl learners.</p>

Aspects of discrimination involved:	Age (Children); Gender
Research coordinating individuals/ institution:	CALS is partnering with Lawyers Against Abuse on the lack of sanitation in schools project.
Progress/ status of research:	On-going
Potential support from the FHR:	CALS needs partners who will assist in realizing their research objectives. In particular, they need funding to enlarge their capacity and bring in a small group of talented researchers. At present, they have a Senior Researcher who works across programmes, and they would like to bring in a couple of additional researchers. A partnership between CALS and FHR to achieve these research objectives would be most welcome.

11. Law of Succession Project	
Researchers:	Mohamed Paleker (University of Cape Town)
Abstract/ summary:	The project considers the viability of affording either an intestate succession claim and/or a maintenance claim to a grandchild against his/her deceased grandparent's estate. Such an investigation is pertinent because South African succession laws do not take into account the socio-economic realities facing South Africa. On account of HIV/Aids, tuberculosis, poverty, desertion and the migrant labour system, grandparents - who serve as primary caregivers - rear many children. Yet, when the grandparents die, these children are often left destitute. The problem is even more acute when

	<p>grandparents die intestate – as is often the case in poor and illiterate communities.</p> <p>In 2012 Mr Paleker convened a conference on the Law of Succession and Trusts at the University of Cape Town. Findings were presented to leading Law of Succession experts in the country, including Supreme Court of Appeal Justice van Heerden. Mr Paleker also presented a paper dealing with the same issue to the Fiduciary Institute of South Africa. The preliminary findings received considerable support, and Mr Paleker was consequently encouraged to take the matter further. A preliminary article was drafted to contextualise the issue, which also called for law reform by legislative intervention or development of the common law. Arguments were framed on the basis of the South African Constitution.</p>
Aspects of discrimination involved:	Age; HIV Status
Research coordinating individuals/ institution:	Individual (University of Cape Town)
Progress/ status of research:	On-going
Potential support from the FHR:	<p>Research funding will assist to:</p> <ul style="list-style-type: none"> • Engage with experts to assist in interdisciplinary research • Undertake further field research with a view to generate empirical data and statistical information

	<ul style="list-style-type: none"> • Source research materials • Arrange workshops, conferences and seminars to broaden local knowledge & identify scholars • Contract the services of additional researchers
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12. Child Law Harmonisation Project	
Researchers:	Nelson Mandela Children's Fund and Ms Julia Sloth-Nielson (University of Western Cape)
Abstract/ summary:	<p>The Nelson Mandela Children's Fund primarily funds NGOs and NPOs operating in the field of children issues. As such, it focuses on research relating to child law, and have formed a collaborative partnership with the University of Western Cape in a project regarding the harmonisation of policy and legislation that impacts on children.</p> <p>The first phase of the project entails the cooperation with UWC in the collection of research around policy and legislation differences, such as the differences in definitions of 'children' under various policies and legislation, including the Sexual Offences Act and Termination of Pregnancy Act. As part of the first phase, the Nelson Mandela Children's Fund wishes to produce a report on the topic, and consequently host a stakeholders forum meeting to discuss the implications.</p>

	A second phase is envisioned, which will include sociological research on values, beliefs and cultural aspects relating to children within South African Communities, and how legislation could be implemented to better take into account these principles and values.
Aspects of discrimination involved:	Age (Children)
Research coordinating individuals/ institution:	Nelson Mandela Children's Fund and the University of Western Cape
Progress/ status of research:	On-going (Phase 1)
Potential support from the FHR:	The Nelson Mandela Children's Fund could use institutional support and partnerships to host the stakeholders' meeting as part of the first phase of the project, as well as partnerships and research capacity to conduct further research as part of the second phase.

Disability

13. Disabled people and realisation of equality and non-discrimination	
Researchers:	Professor Charles Ngwena (Centre for Human Rights, University of Pretoria)
Abstract/ Summary:	Desktop research on realisation of equality for disabled people leading to publication of journal articles and books with a particular focus on inclusive education and employment opportunities
Aspects of discrimination involved:	Disability
Research coordinating individuals/ institution:	Financial support from the Ford Foundation as well as an individual grant.
Progress/ status of research:	A book on equality, and non-discrimination for disabled people in employment is in progress.
Potential support from the FHR:	Financial support

14. Gender-based violence against women with disabilities	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	<p>This project has the following aims:</p> <ul style="list-style-type: none">a. To gather knowledge in South Africa on barriers making the criminal justice system less accessible to women with disabilities experiencing gender-based violence, with specific reference to women with intellectual

	<p>disabilities and with psychosocial disabilities</p> <p>b. To collate examples of existing 'good practices' in addressing these barriers</p> <p>c. To formulate recommendations on improving access to justice for disabled women experiencing gender-based violence in South Africa.</p>
Aspects of discrimination involved:	Disability; Gender; Access to justice
Research coordinating individuals/ institution:	<p>Funding provided by Open Society Initiative (Disability Rights Initiative).</p> <p>Study conducted in partnership with Gender, Health and Justice Research Unit (University of Cape Town) and Cape Mental Health Society, Cape Town.</p>
Progress/ status of research:	Funding provided for one year (January – December 2012). Extension requested until April 2013; currently under consideration.
Potential support from the FHR:	<p>This project is directly in line with the FHR's 'Beyond 16 Days... for No Violence against Women and Children' campaign.</p> <p>The preliminary findings indicate that much remains to be done to raise awareness and build capacity among criminal justice agencies as well as service providers in the disability sector regarding gender-based violence against women with disabilities and their specific needs in respect of access to justice.</p>

	Such activities would form part of a future component of this project, which would benefit from financial assistance from the FHR.
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15. Children with disabilities in Africa: Good practices	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	The project aims to document 'good practices' in laws, policies and programmes affecting children with disabilities in Africa, thus encouraging inclusive policy and programme development and service provision in respect of children with disabilities. Primary as well as secondary sources will be used to collect data for this study. The target countries chosen for primary data collection are Liberia, Mozambique and Kenya.
Aspects of discrimination involved:	Disability; Age (children) (Exclusion of children with disabilities from education, health services, access to ICT, access to physical infrastructure (buildings, transport, etc) and from participation in society.)
Research coordinating individuals/ institution:	Partnership with African Child Policy Forum (based in Addis Ababa, Ethiopia)
Progress/ status of research:	Primary research has been completed; researchers are currently busy with data analysis and writing up of research report. Projected date of completion is April 2013.
Potential support from the FHR:	The project funding allows for the production and dissemination of a formal research report. However,

	<p>a plain language 'guide to policy and programming' for key government decision-makers, setting out these key good practices with reference to the Convention on the Rights of Persons with Disabilities, will make the adoption of these practices more likely. The FHR could provide assistance towards the production of such a guide as well as its translation into French for the benefit of Francophone countries.</p>
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16. Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD)	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	Empirical study aimed at investigating the practical implementation of Article 24 of the CRPD through individual interviews with service providers working with children with disabilities. The findings will be utilised to compile an alternative report for submission to the Committee on the Rights of Persons with disabilities.
Aspects of discrimination involved:	Disability; Age (children); Access to basic education
Research coordinating individuals/ institution:	Partnership with Community Law Centre, University of the Western Cape, and the Campaign on Right to Education of Children with Disabilities (R2E CWD).
Progress/ status of research:	Interviews are currently underway. Projected date of completion is June 2013.

Potential support from the FHR:	Activities are currently being funded by a small amount of seed money collected by the Centre. Financial assistance in order to complete the report and hold a consultative workshop with members of the R2E CWD campaign prior to submitting the report to the Committee on the Rights of Persons with Disabilities will greatly increase the impact of the project.
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17. Employability/ employment of persons with disabilities	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	Compilation of case studies on the experience of the employment/ employability of people living with disabilities through effective legislation in selected sub-Saharan African countries, and progress in implementing the CRPD.
Aspects of discrimination involved:	Disability
Research coordinating individuals/ institution:	International Labour Office, Geneva.
Progress/ status of research:	Project recently commenced; due to run from January to December 2013.
Potential support from the FHR:	As part of this project the researchers are hoping to train students at the UWC Legal Aid Clinic to conduct referrals to assist persons with disabilities who have experienced disability-based employment discrimination. Financial assistance from the FHR to

	make periodic 'disability employment clinics' possible and to document the process for replication at other campus law clinics can assist to make persons with disabilities aware of their rights and also to enforce these rights.
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18. Access mental health care of women with psychosocial disabilities	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	<p>The project examines the barriers encountered by women with psychosocial disabilities in South Africa in accessing mental health care.</p> <p>The project focuses on and investigates the limitations in accessing right to mental health care of women with psychosocial disabilities</p>
Aspects of discrimination involved:	Disability; Gender
Research coordinating individuals/ institution:	Project undertaken by post-graduate student for purposes of Masters research paper (now completed) and subsequent publication.
Progress/ status of research:	Interviews with service providers and experts in the Western Cape are currently underway; projected date of completion is April 2013.
Potential support from the FHR:	The scope of the project has been very modest and it has been limited to the Western Cape. With the support of the FHR, which has already included mental health in its focus areas, the researchers

	would be able to expand the research to be more representative of the South African position and produce a more comprehensive research report.
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19. Implementation of Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD)	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	<p>The project aims to examine the interpretation of Article 19 of CRPD, which is the right to independent living and being included in the community, and measure its implementation in South Africa.</p> <p>The project focuses on the exclusion of persons with disabilities from participation in the community; disability-based discrimination; violation of the right to dignity of persons with disabilities.</p>
Aspects of discrimination involved:	Disability
Research coordinating individuals/ institution:	Partnership with Harvard Project on Disability and the South African Human Rights Commission (SAHRC).
Progress/ status of research:	The first component of the project (analysis of international law) has been completed. Examination of South African law is currently underway. Date of completion is March 2013.
Potential support from the FHR:	The project funding does not make provision for

