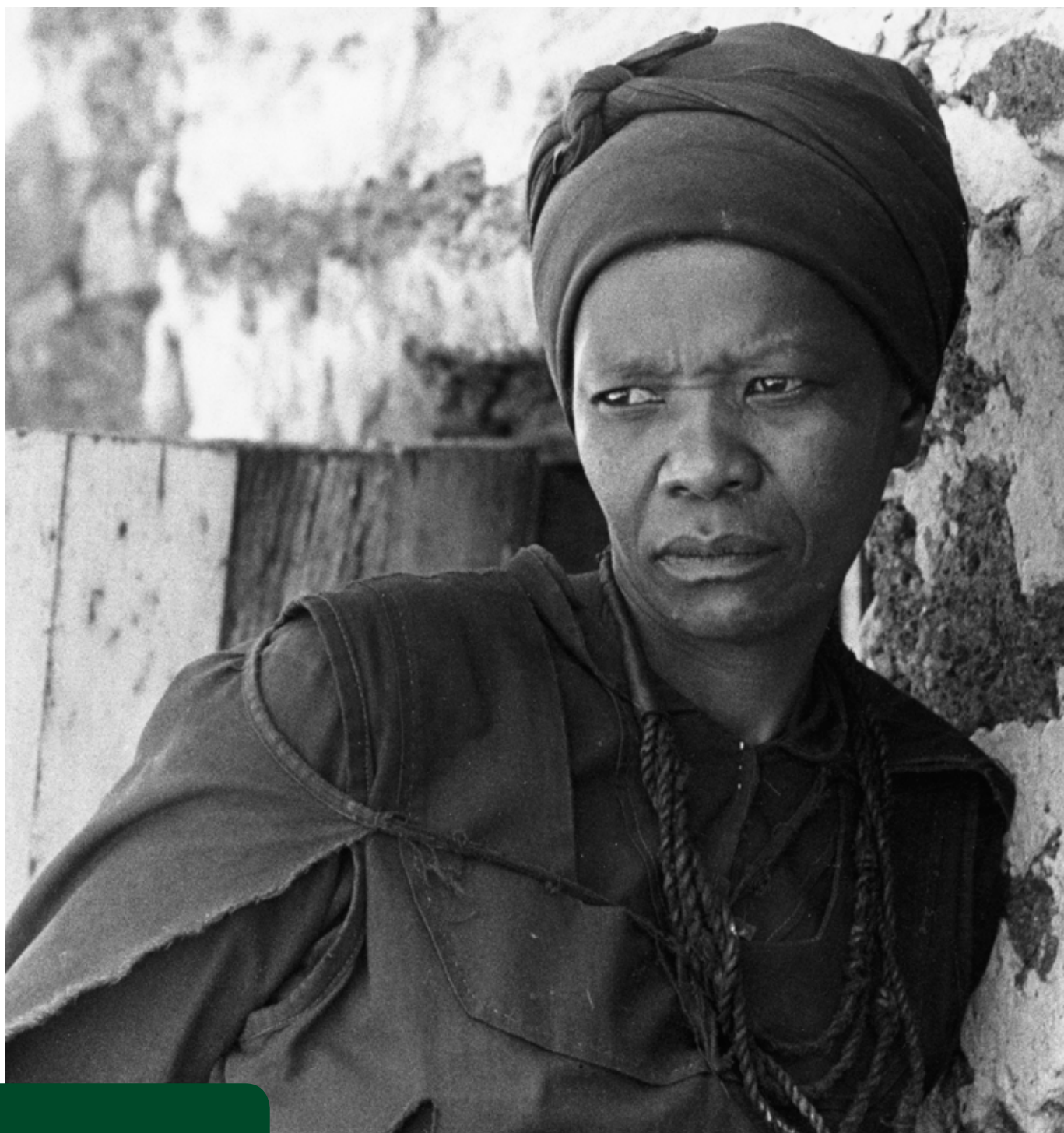


# HOLDING GOVERNMENT TO ACCOUNT

Advocacy in an emerging democracy:  
The story of the Black Sash



## Case Study

Case study conducted for The Atlantic Philanthropies September 2009  
Written by Tom Lebert, Umhlaba Associates

# Sash

Vol. 26 No.1. May 1983. R1·20



Saul Mkhize 1935 – 1983  
The Black Sash Magazine

**Front Cover:** *Saul Mkhize's widow, Beauty Mkhize. Saul Mkhize, who was the leader of the Driefontein community's resistance to forced removals, was shot dead by police in 1983.*

**Photograph:** *Black Sash Archives*

**Right:** *1985: A mob flees a shopping complex in Evaton, Gauteng, as police confront looters.*

**Photograph:** *Sunday Times*

## Key

<b>ANC</b>	African National Congress
<b>Codesa</b>	Convention for a Democratic South Africa
<b>DoSD</b>	Department of Social Development
<b>LRC</b>	Legal Resources Centre
<b>MEC</b>	Member of the Executive Council
<b>NGO</b>	Non-governmental organisation
<b>SASSA</b>	South African Social Services Association



# Table of Contents

## Boxes

The regional advice offices: A typical case	page 20
The case of attribution	page 22
Using litigation: An example from the Durban Regional Office (1999/2000)	page 25
The back pay case (1999/2000)	page 29

<b>I. Introduction</b>	<b>5</b>
<b>II. Background to the Black Sash</b>	<b>7</b>
Phase I (Pre-1990)	8
Phase II (1990-1999)	9
Phase III (1999-2007)	10
Phase IV (After 2008)	11
<b>III. Advocacy and the Black Sash</b>	<b>13</b>
The structure of the Black Sash	13
The functions of the Black Sash	15
Taking advocacy to the people	17
<b>IV. The Black Sash advocacy model</b>	<b>19</b>
Strengths of the advocacy model	23
Adversarial versus collaborative: The use of litigation	24
<b>V. Conclusion</b>	<b>31</b>
<b>VI. Sources of Data</b>	<b>34</b>
Interviews	34
Literature	34
Website references	34



1955: Black Sash women march to the Union Buildings to hand over a petition protesting at the extension of the pass laws to the Deputy Prime Minister.

