

STREET RIGHTS

NEWSLETTER OF THE PILCH HOMELESS PERSONS' LEGAL CLINIC

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HOMELESSNESS AND FAMILY VIOLENCE

As part of its direct casework and law reform activities, HPLC has identified women and children escaping family violence as potentially having an unmet legal need in the homelessness sector. Family violence is a major factor contributing to homelessness in Australia, particularly for women. In 2003/2004, it is estimated that 33% (32,700) of the 100,200 clients accessing the Supported Accommodation Assistance Program (SAAP), the major government response to homelessness in Australia, were women escaping family violence. In addition, 66% (34,700) of the 52,700 accompanying children in SAAP were children who accompanied a female parent or guardian escaping family violence.

Although HPLC does not provide any targeted services to this vulnerable group, we are interested in exploring the possibility of providing accessible legal assistance if gaps in the current services available are identified.

HPLC clients who are experiencing family violence may face a number of legal issues that are beyond the scope of the services currently provided by the Clinic and outside the expertise of clinic lawyers, such as applying for intervention orders or resolving disputes over custody and access to children. In those circumstances, HPLC lawyers can work with, and refer matters to, the Women's Legal Service, Legal Aid or their clients' local or specialised community legal centre. A full list of services is available at the Federation of Community Legal Centres' website (<http://www.communitylaw.org.au>) or Legal Aid Victoria (www.legalaid.vic.gov.au).

Women leaving the home as a result of family violence may also require non-legal support services. Clinic lawyers may therefore consider referrals to services such as financial counsellors, housing organisations and mental health service providers.

Louise Edwards
PILCH Seconded Solicitor

HPLC GOOD NEWS STORIES

*Names have been changed

Housing: HPLC Lawyers assisted Sarah*, who had been evicted by the Office of Housing from her home of 11 years five days prior to attending the Clinic. Sarah was evicted because she had defaulted on a payment plan for arrears that were outstanding and had subsequently refused to make up the missed payment. From the information that HPLC Lawyers were able to obtain, it appeared that Sarah had been legally evicted and that, therefore, there were no legal avenues available to her. However, after persisting with the Office of Housing it was eventually agreed that Sarah could regain possession of the property if she made an immediate repayment and entered into a Deed of Settlement to repay all outstanding monies within a month. If Sarah had not been able to re-enter the property it is likely that she would have struggled for an extended period to find alternative permanent housing because she would not be considered favourably for any public housing. In addition, many of Sarah's possessions would have been disposed of by Office of Housing as she had no means of removing and storing them prior to the Office of Housing wishing to re-tenant the property.

Guardianship: HPLC lawyers appeared before VCAT to oppose a guardianship application on behalf of Tim*, who has been diagnosed with having schizophrenia for 19 years. Currently, Tim is under a Community Treatment Order for being an involuntary patient and an Administration Order with the State Trustee. The Tribunal member dismissed the application in favour of Tim. She gave the following reasons for her decision: a guardianship order is of serious impact on an individual's freedom and there was not enough evidence in this application to satisfy that such need exists; there appears to be a less restrictive way to find Tim suitable accommodation; the guardianship order would not be in the best interest of Tim; and in reaching such conclusion, it is important to give regard to Tim's wishes. The Tribunal member also issued a separate notice to the State Trustee to arrange a Financial Independence Plan meeting with Tim and suggested the Administrative Order to be reassessed in 6 months.

NEWS FLASH!

The UN Special Rapporteur on the Right to Adequate Housing recently released a report identifying a serious national housing crisis in Australia. The report found that Australia lacks a clear, consistent long-term and holistic housing strategy. The HPLC played a major role in instigating and coordinating the Special Rapporteur's visit to Australia and had significant input into the report. The report is significant in that it suggests that Australia is not complying with its human-rights obligations. In particular, it states that Australia has failed to implement the human right to adequate housing. The report is to be considered by the Human Rights Council in mid-June. For a copy of the report and related materials visit the PILCH website at www.pilch.org.au.

Where in the world is Kristen Hilton?

Having made her mark in Geneva and the United Kingdom, Kristen travelled to South Africa, where she spent the first two weeks of her visit accompanying Miloon Kothari, UN Special Rapporteur on the Right to Adequate Housing. It was a frenzied 12 days in which they travelled all over the country, meeting with everyone from government ministers and judges, to community legal centres and university law faculties. One of the highlights of the trip for Kris was having tea with judges of the Constitutional Court in Justice Albie Sachs' chambers. They were chuffed to hear that their Bill of Rights adorns the wall of a *pro bono* organisation on the other side of the world!

Next it was a much deserved holiday in South Africa and Botswana, then back to business, first with a flying visit to Zimbabwe to meet with the *Zimbabwe Human Right Forum*, and then back to Johannesburg, South Africa to meet with the *South African Legal Resource Centre* and *South Africa Lawyers for Human Rights*.

Next Stop: America!



STILL IN STRUGGLE TOWN – TOWARDS THE FULFILMENT OF SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA

Last month South Africa celebrated Freedom Day, marking 14 years since the end of apartheid and the holding of the first democratic elections. In one sense progress toward democratisation and the protection of human rights in South Africa cannot be overstated. Nor can the promise and commitment to genuine equality embodied in the South African Constitution, the cornerstone of which is an indivisibility of rights approach protecting both civil and political and socio-economic rights. But spend any time in the mushrooming informal settlements skirting the periphery of every urban centre in South Africa and the yawning gap between law, policy and implementation becomes painfully apparent.