	<p>publication or dissemination of research findings.</p> <p>The FHR may assist, for example by hosting a seminar to discuss the research findings, in association with the SAHRC.</p>
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20. Monitoring the implementation of the rights of persons with disabilities	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	<p>The Centre is responsible for two components of a broader monitoring project undertaken by the South African Disability Alliance (SADA):</p> <ul style="list-style-type: none"> a) Systemic (law and policy) monitoring b) Data analysis of individual interviews conducted with people with disabilities in four provinces.
Aspects of discrimination involved:	Disability
Research coordinating individuals/ institution:	<p>Partnership between the Centre and the South African Disability Alliance (SADA).</p> <p>SADA has undertaken the project with Disability Rights Promotion International (DRPI). The latter is a multi-country initiative based at the University of York, Toronto, Canada, which has conducted similar studies in a number of countries, including Kenya, India, Bolivia and New Zealand</p>

Progress/ status of research:	First draft of systemic monitoring is underway; individual interviews have been completed. Data analysis is underway. Projected dated of completion is June 2013.
Potential support from the FHR:	The theme and objectives of the project fall within the scope of work of the FHR. Once the findings are available, assistance from FHR will be valuable in disseminating findings and building capacity of disabled peoples' organisations to continue monitoring process.

21. Universal access and sustainable development	
Researchers:	Centre for Disability Law and Policy (University of the Western Cape)
Abstract/ Summary:	The research aims to examine the implementation of Article 9 of the Convention on the Rights of Persons with Disabilities against the background of sustainable development in low-resource settings, with specific reference to policy development.
Aspects of discrimination involved:	Disability; Access to basic services
Research coordinating individuals/ institution:	Project undertaken with funding provided by the National Research Foundation (NRF). Requested carry-forward of unspent funding from 2012; awaiting outcome of request.
Progress/ status of research:	Immediate status of project is dependent on outcome of carry- forward request submitted to

	NRF.
Potential support from the FHR:	Any support welcomed.

Ethnic/ Social Origin

22. Domestic Workers Research Project	
Researchers:	Fairuz Mullagee and Social Law Project (University of Western Cape)
Abstract/ Summary:	The project was launched in 2009. It has focused on the problem of giving effect to employment and labour rights, which domestic workers formally enjoy. It takes as its starting point the basic rights that all workers enjoy in terms of the Constitution, supplemented by International Labour Organisation Convention 189. In addition to a study of secondary sources the researchers have engaged in extensive interaction with domestic workers and the South African Domestic Service and Allied Workers Union (SADSAWU), in part applying its research for capacity-building purposes, as well as interacting with the Department of Labour. They have also engaged in interaction with scholars specialising in the field internationally and the 2010 and 2011 International Labour Conferences. The project's output has included a number of accredited and non-accredited publications, including submissions to government agencies.
Aspects of discrimination involved:	Ethnic/ social origin (Nationality & Poor and Marginalised communities); Gender; Race
Research coordinating individuals/ institution:	Social Law Project - Faculty of Law, University of the Western Cape. Primarily funded by FNV Mondiaal (Kingdom of the Netherlands).

Progress/ status of research:	The findings of the project are currently being edited for publication in book form.
Potential support from the FHR:	Further supportive interaction with SADSAWU is planned on the basis of renewed funding for that purpose. FHR support would be important in providing for research activity to underpin such interaction. This is so because the field of domestic employment (involving some 1 million workers in South Africa) is fraught with unique problems to which no existing labour and human rights law offer ready-made solutions.

23. Precarious Workers Research Project	
Researchers:	Fairuz Mullagee and Social Law Project (University of Western Cape)
Abstract/ Summary:	The project will be launched in 2013. It builds on the Domestic Workers Research Project, which served as a case study of non-standard employment and will focus on the problem of giving effect to the employment and labour rights which all workers formally enjoy. It takes as its starting point the basic rights that all workers enjoy in terms of the Constitution, supplemented by relevant International Labour Organisation Conventions. Its output will include a number of accredited and non-accredited publications, including submissions to government agencies.
Aspects of discrimination involved:	Ethnic/ social origin (Nationality & Poor and Marginalised communities); Gender; Race

Research coordinating individuals/ institution:	Social Law Project - Faculty of Law, University of the Western Cape. Primarily funded by FNV Mondiaal (Kingdom of the Netherlands).
Progress/ status of research:	The project will be activated as soon as the funding has been approved (expected around April 2013.)
Potential support from the FHR:	FHR support would be important in providing for expanding the scope of the research beyond the literature review towards more engaged knowledge production that will underpin a process of improved protection for precarious workers.

24. Development of Social Security policy for non-citizens in South Africa	
Researchers:	Professors Avinash Govindjee (Nelson Mandela Metropolitan University) and Marius Olivier (Institute for Social Law and Policy).
Abstract/ Summary:	<p>Developing a policy for the Department of Social Development (DSD) on social security provisioning for various categories of non-citizens in South Africa, including portability of benefits, using ILO Convention 102 as the basis for identifying risks.</p> <p>Irregular / discriminatory laws and practices involving refugees, asylum seekers, permanent residents, children of non-citizens and irregular migrant workers</p>
Aspects of discrimination involved:	Ethnic/ social origin (Refugees); Age (children)
Research coordinating individuals/ institution:	Department of Social Development, South Africa.

Progress/ status of research:	The project will be completed soon whereafter the policy will be presented to the DSD.
Potential support from the FHR:	Any support is welcomed.

25. Kagiso Anti-Torture Community Project	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVr)
Abstract/ summary:	<p>This project includes South African citizens who are at risk of, or have been victims of police torture and cruel, inhuman and degrading treatment in post-apartheid South Africa. In the research done in Kagiso in 2011, these are primarily young, black South African men of a particular profile: they are in their twenties or thirties, live in townships and are unemployed or underemployed. Many have not completed school. They spend most of their time on street corners gambling, socialising and drinking. Some are known criminals and have passed through the criminal justice system because of illegal activities such as drinking in public, the use of illegal substances or dealing drugs. Other victims may not be involved in crime, but may be abused by the police because of their association with criminals or because they fit the profile of criminal men.</p> <p>This project aims to cause change at an individual, community and national or broader social level. This is to be done through a process of critical reflection, connection, and active citizenship. The Kagiso group and a group of concerned active citizens</p>

	<p>would be mandated to help victims access resources, change the social status of the target group of the target group and regain a sense of agency for the community members.</p> <p>This project investigates, and attempts to work with the Kagiso Anti-torture Community Project and the active citizens group on economic or structural discrimination. The project also aims to prevent and rehabilitate the effects of torture.</p>
Aspects of discrimination involved:	Ethnic/ social origin; Age; Race
Research coordinating individuals/ institution:	This project is currently being funded by Dignity (formally known as RCT – the Research And Rehabilitation Centre for Victims of Torture).
Progress/ status of research:	<p>This project has been progressing well, and the project seems to be gaining momentum. The group has a core of six members, with an additional six members who have started attending regularly. The group feels that they have an identity and have taken initiative in ensuring that meetings happen regularly. There is a sense of trust and belongings within the group and the members have met a number of times without the CSVr facilitators. They have gone for training on communication skills, and are having training on torture and its effects in March 2012.</p> <p>Once they have completed the training on torture, the group intends to advocate against torture at schools and clinics in and around Kagiso.</p>

Potential support from the FHR:	<p>One area of need is with stipends for group members. Stipends have been discussed for members who attend 75% of all meetings and have been part of the group for six months or more. This has come into effect for the initial six members, however, assistance with the stipends for the additional six members is necessary.</p> <p>A second area of need is in the monitoring and evaluation of this project. In 2014 the researchers will be evaluating the full project and may need external specialists who will be able to assist in evaluating areas of qualitative information that have been gathered throughout the project.</p>
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26. Non-Nationals and Hillbrow Anti-torture project	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVR)
Abstract/ summary:	<p>This project assists the sub-group of African non-nationals (with or without legal documentation), who are at risk of torture or have been tortured within South African borders. These are people who have fled their countries of origin due to war, organized violence, economic insecurity or natural disasters, and face multiple and significant losses in exile. These people experience the stresses of being a migrant in South Africa. However, in addition to these stresses, they are at risk of being deported to their home countries where they may face additional torture and cruel, inhuman or degrading treatment. The South African police who stop people on the</p>