**Photograph:** Black Sash Archives

# I. Introduction



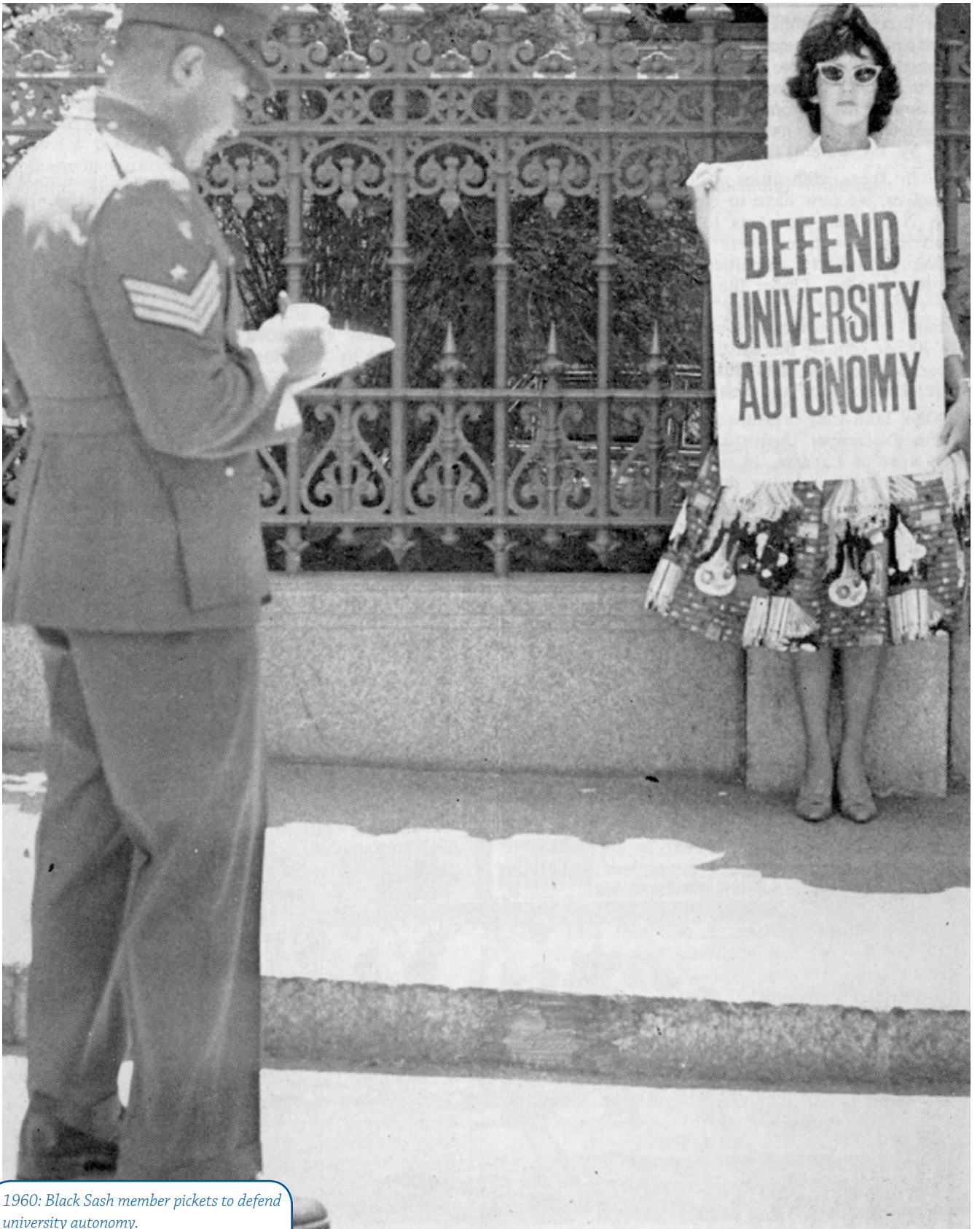
Established in 1955, the Black Sash is one of the oldest human rights organisations in South Africa – and it is still relevant. It plays a key role in monitoring the South African government’s implementation of policy. The Sash monitoring system is attached to a sophisticated advocacy strategy that is constantly evolving, like the organisation.

This booklet documents the best practice advocacy model that is the Black Sash. Whilst some of what the Sash engages in and how it does it is unique and specific to the organisation’s culture and historical currency, it is undoubtedly an example of how civil society can make an impact.



*1958: Women waiting in long queues at the Department of Bantu Affairs to apply for passes allowing them to remain in urban areas.*