The legacy of apartheid is perhaps no more obvious than in the desperate conditions in which many South Africans still live. More than a decade after the dismantling of apartheid and despite the construction of over 1.4 million houses in that time, the number and size of informal settlements has grown and almost half of the population continue to live in housing that is hopelessly inadequate.

For the last twelve days I have been travelling with the UN Special Rapporteur on the Right to Adequate Housing on his official mission to South Africa. One morning we head out on the main arterial from Cape Town to visit a sprawling informal settlement. As we round a corner, our guide, South African human-rights lawyer Steve Kahanowitz, points to a small plaque on the edge of street – *Grootboom*.

It is a name that resonates with human-rights lawyers and activists the world over. The case, which came to be known as the *Grootboom* decision, marked a high point in debate over the justiciability of socio-economic rights. The Court's decision was revelatory. By finding the State in breach of its constitutional obligations under the right to access to adequate housing, content and substance were given to the right.

For several years Irene Grootboom and over 900 others had been living in Wallacedene in appalling shack conditions. Many had been waiting for subsidised low-cost housing for over 7 years. Faced with the prospect of remaining in intolerable conditions indefinitely, the group moved out and built new shacks on vacant land. An order for their eviction was obtained and despite having nowhere else to go, Irene Grootboom and 900 others, half of whom were children, were forcibly evicted. Their homes were bulldozed and burnt and their few possessions destroyed. It was, as Justice Yacoob observes in his judgement, 'reminiscent of apartheid-style evictions.'

Subsequent cases have further enunciated these rights and have led to the amending and passing of legislation reflecting the State's obligations. As Kahanowitz notes, 'by protecting those facing eviction, the Constitutional Court has granted millions of South Africans still living under insecure tenure increased judicial protection against eviction.'

And yet, as the Court was quick to recognise 'mere legislation is not enough.' Nor are the well-intentioned policies, of which each level of government, national, provincial and municipal, now appears to have in spades. One of the major obstacles facing the fulfilment of socio-economic rights lies now in the implementation of laws and policies and the meaningful relief that can be afforded where rights are breached.

It took over four years for the State to develop the emergency housing policy that the Court found lacking in *Grootboom* and over one year for the different levels of government to decide whose responsibility it was. For the Grootboom community it has taken even longer to feel the positive impact of the court's decision.

It is just one example of what appears to be a crisis in implementation in housing and other service delivery. Some say that the problem lies with the huge challenges faced by a relatively inexperienced post-apartheid government. Others point to a fragmented system of government. While laws and policies are developed at a national level, under the Constitution it is the responsibility of the provinces and municipalities to ensure compliance and accountability. In this regard many are failing. Just recently it was revealed that the province of the Western Cape, home to the *Grootboom* residents, failed to spend their allocated housing budget despite the fact that, in 2004, over 1.5 million households had no access to formal shelter.

The issue of implementation goes to the very heart of 'transformation' of South African society. To breathe life into the powerful rights embodied in the Constitution requires a constant monitoring of the impact of court judgements, legislative developments and a focus on relief and remedy where breaches occur. One criticism of the *Grootboom* decision was that the Court's order did not actually compel the State to take steps to ensure that the program comply with Constitutional requirements. As a result long periods of inaction followed.

As large scale evictions and displacements continue to occur throughout South Africa, it is clear that the rights contained in the Constitution must be emboldened with strategies, both legal and non-legal, to ensure the effective implementation of court judgements.

Foreign Correspondent, Kristen Hilton
Reporting from South Africa

THE CLINIC PROVIDES FREE LEGAL ADVICE AT THESE LOCATIONS AND TIMES:

The Big Issue

148 Lonsdale St, Melb 3000

Mon: 10:00am - 11:00am

Melbourne Citymission

214 Nicholson St

Footscray 3011

Mon: 10:30am - 1:00pm

Footscray train station

Tram 82 (Droop St)

Ozanam House

179 Flemington Rd,

North Melb 3051

Tues: 10:00am - 12:00pm

Flemington Bridge train station

Trams 55, 59, 68 (Flemington Rd)

Urban Seed (Credo Café)

174 Collins St, Melb 3000

Tues: 12:00pm - 1:00pm

Flagstaff Crisis

Accommodation

9 Roden St, West Melb 3003

Tues: 1:00pm - 2:30pm

North Melbourne train station

Tram 57 (Victoria St)

The Lazarus Centre

203 Flinders Lane, Melb 3000

By appointment - call 9639 8510

St Peter's Eastern Hill

15 Gisborne St, East Melb 3002

Wed: 7:30am - 9:00am

Parliament train station

Trams 24, 42, 109 (Victoria Pde)

Hanover Southbank

52 Haig St, Southbank 3205

Wed: 1:15pm - 3:00pm

Spencer Street train station

Tram 112 (Clarendon St)

HomeGround Housing

1A/68 Oxford St

Collingwood 3066

Thurs: 12:00pm - 2:00pm

Collingwood train station

Tram 86 (Smith St)

Salvation Army Life Centre

69 Bourke St, Melb 3000

Tues: 12:30pm - 2:00pm

VACRO

116 Hardware St, Melb 3000

Thurs: 1.00 - 3.00pm

Melbourne central station

Tram 19, 57 and 59 (Elizabeth St)

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