	<p>streets to determine whether foreigners are here legally or not, and to extract bribes, may target them.</p> <p>This project follows a similar theory as the Kagiso Anti-torture Community project above, whereby change at an individual, community and broader social level will occur through a process of critical reflection and active citizenship.</p> <p>This project investigates, and attempts to work with the Kagiso Anti-torture Community Project and the active citizens group on discrimination against refugees and asylum seekers in South Africa and economic / structural discrimination</p> <p>Additionally, this project aims to prevent and rehabilitate the effects of torture.</p>
Aspects of discrimination involved:	Ethnic/ social origin (Nationality/ Refugees); Race
Research coordinating individuals/ institution:	This project is currently being funded by USAID
Progress/ status of research:	<p>This project is progressing well. The group has been seen to be a strong group, although the core group has very strong individual members and so trust building and team building has been essential in this group.</p> <p>The non-national group is interested in completing similar training as the Kagiso group on torture and its consequences and thereafter would like to do advocacy work regarding torture and its</p>

	consequences within the community. They have also spoken about performing monitoring work within places of detention and Home Affairs in Pretoria.
Potential support from the FHR:	<p>This group would need capacity building on how to monitor places of detention. Additionally, it would be useful to provide a stipend to members who attend for six months or more, and participate in 75% of the meetings. Transport money for members in this group is necessary.</p> <p>Additional funding for the monitoring and evaluation of this project is essential to show the impact of this work and to learn from the work that is being undertaken.</p>

27. Psychosocial Rehabilitation Of Torture Victims	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVr)
Abstract/ summary:	<p>The CSVr has been providing free psychosocial support to victims of political violence since 1989. After South Africa became a democratic state in 1994, CSVr started seeing more victims of criminal violence (such as rape, assault, muggings and so forth). However, as South Africa opened its borders to refugees and asylum seekers from other parts of Africa, the CSVr began offering therapeutic services to foreigners who had experienced trauma and torture, as well as displacement, in their countries of origin. However, in addition to the</p>

impact of the torture that these people face in their countries of origin, they also face continuous and devastating violence within South Africa, including structural violence, assault, muggings and other forms of violence. This continuous trauma plays a critical role in the therapeutic process, since creating places of safety becomes a difficult feat.

CSVr has created and implemented an extensive Monitoring and Evaluation programme that they have developed through a consultative process. This system allows CSVr to assess the impact of their psychosocial services and enable them to profile torture and learn from the work that is being undertaken. Using information from the Monitoring & Evaluation system, they have also begun to work on a contextually informed individual psychosocial rehabilitation model for victims of torture.

Through their work and the use of the Monitoring & Evaluation system, it became clear in 2012 that they were seeing clients from different parts of the African continent, and so needed to expand their repertoire of interpreters. CSVr now have interpreters who are able to assist in various African languages, including Amharic, Swahili, Lingala, French and Kinyarwanda.

An important part of the work that is done with people tortured both in South Africa and in other parts of Africa is ensuring that these people are provided with the resources that they need. As such, CSVr has committed to expand their referral

	<p>network of service providers who can address the following needs: legal, medical, psychosocial, humanitarian and economic. They are also building the capacity of frontline workers who are linked to torture rehabilitation work.</p> <p>This project investigates, and attempts to work with the Kagiso Anti-torture Community Project and the active citizens group on discrimination against refugees and asylum seekers in South Africa and economic / structural discrimination.</p> <p>Additionally, this project aims to prevent and rehabilitate the effects of torture.</p>
Aspects of discrimination involved:	Ethnic/ social origin (Nationality/ Refugees)
Research coordinating individuals/ institution:	This project is currently being funded by USAID, with partial funding for the Monitoring and Evaluation being provided by Dignity (formerly known as RCT)
Progress/ status of research:	<p>This project is progressing well. Although they are slightly behind target in meeting the required number of clients for 2013, the researchers are devising a recruitment strategy to ensure that these targets are met.</p> <p>Additionally, CSVr will be providing capacity building and expanding their referral network over the course of 2013, to ensure that clients are provided with holistic services.</p> <p>The model development process is underway and</p>

	progressing well. This should be finalised by May 2013, and the Monitoring and evaluation is ongoing with positive progress.
Potential support from the FHR:	<p>Two areas of support that are essential are funding for interpreters and an emergency fund. Interpretation is an area that is essential in the work that is being undertaken. There is a constant need of funding for interpretation to ensure that clients are provided with the best services that they are able to offer.</p> <p>Additionally, clients face a number of ongoing stresses. These include needing to go to Home Affairs for documentation, medical treatment, transportation and so forth. An essential need for these clients is funding for emergency situations and transportation.</p>

28. Xenophobia victims project	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVR)
Abstract/ summary:	<p>South Africa is a highly xenophobic society. Xenophobia is defined as a 'hatred or fear of foreigners'. Due to high levels of xenophobia, South Africans do not respect the rights of non-nationals as it was demonstrated by violent attacks of foreign nationals in 2008. South Africans accuse non-nationals of taking their jobs. However, Landau, Ramjathan-Keogh and Singh found that there is little evidence to support this claim that non-</p>

nationals are taking South Africans' jobs. In fact, non-nationals are creating their own jobs through street trading, despite being abused and harassed by the police on a daily basis. In this understanding, xenophobia is characterised by a negative attitude towards non-nationals. Thus derogatory names such as amakwerekwere or amagrikamba are used to justify violence against non- nationals.

Furthermore, many surveys indicate that police elicit bribes from arrested non-nationals in exchange for freedom. For example, one police officer was quoted saying "we would go to this location around Sebokeng and would say to the illegal immigrants, you must pay fee or we are taking you in". It is asserted in many studies that it is very common for South African police to demand that illegal immigrants pay tsho-tsho (bribery) not to be arrested. Interestingly, one police officer described non-nationals as 'walking ATMs' due to the fact that many carry cash in their pockets as they do not have access to banking facilities in South Africa.

Faul found that some law enforcement officers also use force against non-nationals who do not have money or refuse to pay any bribe. These are the experiences that this study aims to explore (the use of violent methods by law enforcement officials against non-nationals).

Key aspects that are being investigated are the discriminatory and unfair practices of law enforcement officials against non-nationals as

	described in the above section.
Aspects of discrimination involved:	Ethnic/ social origin (Nationality/ Refugees)
Research coordinating individuals/ institution:	The study was being funded by the USAID.
Progress/ status of research:	The report on this study has been written and published by CSVr.
Potential support from the FHR:	<p>It is evident from this research report that abuse and ill-treatment of non-nationals by law enforcement officials is common in South Africa. Non-nationals live in a state of fear, as they are often seen as easy targets for harassment. Law enforcement officials rely heavily on stereotypes in their everyday policing of non-nationals, in which the use of violence is seen as part and parcel of their job. Their policing practices are also characterised by xenophobic attitudes.</p> <p>Funding by FHR would be used to raise awareness about torture and cruel, inhuman and degrading treatment of non-nationals and the right of torture survivors to access psychosocial, medical and legal services. It is also important that advocacy and lobbying initiatives are undertaken to influence existing legislation in South Africa, particularly the Anti-torture Bill currently in parliament. All these activities need funding.</p>

29. Assessment of patterns and trends of torture in South Africa	
Researchers:	Centre for the Study of violence and Reconciliation (CSVR)
Abstract/ summary:	<p>Over the last few years, a number of reports have been written about torture and cruel, inhuman and degrading treatment in post-apartheid South Africa. These reports range from empirical studies, media analysis and policy assessment of existing legislation, conventions, charters and so forth. On the whole, these reports have been raising questions about the existence of torture in the new South Africa, despite the fact that there is no national prevalence data on torture. The paucity of data on this topic is attributed to the fact that torture in South Africa is mainly associated with the brutal regime of apartheid government and with the lack of dedicated institutions to investigate it. This has made torture 'invisible'. However, with increasing reports written on this topic, torture is slowly being seen as an endemic problem in the new democratic South Africa and not as something only associated with the apartheid regime. It is therefore important that empirical studies are conducted in this regard. It is the aim of the current study to analyze existing data on torture and cruel, inhuman and degrading treatment in South Africa.</p>
Aspects of discrimination involved:	Ethnic/ social origin
Research coordinating	Funding is required for this possible research

individuals/ institution:	project.
Progress/ status of research:	We are busy finalizing the proposal to undertake this study in 2013.
Potential support from the FHR:	The major support that FHR could provide is funding for all the costs associated with a research of this nature.

30. Expanding The Protection Space For Refugees In South Africa	
Researchers:	Fatima Kahn (University of Cape Town)
Abstract/ summary:	<p>A number of researchers at UCT have done research on refugee law in South Africa. Three of these studies have recently been converted into articles, and approved for publication:</p> <p>Where practicable and necessary only? - by Fatima Khan</p> <p>This study investigates legal interpreting at asylum determinations and hearings. The focus is on two stages of the asylum application that is crucial for determining refugee status. This paper aims to explore the right of an asylum seeker to an interpreter at these stages of the status determination procedure. It will also compare this right to the existing right in international law and assess whether South Africa has met the minimum requirement to enable a due process.</p> <p>Litigating the Rights of Refugees in the Equality Courts - By Justin de Jager</p>

South African society bears a legacy of inequality and struggle against oppression. In the constitutional era, our courts have held that the right to equality is a core fundamental value against which all law must be tested. The equality courts have therefore been heralded as a transformative mechanism for the redressing of systemic inequality and the promotion of the right. In practice, however, the equality courts face a number of challenges that reduce the accessibility of the courts. Many of these challenges, outlined in this paper, are interconnected and if addressed would permit the courts to realise their full potential.