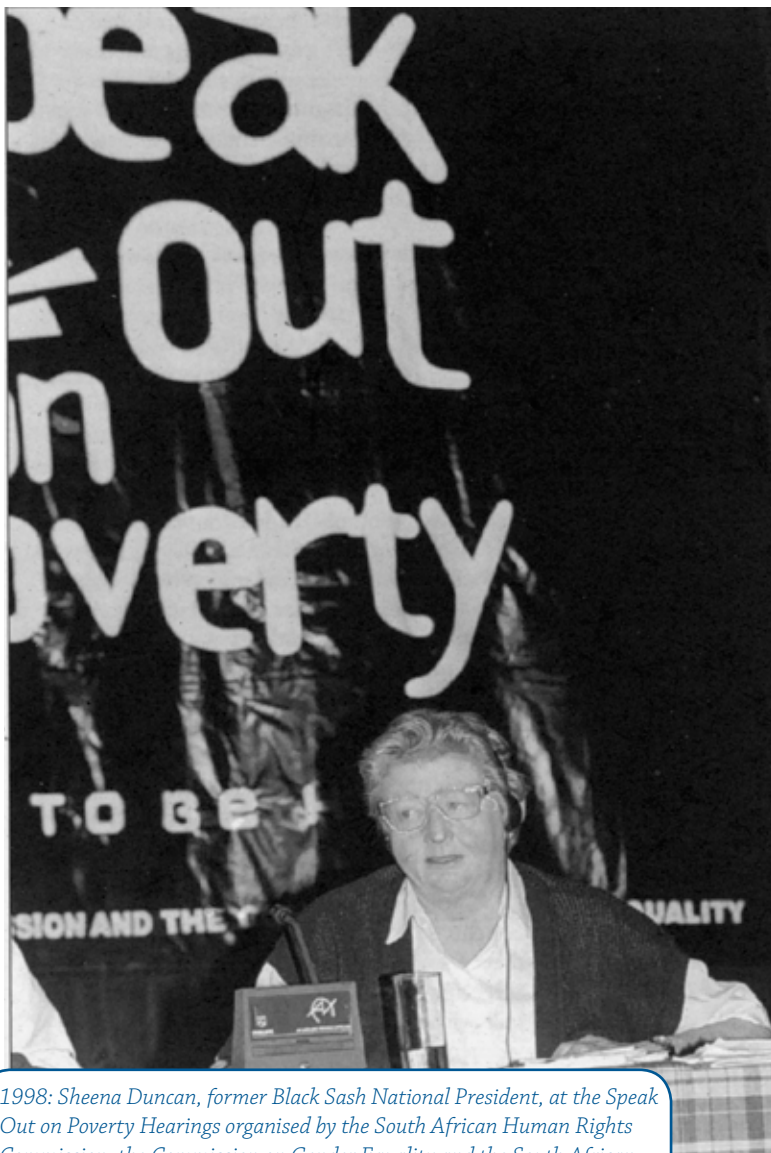
*Photograph: Black Sash Archives*



1960: Black Sash member pickets to defend university autonomy.

**Photograph:** Black Sash Archives

## II. Background to the Black Sash



1998: Sheena Duncan, former Black Sash National President, at the Speak Out on Poverty Hearings organised by the South African Human Rights Commission, the Commission on Gender Equality and the South African National NGO Coalition.

**Photograph:** Black Sash Archives

*"In the 1950s, we were newsworthy, perhaps because we were riding the tide of white protest against the ruthless determination of the government at the time, to impose what later became known as apartheid [...] In the 1960s, we were labeled as communists and were shouted at and told we ought to be at home in our kitchens looking after our children [...] In the turbulent 1970s, we became the flavour of the month inside South Africa and for many of the people worldwide who were beginning to regard apartheid as a great evil [...] In the second half of the 1980s, people began to ask why we were still in existence because the pass laws had been repealed in June 1986 and few saw what use we would be after that [...] In the 1990s, many people were sure we were dead because, they said, there was nothing left for us to do [...] Now, in the 21st century, we are still at it." – Sheena Duncan, former Black Sash National President, 2005<sup>1</sup>*

The Black Sash has occupied an important space in its 54 years of existence. A volunteer-based, activist organisation driven by its membership base during apartheid, today it is a professional non-governmental organisation (NGO) that implements human rights programmes through its skilled, professional staff.

<sup>1</sup> Quoted from the Black Sash (2005), "Golden Jubilee Report: 1955-2005"



1959: Women are arrested and taken to court for pass law offences.

**Photograph:** Black Sash Archives



## Phase I (Pre-1990)

The Black Sash was formed in 1955 by six white women who wanted to express their outrage at the apartheid government's intention to pass the *Senate Bill*. This piece of legislation would increase government support in the Senate, facilitating the passing of the *Separate Representation of Voters Act* that would remove coloureds (people of mixed racial descent) from the common voters' roll, violating an entrenched clause in the South African Constitution of 1910.

During its days as an activist organisation, the Sash's advocacy work centred on attempting to influence white morality in the country, within the context of the 1910 Constitution. Constantly questioning the constitutional validity of several pieces of apartheid legislation, the Sash was initially known as the Women's Defence of the Constitution League. At the time, their advocacy strategy was based on mass meetings, vigils and petitions. Also, the Sash often set up a cell system and telephone network to communicate with members.

From 1956 to the early 1960s, the Sash advocacy strategy developed into a public education approach twinned with protest action. The public education angle was part of a strategy to influence and shift the morality and mindset of whites. At the same time, advice offices were set up in urban areas to assist black people who fell foul of apartheid laws. These offices provided support and free paralegal services, addressing concerns around housing, unemployment, pensions, influx control and detention without trial. Also at this time, the Sash extended its membership to all women in South Africa.

Between the 1960s and the 1980s, increased state repression caused Sash membership to dwindle. However, its advice offices flourished. Much time was spent building them, giving the Sash women first-hand experience of the effect of apartheid on blacks. During this time the Sash continued its public protests and monitored government policy, legislation and action, as well as the courts. The organisation also monitored and recorded protests, rallies, arrests, detentions and deaths.





1956: The Black Sash convoy arrives in Cape Town on Parliament's Joint Sitting Day, dubbed 'Sash Monday' by the press.

**Photograph:** Black Sash Archives

## Phase II (1990-1999)

The period 1990-1994 introduced far-reaching change in South Africa. The African National Congress (ANC) and other anti-apartheid groups were unbanned. Political prisoners, like Nelson Mandela, were released. Negotiations for the transition from apartheid to democracy began. On his release from prison, future President of South Africa, Nelson Mandela<sup>2</sup>, acknowledged the Black Sash's role during the struggle against apartheid:

*"I salute the Black Sash [...] We note with pride that you have acted as the conscience of white South Africa. Even during the darkest days in the history of our struggle you held the flag of liberty high."*

Pre-1994, the Sash monitored the Convention for a Democratic South Africa (Codesa) negotiations and pushed for a new constitution, founded on a bill of rights.

The Sash also formed LegiWatch, a group of Sash women who monitored legislation in Parliament. During negotiations LegiWatch also monitored the Codesa process.

In addition, the Sash provided voter training for the first democratic elections in 1994.

As the country transitioned, questions and debate started among the Sash members and trustees about the organisation's role in the future, in a democratic state. There were those who felt the Sash's work was done as democracy dawned, but the majority felt the Sash's continued monitoring was just as important in a democracy as under apartheid. Chairperson of the Sash Board of Trustees Sibongile Mkhabela<sup>3</sup> says:

*"For any democracy to work, you need critical mass on the ground to hold government accountable. Black Sash chose to remain on the ground and to monitor and play a watchdog role [...] Black Sash takes democracy seriously; it's not just a matter of voting but also about maintaining an active civil society."*

And so, the decision that held out was that the Sash would remain a civil society watchdog.