Critical Challenges to Protecting Unaccompanied and Separated Foreign Children in the Western Cape: Lessons Learned at the UCT Refugee Rights Unit - By Tal Schreier

Despite South Africa having a relatively well developed legal and policy framework for securing the rights of children, there are a number of critical child protection gaps that exist in terms of the implementation of these frameworks for unaccompanied or separated foreign children by Magistrates, Social Workers and Department of Home Affairs' (DHA) officials in particular. This research report focuses on the key challenges that the UCT Refugee Rights Unit has experienced in the protection of unaccompanied foreign children in the Western Cape. In addition to setting out the legal and policy frameworks for dealing with foreign children in South Africa, the paper reviews some of

	its cases and highlights various experiences of the RRU in the course of undertaking this work. The key protection gaps that are highlighted include difficulties with or lack of suitable entry by foreign unaccompanied or separated children into South Africa's child care and protection system, the unclear interface between the refugee regime and the child protection regime, inability to access legal documentation, and the poor level of knowledge of the legal and protection frameworks by government and frontline service providers.
Aspects of discrimination involved:	Ethnic/ social origin (Nationality/ Refugees)
Research coordinating individuals/ institution:	Refugee Rights Project (University of Cape Town)
Progress/ status of research:	On-going
Potential support from the FHR:	Any support is welcomed.

31. Observing and documenting the operation of Traditional Courts	
Researchers:	Dr Sindiso Mnisi Weeks, Centre for Law and Society (CLS – University of Cape Town)
Abstract/ summary:	This research provides an evidence base for a policy position on the regulation (or not) of traditional courts going forward. Fieldwork in rural KZN has been completed, where the researchers have worked with two Traditional Councils, local headmen and disputants. Their dataset comprises extensive interviews and direct observations of local

	dispute resolution processes through daily interaction with six headmen in the area and monitoring of traditional court processes over a 10-month period.
Aspects of discrimination involved:	Ethnic/ social origin (Marginalised groups); Access to justice
Research coordinating individuals/ institution:	CLS (University of Cape Town)
Progress/ status of research:	Busy with data analysis and preliminary writing
Potential support from the FHR:	All of their work involves extensive empirical research, much of it participatory in nature. As such it is expensive. Funding is therefore always a concern and support in this regard would be appreciated.

32. “Formal” and “informal” dispute resolution systems	
Researchers:	Associate Professor Dee Smythe and Diane Jeffthas at the Centre for Law and Society (CLS – University of Cape Town).
Abstract/ summary:	This research examines the relationship between the formal and informal justice systems, with a particular focus on rural citizens’ access to justice after experiencing social contact and property-related crimes. The Traditional Courts Bill has raised numerous questions as to whether traditional courts should have criminal jurisdiction at all, and if so, which kind of offences they should try and what sort of punishment may be imposed. This research on Traditional Courts in

	KZN reveals that the typology of cases undertaken in Traditional Courts includes assault, murder and rape. On the other hand, it is evident through SAPS reports that certain crimes, such as property –related crimes, although they can be dealt with through Traditional Courts, are nonetheless taken to the police. This indicates not only a fluid relationship between the two justice systems, but also a blurring of categories of crimes.
Aspects of discrimination involved:	Ethnic/ social origin (Poor and Marginalised communities); Access to justice
Research coordinating individuals/ institution:	CLS (University of Cape Town)
Progress/ status of research:	<p>They have completed the first year of a three year project. This has included data collection on 1060 cases reported at four rural KZN police stations. The researchers are now moving into the following activities:</p> <p>Year 2</p> <ol style="list-style-type: none"> 1. <i>Police Docket Analysis</i>: Analysis of the dockets, according to quantitative analysis and thematic, qualitative analysis. 2. <i>Interviews</i> – Semi-structured interviews based on the docket analysis with the SAPS, prosecutors, and magistrates. 3. <i>Headman/Chief focus group discussions and workshop</i> – Based on information emerging from the docket analysis, broad themes and

	<p>issues will be identified and used to guide the focus group discussions and a workshop with the headmen and the chiefs.</p> <p>4. <i>Expert workshops</i> – The findings, along with implications for policy and legislative interventions; future training programmes for CJS personnel (aimed at sensitising them to the varying contexts in which rural citizens access justice); as well as current and future advocacy efforts, will be interrogated.</p> <p>Year 3:</p> <p>During the final year of the “Pathways” project the focus will primarily be on the following:</p> <ol style="list-style-type: none"> 1. <i>Finalising data entry, data analysis and write-up</i> – Data from the interviews and focus group discussions will be entered into a database. The dataset will then be cleaned and analysed, following which, write-up of the findings will commence. 2. <i>Workshops (NGO, headman/chief & experts)</i> – The aim of these (separate) workshops is to present the research, collaborate on how best to disseminate the findings, and to discuss the implications for: (a) access to justice in rural communities; (b) future advocacy efforts; and (c) future training for CJS personnel.
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	<p>3. <i>To finalise all research outputs</i> – The researchers envision the following measurable outputs: (a) a series of peer-reviewed journal articles; (b) incorporating the research findings into advocacy efforts calling for appropriate legislative and policy interventions addressing access to justice in rural communities. This will specifically be related to their ongoing initiatives around the TCB process which includes submissions to Parliament and the DOJCD, and, through a transfer of knowledge, assisting rural communities to have their voices heard; (c) presenting the findings in a CLS newsletter, a policy briefing document, as well as in articles for select media outlets; (d) structuring the findings in a manner that would eventually result in a book draft; and (e) presenting the findings on the new CLS Custom Contested website which will be launched in March 2013. Through this website they aim to provide a forum which facilitates ongoing debates around issues of customary law, powers of traditional leaders and access to justice in rural communities.</p>
Potential support from the FHR:	<p>All of the work involves extensive empirical research, much of it participatory in nature. As such it is expensive. Funding is therefore always a concern and will be appreciated.</p>

33. Water for Dignity Project	
Researchers:	Khulumani Support Group
Abstract/ summary:	They are at the initiation stages of a partnership on building a National Community-based Water for Dignity Programme across several river catchment systems in the country to empower community members to be effective activists in relation to water distribution, access and quality: With the Institute for Water Research at Rhodes University with partners in Ireland, The Netherlands and Uganda. Building a network of citizen scientists.
Aspects of discrimination involved:	Ethnic/ social origin (Access to water)
Research coordinating individuals/ institution:	Khulumani Support Group
Progress/ status of research:	In the finalisation stages.
Potential support from the FHR:	The critical support that FHR could provide is funding to strengthen the capacity building work involved in enabling communities to undertake investigations and reporting, funding the communication processes - eg. setting up a media/ communication hub for Khulumani in each province, providing funds for data-bundles, providing funds for ongoing training and support to Khulumani community activists for their detailed work on monitoring and reporting on what is happening at ground level in marginalised communities so that these issues may be placed effectively in the public domain.

34. Implications of policy shifts in SA's asylum policy	
Researchers:	Lawyers for Human Rights (LHR) and African Centre for Migration and Society (ACMS)
Abstract/ summary:	This study (report) is motivated by evidence of recent changes in practice within the asylum system in South Africa, as well as statements concerning intended shifts in policy. These shifts have taken place primarily in the areas of group exclusion, access barriers, limitations of basic rights, refugee reception offices and appeals.
Aspects of discrimination involved:	Ethnic/ social origin (Nationality/ Refugees)
Research coordinating individuals/ institution:	Lawyers for Human Rights (LHR) and African Centre for Migration and Society (ACMS)
Progress/ status of research:	Complete. Report available at http://www.lhr.org.za/publications/policy-shifts-south-african-asylum-system-evidence-and-implications
Potential support from the FHR:	Currently two new research projects are being developed, focusing on: <ul style="list-style-type: none"> - Corruption practices at the refugee reception offices of Department of Home Affairs (in collaboration with Wits ACMS) - Exclusion of refugees and asylum seekers from the formal and informal employment sector

	They are still in the process of raising funds for these projects but hope to commence within the next two months.
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35. CALS Environment Programme	
Researchers:	Centre for Applied Legal Studies (CALS)
Abstract/ summary:	<p>CALS' Environment Programme has two relevant research studies underway, namely its Vele Colliery/ Mapungubwe Project and its Social and Labour Plan (SLP) Project.</p> <p>In the first project, CALS represents a Coalition of civil society organisations in a project designed to interrogate the nature of development and what is appropriate in an area as sensitive as the Mapungubwe World Heritage Site. Emerging from this long-standing project is an area of new focus for CALS: to clarify the heritage framework of South Africa by developing a set of guidelines for application in resolving competing demands for land.</p> <p>In the SLP Project, CALS aims to take a critical analysis of social and labour plans and their role in benefiting mine-affected communities, comparing theory and practice and developing recommendations for the furtherance of better compliance with SLPs in the sector.</p> <p>The Mapungubwe Project and the SLP Project address the impact of unfair and discriminatory</p>

	practices of mining companies particularly on poor, rural mining-affected communities. Environmental degradation is also most acutely felt by women, whose security and safety is often compromised by having to travel further to obtain water and other natural resources.
Aspects of discrimination involved:	Ethnic/ social origin (Poor and marginalised communities); Gender
Research coordinating individuals/ institution:	On the Mapungubwe Project, CALS is partnering with a coalition of civil society organizations, including EWT (Endangered Wildlife Trust), Birdlife South Africa, The WWF, The Wilderness Foundation, MAG (The Mapungubwe Action Group), ASAPA (Association of South African Professional Architects), and the Centre For Environmental Rights (CER). Additional partners include Vance Centre for International Justice and the multinational law firm Morrison Foerster. On the SLP Project, CALS is partnering with the Centre for Sustainability in the Mining Industry (CSMI), the Society at Work Project (SWOP), and the Wits Law School Environment Programme, all of which are located at University of the Witwatersrand.
Progress/ status of research:	On-going
Potential support from the FHR:	CALS needs partners who will assist in realizing their research objectives. In particular, they need funding to enlarge their capacity and bring in a small group of talented researchers. At present, they have a Senior Researcher who works across programmes, and they would like to bring in additional researchers. A partnership between

	CALS and FHR to achieve these research objectives would be most welcome.
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36. CALS Basic Services	
Researchers:	Centre for Applied Legal Studies (CALS)
Abstract/ summary:	<p>Within Basic Services, CALS has three relevant research studies, namely its Gender and Housing Project, its Disability Project, and its Gauteng Health Crisis Project.</p> <p>CALS represents communities in the Johannesburg inner city who face eviction, and has been at the forefront of developing the constitutional jurisprudence in this area. In addition to litigating evictions, CALS previously undertook a research project emerging from one of its cases to identify the gender implications of formalisation by learning from the relocation to temporary accommodation. CALS undertook primary and secondary research, with an objective to inform housing policy and project or case methodology. CALS is currently considering how to advance this research based on current eviction cases it is litigating.</p> <p>CALS also made a submission to the Department of Women, Children and People With Disabilities in response to its call for public comments on a draft of the First Country Report to the United Nations on the implementation of the Convention on the Rights of Persons with Disabilities. Specifically, CALS commented on the issues of women and children</p>

	<p>with disabilities and protecting persons with disabilities from sexual abuse and violence; access to education for children with disabilities; and the principles of non-discrimination.</p> <p>Finally, in terms of its Gauteng Health Crisis Project, CALS has conducted extensive research on the systemic collapse of the health care system in Gauteng, with a view to possible litigation against the Gauteng Department of Health.</p> <p>The three research projects of the Basic Services Programme focus on realising socio-economic rights embedded in the Constitution, particularly for poor and marginalised communities who, in Johannesburg, are regularly evicted from their homes, and for poor communities who lack meaningful recourse to the provincial healthcare system. Specific vulnerable groups focused on in each of the three research projects include poor women, women and children with disabilities, and poor communities, including those living with HIV.</p>
Aspects of discrimination involved:	Ethnic/ social origin (Poor and Marginalised communities); Gender; Age (Children); HIV Status
Research coordinating individuals/ institution:	On the Gender and Housing Project, CALS is partnering with the Socio-Economic Rights Institute (SERI) and the Legal Resources Centre (LRC) on housing research. On the Disability Project, CALS is partnering with Werksmans Attorneys and Afrika Tikkun. On the Gauteng Health Crisis Project, CALS is partnering with Section 27.

Progress/ status of research:	On-going
Potential support from the FHR:	As per project 35 above.

37. CALS Rule of Law Project	
Researchers:	Centre for Applied Legal Studies (CALS)
Abstract/ summary:	<p>CALS' Rule of Law Programme is currently focusing on two relevant research projects, namely its Remand Detainees Project and its work around Marikana. In the former, the project grew out of the <i>Dudley Lee</i> litigation addressing the rights of remand detainees who have tuberculosis. The broader research project addresses the fundamental and constitutional rights of remand detainees in South African prisons, specifically exploring the human rights violations associated with the lengthy detention of remand detainees who cannot post bail and who are detained in conditions violating their constitutional rights. A research report will soon be disseminated, and combines primary and secondary research.</p> <p>In the latter, CALS has been representing the South African Human Rights Commission (SAHRC) before the Marikana Commission in Phase I of the proceedings. As part of its research, CALS assisted the Wonderkop Community Women's Association (WCWA), who represents the women of the Marikana community, in launching an urgent High Court Application in the Mafikeng High Court to protect its right to protest. Through its</p>

	<p>representation of the SAHRC, CALS has also consulted with the women of Marikana, and will explore best how to present these stories in Phase II of the Marikana Commission.</p> <p>CALS views the population of remand detainees itself as a marginalized and vulnerable population, and therefore the entirety of its research on this project seeks to remedy the multiple vulnerabilities experienced by this population, including many who live with HIV. On its Marikana Project, CALS has been working with a vulnerable mining-affected population, and within this population, seeking to protect the rights of women who are affected in unique ways.</p>
Aspects of discrimination involved:	Ethnic/ social origin; Gender
Research coordinating individuals/ institution:	On the Remand Detainees Project, CALS is partnering with the Wits Justice Project, Section 27, and the Treatment Action Campaign (TAC). On the Marikana Project, CALS is representing the South African Human Rights Commission (SAHRC).
Progress/ status of research:	On-going
Potential support from the FHR:	As per project 35 above.

Gender

38. Equality, discrimination and realisation of sexual and reproductive health	
Researchers:	Professor Charles Ngwena (Centre for Human Rights, University of Pretoria)
Abstract/ Summary:	Desktop research on equality and discrimination in the realisation of sexual and reproductive health at the African regional level, leading to publication of journal articles and books with a particular focus on abortion.
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	Financial support from the Ford Foundation as well as an individual grant.
Progress/ status of research:	<ul style="list-style-type: none"> • Professor Ngwena edited a book on realisation of sexual and reproductive in the African region, which is close to completion. • A book on realisation of sexual and reproductive health in the African region is in progress
Potential support from the FHR:	Financial support – the cost of publishing a book on sexual and reproductive health in the African region.

39. Early and forced marriage in Africa	
Researchers:	Centre for Human Rights (University of Pretoria)
Abstract/ Summary:	The study will compare relevant legislation in all African countries and elaborate on the issue of early

	and forced marriage through 10 selected case studies, including South Africa. The study will be published and will include recommendations to states, in particular with respect to meeting obligations under the African Women's Rights Protocol.
Aspects of discrimination involved:	Gender; Age (Children)
Research coordinating individuals/ institution:	The Centre for Human Rights (University of Pretoria)
Progress/ status of research:	The child marriage study is a two-year project and is currently in the first quarter of the first year.
Potential support from the FHR:	Financial support would strengthen the implementation of the project as it was designed with limited budgets from the outset, which had the greatest effect on the human resources available to conduct the research.

40. Gender audit of the University of Pretoria	
Researchers:	Centre for Human Rights (University of Pretoria)
Abstract/ Summary:	The aim is to measure the extent to which principles of gender equality is respected at the institution. The findings will be published, and it is envisioned that other institutions of higher learning in the region to undertake the same exercise will use the audit tool, which is being developed in the process.
Aspects of discrimination involved:	Gender

Research coordinating individuals/ institution:	The Centre for Human Rights (University of Pretoria)
Progress/ status of research:	The gender audit is an 18-month study to be completed by July 2013. It may be necessary to seek an extension until the end of 2013 as there were some unanticipated challenges in the first year due to having to work within the confines of the University bureaucracy.
Potential support from the FHR:	Financial support would strengthen the implementation of the project as it was designed with limited budgets from the outset, which had the greatest effect on the human resources available to conduct the research.

41. Law reform on discrimination against women	
Researchers:	Centre for Human Rights (University of Pretoria)
Abstract/ Summary:	<p>Three students in the women's rights clinic of the LLM programme in Human Rights and Democratisation in Africa are conducting research on the extent of law reform on discrimination against women (and manifestations thereof) in African states that are party to the Women's Rights Protocol since the adoption of the Protocol ten years ago.</p> <p>They will highlight 'success stories' as well as gaps and challenges in eliminating discrimination against women. The findings will form a chapter in a publication by Equality Now and the Solidarity for African Women's Rights Network to commemorate the adoption of the Protocol in 2003.</p>

Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	The Centre for Human Rights (University of Pretoria)
Progress/ status of research:	The study on the Women's Rights Protocol (successes and challenges) by the women's human rights clinic will be completed by May 2013. It was started in January 2013.
Potential support from the FHR:	Financial support would strengthen the implementation of the project as it was designed with limited budgets from the outset, which had the greatest effect on the human resources available to conduct the research.

42. Due diligence and violence against women	
Researchers:	Centre for Human Rights (University of Pretoria)
Abstract/ Summary:	The CHR has partnered with the International Human Rights Initiative (IHRI) to undertake research on the application of the due diligence principle in relation to violence against women in Africa (state accountability to protect women from violence, to prevent and to punish and prosecute violence against women, and to provide redress). The report will inform a global study by the IHRI on due diligence.
Aspects of discrimination involved:	Gender
Research coordinating	International Human Rights Initiative (IHRI)

individuals/ institution:	
Progress/ status of research:	The study on the due diligence in Africa is complete - a final draft is being reviewed by the Project Directors. Minor amendments may be required. The CHR will continue with the project by disseminating the findings and advocating for the implementation of the recommendations.
Potential support from the FHR:	Any support is welcomed.