Di Oliver<sup>4</sup>, a Sash Board Member, remembers that while there was political change, people still queued for help at the Black Sash advice offices. To the Sash, this indicated that its work needed to continue, even if not in the same form as under apartheid.

The organisation itself also transformed, evolving in its form and function. It changed from a membership-driven, volunteer, activist organisation into a professional NGO with full-time, paid staff members and a Board of Trustees. The Sash maintained its advice offices, knowing they were fundamental to the rest of its work. The organisation also developed its human rights programmes

<sup>2</sup> See the Black Sash website: [www.blacksash.org.za](http://www.blacksash.org.za).

<sup>3</sup> Interview on 21 November 2008 at the offices of the Nelson Mandela Children's Fund, Johannesburg.

<sup>4</sup> Interview on 11 November 2008 at the home of Di Oliver, Cape Town.



1988: 29 Black Sash members hold an illegal group picket.

**Photograph:** Merry Dewar

further, implementing them through a rights education approach, advocacy and the advice offices.

In the 1994-1999 period, the newly elected, inexperienced democratic government was eager to work with civil society, so spaces opened up for organisations to assist in drafting legislation and monitoring its impact. Sash Board Member Jenny de Tolley<sup>5</sup> remembers that government looked towards trusted organisations for support. The Black Sash was excited at the possibility of a responsive government, and that organisations like the Sash could impact on legislation to improve the lives of poor people. The Sash helped draft legislation, made inputs to Parliamentary standing committees, and its advice offices monitored the impact of legislation.

## Phase III (1999-2007)

Between 1999 and 2007, the political environment changed drastically. Many spaces open to civil society tightened and some closed. The constructive and collaborative relationships established with government officials and provincial Members of the Executive Council (MECs) changed. A more adversarial attitude started permeating the halls of government.

Some government officials felt helpless about implementation of service delivery. Parliamentary portfolio committees were sidelined and left out of the national decision-making processes by the Presidency. This closing off of vital public participation affected the Sash's ability to impact on policy and legislation like before.

There was a significant shift in government's approach to civil society organisations. Former Black Sash Advocacy Officer Isobel Frye<sup>6</sup> observed this change:

<sup>5</sup> Interview on 11 November 2008 at the home of Jenny de Tolley, Cape Town.

<sup>6</sup> Interview with Isobel Frye on 24 November 2008 at the offices of Studies into Poverty and Inequality Institute in Johannesburg.

*"Between 1994 and 1999 there was a rights-based engagement from both civil society and government. Positions in government were occupied by former civil society practitioners. There was a mutual recognition of the historical significance of the new Constitution. By 2000, there was a shift from a rights-*



*Candlelight vigil 1993: The murder of South African Communist Party leader, Chris Hani, threatened to derail the multiparty negotiations but the ANC and the government reached agreement on a Government of National Unity with a Transitional Executive Council.*

**Photograph:** Black Sash Archives

*based approach to a technocratic approach by government. The discourse shifted to the cost implications for every submission put forward from civil society, placing a burden on civil society organisations to engage in number-crunching exercises.”*

After 1999, the Sash strategy of a cooperative relationship with government often resulted in frustration at not being heard nor being able to shift service delivery as before. Now the Sash’s advocacy had to become far more hard-hitting and they used litigation to compel government to be more accountable regarding service delivery. Also, the advice offices began using litigation to get a response from government on service delivery challenges.

At one time, the Durban Regional Office referred 145 cases for litigation. This made the Department of Social Development (DoSD) sit up and pay attention (Black Sash, 2004:27). However, the government’s attention lapsed again and the Durban Regional Office had to resort to litigation once more, again with positive results.

Di Oliver is of the opinion that “government sometimes would only listen when there was litigation”. Whilst litigation got the desired response from government, the Sash still only uses litigation as an absolute last resort, after all avenues of cooperative engagement are exhausted and no solutions are forthcoming.

The Black Sash’s main advocacy objective is to bring about change in the lives of people by engaging with government in a way that builds relationships as far as possible.

## Phase IV (After 2008)

This period again sees the Sash reflecting on its role and strategic positioning. It recognises it has been playing a monitoring and advocacy role since 1955 and therefore has very high skills levels in this field. Now its strategy is to build the advice offices to become independent units, able to do more than administer rights-based legal advice.

Advice offices are changed to become regional offices with regional



Cape Town Advice Office staff Leonie Caroline (left, foreground), Regional Director, and Morgan Disipi, Paralegal, take clients through one of the Black Sash's information booklets, "You & Debt". The booklet serves as an introduction to debt and the questions that should be asked when taking a loan.

**Photograph:** Benny Gool

directors heading up the offices. Each is responsible for its own advocacy programme and engages directly with provincial government and other structures.

As advocacy is decentralised, national advocacy programme managers will help regional offices to develop region-specific advocacy strategies, linked to local community experiences. In order to make this possible, regional offices will conduct their own analyses of the data coming through their offices as well as from other NGO advice offices. In addition, community voices will be bolstered so they can become their own advocates rather than the Sash speaking on behalf of poor communities. Says Sibongile Mkhabela:

*"[It is about] enabling communities to articulate their own rights rather than the Black Sash articulating these on their behalf [...] where community leaders take charge of their own issues [...] where we build community advocates."*

At the national level, the Sash positions itself as a national advocacy body that will provide support to locally-based advice offices, other NGOs, and community resource centres. Member of the Black Sash Board of Trustees Yasmin Sooka<sup>7</sup> feels that:

*"the Black Sash advice offices are now playing a much more nuanced role. It must now use these skills it has to offer skills and services to other advice offices."*

The organisation will develop database systems that will more effectively capture local data and feed it to the national database in order to identify national trends and inform national advocacy campaigns.

The Sash will also provide capacity-building support to organisations, sharing its wealth of experience in lobbying, making submissions to government, planning and engaging in advocacy.

<sup>7</sup>Interview with Yasmin Sooka on 24 November 2008 at the offices of the Foundation for Human Rights.

# III. Advocacy and the Black Sash

The Black Sash has a rich history of advocacy under apartheid and transformed itself into a professional advocacy organisation after the advent of democracy in 1994. During its lifespan, the organisation has seen many changes to its structure and functioning, all aimed at keeping it relevant to the political context of the time.