43. Maternal health rights in Cape Town	
Researchers:	Legal Resources Centre (LRC)
Abstract/ summary:	<p>Following signature and ratification of international and regional conventions, South Africa has enacted legislation and policies that are geared towards entrenching, promoting and protecting maternal health rights. Unfortunately, the implementation of the legislation and policies put in place following the legislation shows a clear violation of maternal health rights of mothers in Cape Town. Birth stories collated portray horrible circumstances in which some women still give birth. Further data collected on morbidity and mortality of mothers in all provinces of the country paints a very bleak picture for women.</p> <p>Though they have not yet started the researchers plan to consider the morbidity and mortality of mothers; the availability and location maternal obstetric units; the treatment of women at maternal obstetric units before, during and after labour; the</p>

	failure to allocate adequate resources; insufficient infrastructure allocated; limited personnel; limited emergency care availability; and the timeframe policies for accessing resources.
Aspects of discrimination involved:	Gender; Sex; Pregnancy
Research coordinating individuals/ institution:	LRC: The research is being undertaken in their own organisations' names through clients that approach them. They have collaborated with the Parent Centre which is a non-profit organisation that provides communal maternal health services including home based care and visits.
Progress/ status of research:	Literature review has been roughly completed.
Potential support from the FHR:	<p>Funding to monitor maternal obstetric units in relation to the points identified above and conduct communal workshops to hear birthing stories of women approaching maternal obstetric units for assistance.</p> <p>Editor to work on the report once it has been compiled and to combine the literature review and empirical research.</p>

44. Sex workers' rights project	
Researchers:	Legal Resources Centre (LRC) and Sex Workers Education and Advocacy Taskforce (SWEAT)
Abstract/ summary:	Together with SWEAT in Rustenburg, the LRC is tracking the kinds of harassment experienced by sex workers in the area, with the view to identify the

	<p>systemic problems in both the police and criminal justice system.</p> <p>The Rustenburg office of SWEAT collects statements of the grievance of sex workers. This will enable them to track the rate of arrests, the reasons for arrest and the duration of detention. Complex legal matters are referred directly to the LRC Johannesburg office to be dealt with; alternatively paralegals working with SWEAT are able to deal with the immediate issues.</p> <p>The researchers are particularly assessing police conduct and the NPA.</p>
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	The LRC is undertaking the research together with SWEAT.
Progress/ status of research:	The project is still in its infancy as they are still collecting data.
Potential support from the FHR:	It would be helpful to get more field workers to collect and analyse data that can feed into a broader litigation strategy to decriminalise sex work in South Africa. It will also be useful to broaden the scope of research to assess reproductive rights of sex workers and access to social assistance. At the moment the project is being piloted in Rustenburg, however it would be useful to get data from other parts of the country.

45. Women on the Journey	
Researchers:	Centre for the Study of Violence and Reconciliation (CSVR)
Abstract/ summary:	<p>Improved Community-led interventions for torture and cruel, inhuman and degrading treatment prevention and rehabilitation, supported by evidence-based knowledge.</p> <p>This project includes refugee women who have gone through violent experiences in their homelands. However, while the core group is made up of refugee women, the project does not exclude South African women.</p> <p>The projects aims on having women come together and form an organisation that would deal with the problems that refugee women in South Africa face. It is based on the assumption that if women unite in an independent organisation aimed to initiate income generation and awareness-raising of the rights of refugees, they might reach a sufficient level of autonomy and well-being after having lived through violent events and suffered marginalisation in their home country as well as in South Africa.</p> <p>In order to ensure a sense of empowerment and independence amongst the participants, the women were encouraged to set their own agendas and take a lead to find the solutions to the daily challenges they faced.</p> <p>This project investigates, and attempts to work with the women to empower themselves in terms of</p>

	<p>discrimination against refugees and asylum seekers in South Africa, gender discrimination and economic / structural discrimination.</p> <p>Additionally, this project aims to prevent and rehabilitate the effects of torture and rehabilitate those affected by torture in their country of origin as well as within South Africa.</p>
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	<p>This project was initially funded by Dignity (formally known as RCT – the Research And Rehabilitation Centre for Victims of Torture) and then by USAID (The US Agency for International Development). However, the funding for this project has not been finalised for the 2013 year. United Nations Voluntary Fund for Victims of Torture (UNVFVT) may be funding parts of the capacity building aspects of this project, however this is to be confirmed.</p>
Progress/ status of research:	<p>This project has been progressing well, and the project seems to be gaining momentum. The Women on the Journey group has worked hard toward being sustainable and self-sufficient.</p> <p>They are in the process of organising training on business development. They are also drafting a proposal to run an after-school programme for street children. They are currently looking for financial support for sewing classes to ensure economic sustainability</p> <p>However, as mentioned above, the funding for this</p>

	project is difficult. The UNVFVT needs to confirm that they will fund the capacity building elements of this project.
Potential support from the FHR:	This project needs various types of funding and support. The primary need to ensure the sustainability of this project, however, is for financial and/or capacity building support on starting and sustaining a small business.

46. Rural Women's Action Research Programme (RWAR)	
Researchers:	Centre for Law and Society (CLS – University of Cape Town) and Community Agency for Social Enquiry (CASE)
Abstract/ summary:	A primary focus of this research is to document the processes of positive change that are underway in many rural areas, and how these are put at risk by laws that fundamentally skew the balance of power within which change is negotiated at the local level. Changes in relation to single women claiming and obtaining residential sites in 'communal areas' are particularly remarkable. These changes first came to light through the rural consultation meetings convened in respect of the Communal Land Rights Bill. RWAR, in partnership with CASE, subsequently engaged in a 3000 women survey that confirmed the scale of change across three different areas in North West, KwaZulu-Natal and Eastern Cape.
Aspects of discrimination involved:	Gender

Research coordinating individuals/ institution:	CLS (University of Cape Town)
Progress/ status of research:	On-going
Potential support from the FHR:	Any support is welcomed.

47. Change in women's marital status and access to land in rural areas	
Researchers:	Dr Aninka Claassens with Nolundi Luwaya at the Centre for Law and Society (CLS – University of Cape Town)
Abstract/ summary:	In 2009 the researchers partnered with CASE to conduct a survey on women and land rights, carried out in three project sites, and involving 3000 households. The CASE surveys explored the differential position of married and single women (including never married, separated, divorced and widowed women) in relation to land and property rights. These questions concerning the interface between marital status, tenure security and activism are particularly important given that single women appear to be the major drivers of change in rural areas. Issues of marital status and family position are very material to land rights in customary systems. The researchers were directly involved in conceptualizing the questions, developing and administering focus group questions, testing and refining the questionnaires, checking translations, providing training to field workers and facilitating access to the research sites.

	<p>The process of selecting and facilitating access to the field sites was particularly important, given the overlap between the issues interrogated by the survey and on-going community liaison and qualitative research work in the project sites. Each survey site was chosen because of established and potential links with local NGOs and CBOs. These partnerships constitute an intrinsic component of the researchers' action-research model, and of the community led interventions that they aim to support. The survey process, while very important in its own right, was only the beginning of a longer period of intensive research and interaction by the researchers in the three project sites.</p> <p>They are currently embarking on a project that seeks to gain an in-depth understanding of the social and political dynamics underpinning shifts in women's land rights, based on the findings of the CASE survey, which showed radical shifts in women's access to communally held land. It remains a priority for the researchers to better understand the dynamics of the processes of change that are underway in rural areas and the factors that both support and inhibit positive change. One of the ways in which they are doing this is through detailed interviews with "change agents" – the first women in the various project sites to have obtained access to land in their own right.</p>
Aspects of discrimination involved:	Gender; Marital Status

Research coordinating individuals/ institution:	CLS (University of Cape Town)
Progress/ status of research:	It is currently in the planning phase and will be implemented in mid 2013.
Potential support from the FHR:	All of the work involves extensive empirical research, much of it participatory in nature. As such it is expensive. Funding is therefore always a concern and will be appreciated.

48. Violence against women living with HIV	
Researchers:	Aids Legal Network (ALN)
Abstract/ summary:	<p>The study assesses perceptions and experiences of violence and other rights abuses against women living with HIV in KwaZulu Natal, Eastern Cape and Western Cape.</p> <p>The project also assesses levels of knowledge, as well as experiences of accessibility and redress mechanisms available when rights violations occur.</p>
Aspects of discrimination involved:	Gender; HIV Status
Research coordinating individuals/ institution:	UN Women and UN Trust Fund to end Violence against Women
Progress/ status of research:	<p>The research phase of these projects has been concluded and reports highlighting the main findings and recommendations have been developed and launched during the 2012 “16 Days of Activism”. The reports are available on the website www.aln.org.za.</p>

	<p>The researchers are currently in the process of developing advocacy material informed by and based on the research findings, facilitating dialogues and knowledge sharing within, across and beyond the study areas, and enhancing levels of legal literacy so as to ensure both a reduction in the occurrence of HIV-related stigma, discrimination and violence and adequate and timely access to justice as and when rights violations have occurred.</p>
Potential support from the FHR:	<p>Recognising the need for further research assessing not only the occurrence, but also the impact of, stigma, discrimination, violence and other rights abuses based on and in the context of HIV, the researchers believe that a replication of these studies in other provinces would greatly enhance the evidence and knowledge base to this effect.</p>

49. Domestic violence and its impact on women and children	
Researchers:	Legal Resources Centre (LRC)
Abstract/ summary:	<p>The research is being used to produce a gap analysis report and a desktop review. The gap analysis report will form the basis of discussion and engagement with government and civil society. The desktop review will form the reference point to all of the cases that LRC takes on. The document will also be used as a guide for LRC's candidate attorneys when they start doing work in the gender project as a training tool.</p> <p>These documents will speak specifically to domestic</p>

	violence and government obligations with regard to protecting vulnerable women and children.
Aspects of discrimination involved:	Gender; Age (children)
Research coordinating individuals/ institution:	This research has been done for the purposes of the LRC and financially supported by several donors. It will increase the LRC's knowledge base, be a resource for advice and litigation and be shared with relevant institutions and organisations and their partners.
Progress/ status of research:	The reports are being finalised and are in the process of being published.
Potential support from the FHR:	FHR could facilitate workshops and presentations where LRC could (1) share their findings and (2) make links with relevant government institutions and organisations that serve women and children. For future projects, FHR could provide the financial support needed to conduct the research and print any resulting reports.

50. National Housing Policy Project	
Researchers:	Women's Legal Centre
Abstract/ summary:	WLC are presently examining the national housing policy and the housing policies of the major municipalities to establish whether they have discriminatory provisions for the allocation of houses where houses are allocated to the male partner in a relationship arising out of a religious

	<p>marriage or a domestic partnership.</p> <p>An analysis of the policies to assess discrimination will take place. The discrimination would arise from the failure to recognise certain types of relationships, namely domestic partnerships and marriages solemnised according to religious rights which would impact on who would be recognised as the applicant for the house.</p>
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	Women's Legal Centre (WLC)
Progress/ status of research:	Preliminary research phase
Potential support from the FHR:	Assistance with resources for in depth research and to provide remedies where there is discrimination.

51. Battered Women Syndrome Project	
Researchers:	Women's Legal Centre
Abstract/ summary:	<p>Battered woman syndrome is a criminal defence involving a pattern of psychological dependency among women caught in long-term relationships with abusive male partners. Over time, abuse produces an irrational mental state of "learned helplessness," limiting free choice and placing victims of abuse in a spiral of conflict that occasionally results in a violent and sometimes fatal response over which they have no rational control.</p>

	Developing the law where battered woman syndrome is used as a defence where the woman is prosecuted for murder. While the battered women syndrome defence has been argued successfully in many cases, it has been contested by forensic psychologists and legal scholars.
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	Women's Legal Centre (WLC)
Progress/ status of research:	Preliminary research phase
Potential support from the FHR:	Assistance with resources for research to do research in countries where the syndrome has been used successfully as a defence, the arguments opposing the use of the syndrome as a defence, a collation of statistics to collate criminal prosecution of women who kill their partners and an in depth analysis of the statistics to determine common characteristics.

52. Silicosis Project	
Researchers:	Women's Legal Centre
Abstract/ summary:	<p>WLC are exploring the legal recognition of women's unpaid care work in the context of mining and claims against mining companies by miners with silicosis.</p> <p>The law currently does not recognise, in monetary</p>

	<p>value and for the purposes of a claim, that a miner's female partner or family member would have foregone opportunities or her own employment in order to care for the sick miner, who becomes progressively more ill as a result of silicosis and eventually dies. The aim of the research would be to gauge the viability of such claims, the prospects of success, and a method of quantifying unpaid care work.</p> <p>The present non-recognition of women's unpaid care work for the purposes of claims against mining companies where miners have been diagnosed with silicosis, and become ill and unable to continue to work. Such miners become progressively more ill, and ultimately the women in the community are expected to care for these ill men, sometimes over a long period of time. This is distinct from the recognised claims for loss of breadwinners.</p>
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	Women's Legal Centre (WLC)
Progress/ status of research:	Preliminary research phase
Potential support from the FHR:	Assistance with resources to do qualitative research in the field, and to retain the services of a specialist actuarial researcher to assist with the quantification of unpaid care work in the mining and silicosis context.

53. Definitions of men and women and related gender characteristics	
Researchers:	Women's Legal Centre
Abstract/ summary:	WLC would like to investigate the constitutionality of standard operating procedures and the Criminal Procedure Act that states "a woman should be searched by a woman" and <i>vice versa</i> , and how this impacts on transgender persons and transgender sex workers who are often searched, arrested and detained.
Aspects of discrimination involved:	Gender; Sex
Research coordinating individuals/ institution:	Women's Legal Centre (WLC) in partnership with Sex Workers Education and Advocacy Taskforce (SWEAT), Sisonke, Triangle Project and Gender Dynamix
Progress/ status of research:	Worked on the standard operating procedures with the police. Despite the information and advice they did not change their position regarding transgendered persons.
Potential support from the FHR:	Research on the definitions of a woman and a man, and how this impacts on transgender persons, and any other international cases where the issue of searching, transporting, arresting and detaining transgendered persons was litigated.

54. Comparative study of traditional courts in Southern Africa	
Researchers:	Women's Legal Centre

Abstract/ summary:	WLC have some funding to call for papers and host a seminar. The study will focus on the way in which customary law is applied and traditional courts operate in other Southern African countries, and the impact on women.
Aspects of discrimination involved:	Gender
Research coordinating individuals/ institution:	The Women's Legal Centre (WLC), partly funded by Heinrich Boell Foundation.
Progress/ status of research:	Call for papers to go out in April. Seminar planned for mid-year.
Potential support from the FHR:	FHR could partner in this research project. This will extend the reach of the project regionally. This would involve co-hosting the seminar and the production of a report.

55. Family law in minority religious communities in South Africa	
Researchers:	Waheeda Amien (University of Cape Town)
Abstract/ summary:	<p>The study's focus is threefold:</p> <ol style="list-style-type: none"> 1. Consideration of the effect of non-recognition of minority religious marriages on women and the ways in which their marriages can be recognized in a manner that does not negatively impact on women's rights. 2. Alternative means of protection for women in minority religious marriages in the event that legal recognition is not viable/possible/does not happen for instance, the viability of

	<p>marriage contracts.</p> <p>3. The impact of religious courts or alternative dispute religious tribunals/forums on women's rights.</p>
Aspects of discrimination involved:	Gender; Religion
Research coordinating individuals/ institution:	University of Cape Town
Progress/ status of research:	Thus far, the researcher has undertaken a theoretical study of the effects of non-recognition of Muslim marriages and the way in which legal recognition can be afforded to those marriages without impeding women's rights. She has also begun to theoretically explore the viability of Muslim marriage contracts.
Potential support from the FHR:	<p>The researcher needs to obtain empirical data regarding the effect of non-recognition of minority religious marriages including Muslim, Hindu and Jewish marriages; alternative means of protecting the rights of women in those minority religious communities; and the viability of religious courts.</p> <p>The FHR could provide support in the form of funding to enable her to undertake the above empirical research.</p>

56. CALS Gender Project	
Researchers:	Centre for Applied Legal Studies (CALS)
Abstract/ summary:	Within the Gender Programme, CALS has been

focusing on two areas of relevant research: Sexual Violence in Schools and Gender Responsiveness Budgeting. In the former research project, CALS has adopted a multi-pronged approach to addressing the problem of sexual violence in schools. In addition to facilitating training sessions with officials in the Department of Basic Education on this pervasive rights violation, and developing a handbook for activists and communities affected by sexual violence in schools, CALS is undertaking an extensive comparative research study on the issue. The study aims to follow up on the seminal Human Rights Watch 2001 report on sexual violence in South African schools, specifically examining the systemic state failure to ensure the accountability of perpetrators of sexual violence in schools. The research, both primary and secondary, will examine the causes of the lack of accountability, its impact on perpetuating and magnifying the human rights violations, and also provide specific recommendations for remedies.

In the latter area of research, CALS is researching Gender Responsiveness Budgeting (GRB), an analysis of government budgets in terms of their impact on women and men, girls and boys. It is a form of gendered policy analysis that goes beyond the description on paper of a particular policy but investigates actual budgets allocated to implement gender-specific policies and whether these budgets are spent as planned.

	CALS is investigating the disproportionate impact of sexual violence in schools on girl learners, ranging from absenteeism to dropping out to long-lasting psychological and health effects. In its GRB Project, CALS is examining the impact of actual government budgets, as allocated and implemented, on women and girls in terms of a shortfall of resources in implementing gender-specific policies.
Aspects of discrimination involved:	Age (Children); Gender
Research coordinating individuals/ institution:	CALS is partnering with Students for Law and Social Justice, Lawyers Against Abuse, Section 27, and Cornell International Human Rights Law Clinic in New York on different dimensions of the sexual violence in schools project. CALS is partnering with UN Women on the GRB project.
Progress/ status of research:	On-going
Potential support from the FHR:	As per project 35 above.

57. Land reform in general and customary law	
Researchers:	University of Stellenbosch
Abstract/ Summary:	The research revolves around land reform in general and Customary law – with particular emphasis placed on land, property and ownership and the various relationships. The researchers are in the process of completing a book “Land Reform” (Juta) where gender issues become relevant with regard to land reform generally.

	<p>The Land Reform book is to be finalized in 2013 and covers the broad spectrum of land reform – the reasons for it, what land reform entails and how it is conducted in South Africa. Policy directives indicate that the vulnerable – especially women, female-headed families etc – have to benefit in particular. Accordingly, the research explores how gender is dealt with and approached in light of land reform policy and legislative measures. Communal land and the relationships relevant there, as well as the use and inheritance of land is also part of the land reform book. All relevant legislative measures impacting on communal land are scrutinized and evaluated. Discriminatory practices, despite legislation, may continue.</p> <p>Gender and land- the impact on the tenure security and access to land for women is investigated. The research also aims to identify the way policy documents deal with the gender aspects, and what legislative measures say about it.</p>
Aspects of discrimination involved:	Gender; (Right to property)
Research coordinating individuals/ institution:	University of Stellenbosch
Progress/ status of research:	On-going; A culmination of the study to be published in a book in 2018
Potential support from the FHR:	Financial assistance; Research assistance for the publication of the book.