## The structure of the Black Sash

The Black Sash structure makes it an efficient and effective advocacy organisation. The National Office, which houses the National Director and programme staff, is literally around the corner from Parliament. This gives the Sash easy access to ministers, government officials and Parliamentary processes. Sash staff walk over to Parliament for informal discussions with officials, as well as to keep in the loop of policy and legislative developments.

The National Director manages the strategic direction of the organisation and ensures the Sash's voice is heard on issues central to its work. The national programme team, composed of a National Programme Director and four advocacy programme managers, is responsible for the national programme and forms the engine room of the organisation. The team drives programme implementation in the regions and ensures a link between the regions and the National Office. The team also monitors national legislative changes.

Today the Sash has seven regional offices. Previously known as advice offices, they are located in Cape Town, Knysna, Port Elizabeth, Grahamstown, Durban, Pietermaritzburg and Johannesburg. As mentioned, the regional offices are headed by regional directors. The directors are supported by paralegals.

The paralegals capture the cases of people from the community who come for help, and engage in rights education. They analyse emerging trends and do advocacy work in their own areas, including discussions and negotiations with provincial government, MECs and Parliamentary portfolio committees. The regional offices also monitor service delivery. As said before, advocacy at the regional level is supported by the national advocacy programme managers.



Ulrike Albrecht (middle), Black Sash Trainer, participate in a Black Sash paralegal session.

Photograph: Debbie Yazbek

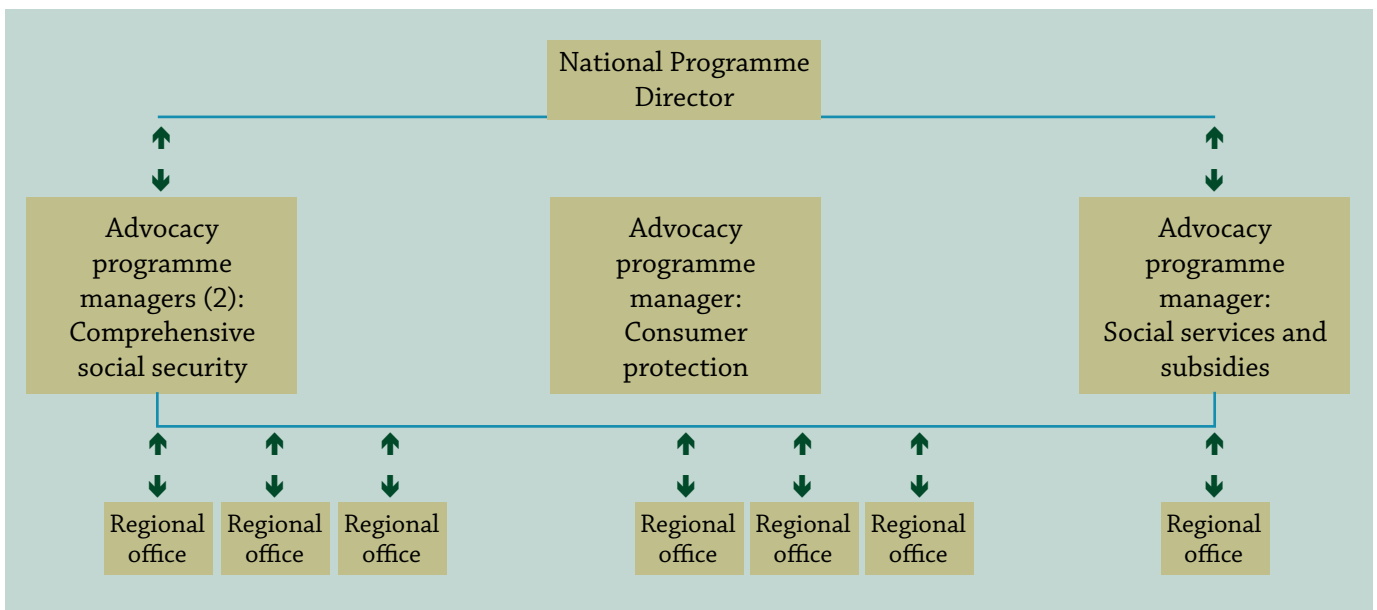


Figure 1: The structure of the advocacy team



1991: Khayelitsha residents inspect the still-smouldering wreckage of shacks and the burnt-out hulk of a taxi after a night of violence attributed to the taxi war.

**Photograph:** Willie de Klerk, *The Argus*

## The functions of the Black Sash

The Black Sash concentrates on three programmatic areas: Comprehensive social security, consumer protection for the poor, and social services and subsidies.

The comprehensive social security programme is the Black Sash's biggest programme. It aims to close policy gaps in social security and work towards the realisation of rights.

*"The current social protection measures, vis-à-vis social assistance, provide a 'survival mode' safety net only to certain households who are fortunate enough to contain individuals in the current target groups. These include the disabled, elderly and very young. Children between the ages of 15 and 18 and the unemployed are currently excluded. Furthermore, large proportions of working people do not benefit from private retirement or health savings and, further, certain categories of persons are excluded from social insurance i.e. domestic workers and those in the informal sector, and casual and temporarily employed. The struggle for a comprehensive social security system is therefore all the more necessary, as it is the poor who suffer most when these systems are weakened or not sufficiently resourced to cushion us during times of economic crisis." – Marcella Naidoo, Black Sash National Director, 2008<sup>8</sup>*

The consumer protection programme aims to build a fair credit and consumer environment. The social services and subsidies programme aims to ensure accountable governance and service delivery.

The three programmes are interlinked for everybody who uses the Sash services. For example, clients coming for advice on welfare grants are advised about credit systems and helped in their struggle to access government's free services and asset-building opportunities.

The Sash has a three-pronged implementation strategy for the three programme areas – it uses rights-based education, advocacy and advice-giving. The regional offices implement the programmes in communities.

Through its programmes, the Black Sash informs communities about their

<sup>8</sup> Quoted from "Black Sash – Making Human Rights Real. The Black Sash Report for 2008"



*Marcella Naidoo (left), Black Sash National Director, and Nceba Mafongosi, Advocacy Unit Regional Manager, make signs in preparation for a Black Sash campaign.*

**Photograph:** Black Sash Archives

rights under the Constitution and in law.

Clients are assisted to access these rights by paralegals based in the regional offices. The Sash then analyses case logs of assisted clients to identify emerging trends and developments, which inform its ongoing advocacy strategies.

Advice-giving is the third overall Black Sash strategic approach. Advice-giving is also aimed at enabling individuals and groups to exercise their socio-economic rights prescribed by law. The Sash provides comprehensive quality advice on labour, citizenship, and social and consumer protection, such as credit, debt and contracts.

The Black Sash advocacy strategy straddles its rights-based education and advice-giving components. The advocacy strategy has five key implementation areas.

The first and second key implementation areas are tracking, and understanding policy and legislative developments in the three programme areas. The third and fourth key implementation areas are conducting research in the core focus areas, and monitoring service delivery at key service points in the country. The fifth key implementation area is building the network of advice centres to enable better data collection and advice-giving at the local level.

Advocacy tools used by the Black Sash to engage in advocacy include campaigns, coalition work, networking, submissions to Parliament and political parties, lobbying, using the media, and litigation.

The Sash recognises the value of having both its advice offices and advocacy component. It continually meshes the two to build a comprehensive advocacy strategy.





*Nelisiwe Hlophe (wearing AIDS ribbon), Durban Regional Office Paralegal, reaching out to a client.*

**Photograph:** *Black Sash Archives*

## Taking advocacy to the people

The strength of the Black Sash regional offices enhances the advocacy work of the organisation. The regional offices offer a direct connection between the local community and the National Office where strategy is developed and where interventions are considered and implemented.

However, the Sash wants to move away from being an advocate for others – a role the organisation feels it has played for almost too long – and play a more enabling role where it renders assistance and support to advocacy initiatives driven by communities. Whilst the Sash will continue to engage in advocacy work, this will be at the highest level of engagement with national government and in monitoring legislative reform.

The Sash is committed to achieving maximum impact in the lives of poor and marginalised people. To this end, each regional office will start focusing on at least one struggling, disadvantaged community per year. Such communities will be selected by Sash staff in the satellite offices, or they can be identified through advocacy campaigns or rights-based work.

Committed to playing an enabling role, the organisation will give selected communities space to lead on identified issues and to turn these into community mobilisation challenges. The Sash will work with legitimate and valid community structures and with smaller groups that have broad acceptance in the community.

With the support of their advocacy programme managers, regional offices will work autonomously with selected communities to decide how to strategise advocacy to ensure cross-pollination of strategies among the different regions, but also to help each region define a strategy directly applicable to a specific context and community.

By adopting this new advocacy strategy, the Black Sash is making advocacy more relevant to local communities. It is also helping to grow local advocates who can speak for communities and for themselves.



*Durban Regional Office staff and volunteers. Standing from left to right: Nelisiwe Xaba, Henry Webster, Marie Therese Naidoo, Bill Ramsden, M Matiwane and Thulie Ntuli. Sitting from left to right: Njabulo Khumalo and two volunteers.*

**Photograph:** Black Sash Archives

# IV. The Black Sash advocacy model



**B**lack Sash advocacy work is rooted in its regional offices. Each regional office is staffed by paralegals tasked with providing comprehensive and quality legal advice.

Among the steady stream of office clients are people who cannot get relief in their efforts to address problems with the state or an employer. They know their rights are infringed because of the Sash's rights-based education in their communities.

In most cases paralegal work will involve mediation, negotiation or a discussion with the other party. Sometimes issues are easily resolved. When they cannot be resolved, *pro bono* lawyers or legal NGOs like the Legal Resources Centre (LRC) or Lawyers for Human Rights are accessed to help.

Collective steps may be needed when a regional trend is emerging and cases cannot be solved by paralegals. In these instances the regional office engages the relevant provincial government to assist in solving the problem. If the provincial government does not alleviate the problem, the regional office contacts the National Office for support.

The National Office then conducts a trends analysis with other regional offices to ascertain the extent of the problem. If other offices have similar problems, the National Office undertakes research to pinpoint where the problem lies.



1986: Hunger, poverty and repression worsens – children queue for soup.

**Photograph:** Black Sash Archives

### The regional advice offices: A typical case<sup>9</sup>

Thandi Dlomo applied for a child support grant from the DoSD. After a year she is still waiting for a response from them. She has been to the offices of the DoSD and the South African Social Services Association (SASSA) many times. At each visit a new problem emerges.

In sheer desperation she seeks the assistance of the Johannesburg Black Sash Regional Office. Here she is greeted at reception, asked for details such as her name, address and contact numbers, and her details are entered into an electronic database. Thandi is then assigned a paralegal who sits down with her and documents her full story.

After Thandi leaves, the paralegal makes a few phone calls to people she knows at the department and SASSA to find out what the problem is. She then writes a formal letter to SASSA requesting a response to the application within the legally required time frame. The paralegal takes every necessary step to keep Thandi's case file up-to-date and solve her problem.

First thing in the morning and at the end of each day, the Regional Director logs all the cases that have come through the office on the Black Sash's national database. Thandi's case will be among them. The information gathered is then fed to the National Office where the cases are analysed and trends identified.

The research interrogates policy implementation and the law with regard to a particular government service. It aims to uncover whether problems brought to a regional office are the result of bad policy or service delivery. Once the research is done, the Black Sash prepares a case with supporting regional office data. A meeting is then set up and the information is presented to the relevant national department. The Black Sash will consider litigation as a final strategy if the meeting and further discussions with the relevant department do not bear fruit.

<sup>9</sup>The information in the text box is based on an example from the Gauteng Regional Office. All Black Sash regional offices deal with cases in the same way. The information was sourced from an interview with Thandiwe Zulu, Gauteng Regional Director.