HIV Status

58. Coerced and forced sterilisations on HIV positive women in South Africa	
Researchers:	Ann Strode and Zaynab Essack (University of Kwa-Zulu Natal)
Abstract/ summary:	<p>HIV positive women are entitled to sexual and reproductive health rights, including access to contraceptives of their choice. One such option is sterilisation. Given its permanency, a woman's decision to sterilise should be voluntary and fully informed. However, there have been multiple reports that HIV positive women are being sterilised without their informed consent, and sometimes without their knowledge, in Southern Africa and elsewhere.</p> <p>The article explores the socio-cultural, physical, emotional and psychological impact of coerced and forced sterilisations on HIV positive women. It is part of a larger qualitative study, conducted in South Africa, which explored the experiences of 22 HIV positive women who reported being sterilised without their informed consent.</p> <p>Involuntary sterilisation has a devastating impact on women, affecting them mentally and physically, and impacting on their relationships with their partners, families and the wider community. Many interviewees reported that being sterilised profoundly affected their perceptions of themselves as women. Involuntary sterilisations have grave social and emotional implications for already</p>

	marginalised HIV-positive women. Therefore efforts should be made to address human rights violations in South African healthcare settings and to prevent further gender-based abuses.
Aspects of discrimination involved:	HIV status; Gender
Research coordinating individuals/ institution:	Not provided – researchers are currently based at the University of Kwa-Zulu Natal
Progress/ status of research:	Completed

59. HIV Stigma Project	
Researchers:	Aids Legal Network (ALN)
Abstract/ summary:	<p>The project is aimed to assess and address HIV-related stigma, discrimination and other violations of rights in the Northern Cape and North West.</p> <p>The project also assesses levels of knowledge, as well as experiences of accessibility, redress mechanisms available and when rights violations occur.</p>
Aspects of discrimination involved:	HIV Status
Research coordinating individuals/ institution:	Ford Foundation
Progress/ status of research:	The research phase of these projects has been concluded and reports highlighting the main findings and recommendations have been developed and

	<p>launched during the 2012 “16 Days of Activism”. The reports are available on the website www.aln.org.za.</p> <p>The researchers are currently in the process of developing advocacy material informed by and based on the research findings, facilitating dialogues and knowledge sharing within, across and beyond the study areas, and enhancing levels of legal literacy so as to ensure both a reduction in the occurrence of HIV-related stigma, discrimination and violence and adequate and timely access to justice as and when rights violations have occurred.</p>
Potential support from the FHR:	<p>Recognising the need for further research assessing not only the occurrence, but also the impact of, stigma, discrimination, violence and other rights abuses based on and in the context of HIV, the researchers believe that a replication of these studies in other provinces would greatly enhance the evidence and knowledge base to this effect.</p>

Marital Status

60. Parental rights and responsibilities of children of same sex couples.	
Researchers:	Centre for Child Law (University of Pretoria)
Abstract/ Summary:	<p>The Centre is conducting research involving a same sex couple that obtained a child via artificial insemination technology using the female gametes of one of the parties and donor sperm. Upon the couple's separation, the partner whose gamete was not used in the procedure sought contact and care, and guardianship of the child.</p> <p>The Centre undertook research on this scenario and made submissions to the court, as a "friend of the court", which revealed that section 40 of the Children's Act was discriminatory because it excluded same sex partners who were not in a civil union. The court obtained some direction from this submission in making a decision. Further research is being carried out on this and other similar cases involving reproduction using artificial means.</p>
Aspects of discrimination involved:	Marital status; Sexual orientation
Research coordinating individuals/ institution:	The Centre for Child Law
Progress/ status of research:	Research is in final stages - a conference paper to be presented in July 2013.
Potential support from the FHR:	The Centre receives funding from international and local donors. As they are always busy with

	numerous research projects, discussions with the FHR would be greatly welcomed to establish the types of support that the FHR can offer.
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Religion

61. Recognising Religion: Emerging jurisprudence in South Africa	
Researchers:	Wits University
Abstract/ Summary:	<p>This research examines the emerging jurisprudence with respect to the freedom of religion in South Africa. The research discusses the history of the religious freedom under the apartheid government of South Africa, and argues that the laws passed during apartheid government were inclined towards Christian religious values and that to some extent this has persisted in post-apartheid jurisprudence.</p> <p>The research discusses the current judicial interpretations of the freedom of religion under the South African Constitution. In this regard, the paper examines the decisions in <i>Prince v President of Law Society</i>, <i>Pillay v MEC</i> and <i>Popcru v Department of Correctional Services</i>, and their impact on human rights and the transformative agenda of the South African society. The research examines religious or cultural discrimination in the context of these cases.</p>
Aspects of discrimination involved:	Religion; Culture
Research coordinating individuals/ institution:	Wits University
Progress/ status of research:	On-going
Potential support from the FHR:	Research funding is welcomed

Sexual Orientation

62. LGBTI and gender related applications for asylum	
Researchers:	Legal Resources Centre (LRC) and People Against Suffering, Oppression and Poverty (PASSOP)
Abstract/ summary:	<p>The LRC is being approached by an increasing number of clients from Uganda, Cameroon, Zimbabwe, Malawi and the Democratic Republic of Congo where homosexuality is not only socially unacceptable but criminalised as well. This is underpinned by a stereotypical notion that homosexuality is “unAfrican”. LGBTI persons are not able to live openly as homosexual persons in most African countries. They have to conceal or consider changing their identity in order to avoid persecution. The fear of arrest or mob attacks alone is enough to force them to leave their country and come to South Africa for refuge.</p> <p>Our current work has shown that such persons seek asylum in South Africa on the basis of their sexuality (membership of a social group) but a number of them get rejected by Refugee Status Determination Officers as either ‘unfounded’ or ‘manifestly unfounded’. There is a real possibility that they may be forced to return to their countries of origin where they would suffer persecution should their internal appeals or reviews not succeed. This is done despite a number of international and regional conventions ratified by South Africa which have been domesticated through the Refugees Act.</p>

	<p>The researchers are investigating the adjudication process of LGBTI asylum application by the Refugee Status Determination Officers in the Cape Town refugee Reception Office. They are focusing on the application of the legal framework to these applications and use of certain languages that can be considered derogatory, like calling the applicant 'a gay.'</p>
Aspects of discrimination involved:	Sexual Orientation
Research coordinating individuals/ institution:	LRC & PASSOP: The research is being undertaken in the organisations' names through clients that approach them. The clients do not give their names in the report but simply their country of origin.
Progress/ status of research:	<p>The researchers have been collecting refugee status determination rejection letters issued by the Cape Town refugee Reception office and analysing the application of the law to these cases. They have also prepared a draft paper on the legal framework of the refugee law applicable to asylum applications focusing on the issue of persecution suffered because of membership of a particular social group.</p> <p>The proposal is to compile a research report that will be sent to the Minister of Home Affairs and the Portfolio Committee of Home Affairs to bring this to their attention.</p>
Potential support from the FHR:	The researchers could consider expanding the research to include rejection letters from other refugee reception offices in order to highlight a

	<p>national problem in the adjudication of LGBTI asylum application.</p> <p>They could also benefit from an editor who can from time to time edit editions to the report when they receive additional rejection letters.</p> <p>The research does not have to be national, but should there be a need to, then a researcher could be appointed to collect rejection letters from the Pretoria, Durban and Musina Refugee Reception Offices.</p>
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Conclusion

It is clear from research observations that certain trends exist. Academic institutions (and more specifically units or centres within these institutions) usually conduct their research projects with a specific focus or within a particular scope. The area of research usually corresponds with the work that they do in practice – for example, the Centre for Child Law is regularly engaged in public interest litigation on children’s rights issues, and therefore focus their research on issues around children’s rights. That being said, a select group of units and centres also have different units that focus on a wide range of topics. The scoping exercise indicated that certain issues are more often being researched than others, which also corresponds with global and regional trends. Topics that seem to stand out are:

- a) Gender related research;
- b) Children’s rights research;
- c) The rights of people with disabilities;
- d) Refugee rights; and
- e) LGBTI rights (lesbians, gays, bisexuals, transsexuals and intersexual)

These areas have also been identified as issues of concern by international and regional organisations such as the United Nations, the African Union, the African Commission for Human and People’s Rights and numerous international NGOs. It is important also to keep in mind that every region has its own challenges, and the prevalent topics of research would not necessarily be the same in Africa as the in developed or first-world countries.

There also seems to be a trend towards multi-disciplinary or inter-disciplinary research, combining the above-mentioned topics on more than one occasion. This phenomenon makes sense, since issues regarding gender, children, disabilities and LGBTI are often inter-related or interdependent. It is quite understandable that FHR is cautious to fund projects that might amount to duplication, but it is important to keep in mind that these issues have not been extensively dealt with on a regional level.

As researchers are uncertain about the extent of FHR’s possible assistance, the majority of researchers identified financial assistance as the most desirable. Nonetheless, it has been

indicated in some instances that researchers would like to enter into discussions with FHR about other possible ways of assisting the research. This may include facilitating focus groups, providing institutional support through liaising between different research centres, or hosting seminars and training programmes in collaboration with institutions such as the South African Human Rights Commission. The FHR could also consider approaching research projects from an alternative angle – by setting the research agenda. It is clear that academic institutions prefer to research issues within their field of focus, but the FHR may play a more significant role in identifying specific topics of interest within these fields.

Some areas identified by participants during the course of the exercise that requires further attention/ research include:

- Sexual violence in schools
- Special needs and inclusive education
- Security of tenure for public schools on private property
- Analysis of women in the mining sector
- The enforcement/ realisation of human rights (access to justice)

We include a contact list of the researchers and institutions that responded to our call for information on current research projects.

Anton Kok & Josua Loots

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