*Siphiwo Moneli (left), Grahamstown Regional Office Paralegal, attends to a client. The Black Sash helps clients access more than R1 million in social grants and private pensions each month.*

**Photograph:** Black Sash Archives

At the point of litigation, the Black Sash seeks legal opinion from lawyers based most frequently at the LRC, due to the partnership and relationship that developed historically between the two organisations. The LRC will deliberate on the case and provide a legal opinion on whether the Black Sash should proceed with litigation. If approval is given, the Sash, together with the LRC, will lodge a case against the government.

Outside of this, the Black Sash also engages in lobbying government to reform legislation or policy. During apartheid it was pointless trying to make legislative submissions or to try to reform the law. But democracy presented an opportunity to the Sash to engage in lobbying as an additional tool in its advocacy toolbox.

According to Board Member Jenny de Tolley<sup>10</sup>:

*"At around the '94 period, the Black Sash was going in many directions. We knew that if we were going to take on this advocacy role we needed to narrow our focus and become more specialist."*

Former Sash National Advocacy Manager Allison Tilley<sup>11</sup> agrees that 1994 presented a different context. South African civil society now had a democratic government it could engage with. This push into advocacy prompted the Sash to narrow its focus and become more specialised. Hence it focused its attention on social assistance system issues.

The Sash also reflected on whether public protest was achieving any significant shift in delivery to the poor. It found protests did not bring change, nor achieve law reform. It therefore decided to take up government's encouragement of public participation, dialogue and cooperation.

In its attempt to learn more about advocacy and, in particular, lobbying as a tool, the Sash studied advocacy models. It gained much from the United States, especially from an American lobbyist who visited Parliament in the mid-1990s.

<sup>10</sup> Interview on 11 November 2008 with Jenny de Tolley at her home in Cape Town.

<sup>11</sup> Interview on 11 November 2008 with Allison Tilley at the offices of Alliance for Children's Entitlement to Social Security, Cape Town.



*Henry Webster (right), a volunteer at the Durban Regional Office, assists clients.*

**Photograph:** Black Sash Archives

### The case of attribution

Organisations can use three mechanisms to measure success:

- Run surveys to show trends of increase or decrease after an intervention
- Use their own language in submissions. Decision-makers who use submissions often use this language
- Use people's real stories to back up submissions to ensure interventions are real too

The Black Sash has learnt from studying international advocacy models, as well as from its own experience. In particular, it has learnt to always include public advocacy in its strategy. In most cases public myth and misunderstanding can cloud an issue. It is important to deal with general perceptions and develop a common understanding.

Another lesson the Sash has learnt is that it is important to know the political terrain. When laying the groundwork for tackling an issue, it is important to know who in government is supportive of the issue and of the work of the organisation and get them on board. This means spending time building relationships and strategic partnerships, not just with government officials but also with civil society organisations, other state entities and Chapter 9 Institutions.

The Black Sash has established a good relationship with civil-society Parliamentary monitors who know what legislation is being tabled for reform, and the calendar of when it will happen. By establishing these strategic relationships, the Black Sash has its finger on the law reform pulse and is always present when legislation falling within the ambit of the Sash's work is tabled.

A third lesson learnt is to maintain transparency with government. The Sash always states up front what it is about and what its vision and mission are, and constantly checks that it sticks to its own principles.

## Strengths of the advocacy model

The Black Sash advocacy model has four key strengths.

Firstly, the model is based on an ever-evolving strategy that is conscious of and responsive to changes in the political environment.

The second strength of the advocacy model is its full integration into the work of the Black Sash. Advocacy is not a separate programme or project. It is the foundation for the Sash's work. All other interventions link into it. Jenny de Tolley describes Sash advocacy as forming part of a "full cycle". Each strategic Sash intervention is linked to advocacy.

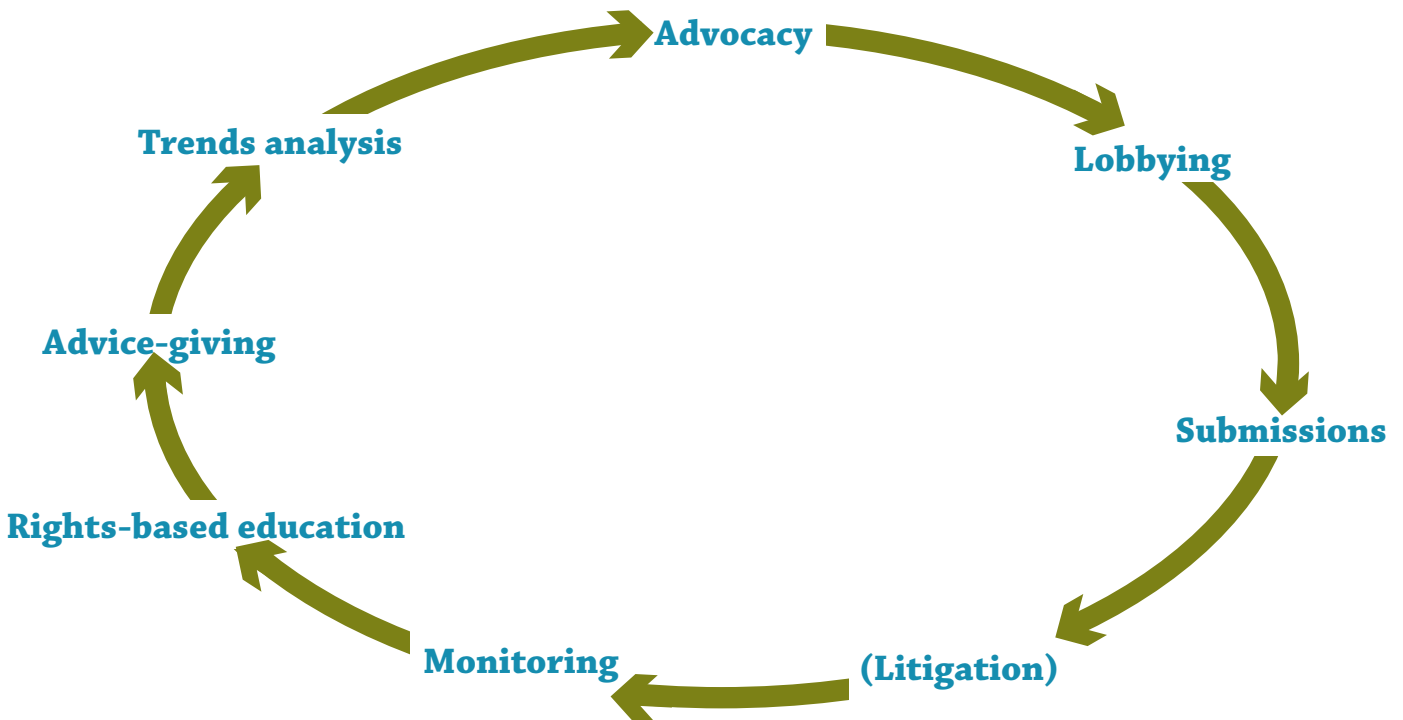


Figure 2: The Black Sash advocacy cycle

A third strength of the Black Sash advocacy model is that it monitors the implementation of reformed policies and law. Monitoring happens at the regional offices where cases are presented. The regions are the barometer of deficits in government policy. From cases presented in the regions, the Sash can gauge key issues and use these to develop advocacy strategies. The Sash also monitors service delivery at key points in the regions and specifically checks whether services are efficient.

Through reflection and experience, the organisation identified that it needed to have a narrower and more specialised focus. The key question



2000: Black Sash activists demonstrate against cuts on social spending on Budget Day. The poster in the top right corner reads: "Our children are hungry – But the state buys weapons".

**Photograph:** Black Sash Archives

– What does the organisation want? – was asked, and led to the answer: A comprehensive social security system. Further questions about whom it should target and how it would get what it wants formed the building blocks of its advocacy strategy, which is shaped and underpinned by the Sash's core organisational values: Justice, dignity, affirmation of women, integrity, non-violence, rigour, independence, courage and volunteerism.

## Adversarial versus collaborative: The use of litigation

One of the tools in the Black Sash's advocacy toolbox is litigation. As mentioned earlier, the Sash sometimes works with legal NGOs like the LRC to force accountability and transparency on service delivery issues in the courts. It uses litigation in two instances:

- When individual cases cannot be resolved through discussion and negotiation, regional offices take them to *pro bono* lawyers.
- When the Sash identifies worrisome trends. Sometimes a regional office sees a trend emerging just in its own region. If the trend occurs only there it deals with it regionally. If it is a national trend, it gets addressed at the national level.





Gauteng Regional Office Director, Thandiwe Zulu (third from the left), flanked by a volunteer and Wellington Ntamo, Paralegal, to her left, and Thifulufheli Sithumule, also Paralegal, to her right.

**Photograph:** Black Sash Archives

### Using litigation: An example from the Durban Regional Office (1999/2000)<sup>12</sup>

In the second half of the 1990s, delays in the DoSD's processing of welfare grant applications became a major problem. The majority of people who went to the Black Sash for help had already struggled for six months to a year to get a proper response from the department. Initially, the Sash sent a friendly letter asking for a substantive response within 21 days. This was followed by numerous telephone calls and at least two follow-up letters. In addition, the Sash raised its concerns at the bi-monthly paralegal sectoral meeting facilitated by the department.

In 1999 the Sash had no other option but to refer 145 cases for litigation. The clients were already waiting for a year to a year and half for a response. The litigation yielded the desired results for these cases and also for a range of other Sash clients.

From May 1999 to June 2000, the Sash held regular meetings with the provincial Director-General of Welfare, Durban regional staff and district officials to discuss cases and Sash findings in monitoring applications and pay points.

These strategies helped the Sash resolve more delayed cases, led to the upgrading of infrastructure and resources at district offices, as well as to the retraining of staff. Yet, at least 25% of Sash cases remained unresolved.

In May 2000 the Sash addressed the KwaZulu-Natal Welfare Portfolio Committee, highlighting a number of social assistance delivery issues. It alerted the Committee to delays, highlighted that this constituted a failure to meet people's constitutional right to just administrative action, as well as the Sash's reasons for resorting to litigation.

In July 2000 the Sash once again referred 30 cases to the LRC and private attorneys for litigation. This again resulted in faster resolution of outstanding cases.

<sup>12</sup>From the Black Sash, "Conference on Promotion of Administrative Justice Act 3 of 2000 – a tool for transforming delivery in South Africa", pp 27-28, October 2004.



*S'celimpilo Shange, former Paralegal at the Gauteng Regional Office, at a paralegal training session.*

**Photograph:** Debbie Yazbek

When service delivery fails it often happens because a government department is breaking the law or there is a structural problem within the department or within a delivery agent. In both instances, Black Sash regional offices exhaust every possible avenue to get an issue resolved. This includes meeting with government officials, for example a person in the SASSA with whom the regional office has a relationship.

At this meeting, the Sash will sit with the official, explain the issues and give possible options to resolve the problem. Thereafter, the Sash will offer to cooperate with and assist the official in solving the problem.

If there is a structural problem, the Sash usually meets with the chief directorate of the relevant department. Again, the aim of the discussion is to find solutions and a basis for cooperation.

When all of these cooperative options are exhausted and a solution is not found, the Sash opts for litigation and takes a class action to court. But, even in the litigation process, the Sash always leans towards finding solutions through other cooperative means.

The Black Sash also uses impact litigation to challenge the constitutionality of government action, or to set a legal precedent that will transform policy or legislation. Isobel Frye is of the opinion that:

*"Litigation should always be there in democracies to uphold the implementation of the Constitution."*

The Constitutional Court itself maintains it does not get enough of these cases to allow for more depth and meaning to the Constitution. Cases in all courts help establish correct interpretations of the Constitution and ensure that the law interprets the Constitution correctly. Such impact litigation helps set benchmarks for government's implementation performance.

Sibongile Mkhabela maintains litigation should set precedent and stresses that the Black Sash will keep using litigation as part of its advocacy strategy. However, she warns litigation should not be used as a whip to get government to respond to issues. The focus should be on achieving change and a broader impact rather than using litigation as a means to resolve

individual cases. The purpose of litigation should be to achieve policy change to ensure effective administration. When litigation is used in this sense, change is made through the courts and a precedent is set.

There is an acute awareness in the Black Sash of the state's litigation costs. In May 2008, there were 8 350<sup>13</sup> cases against the DoSD. The state's costs in terms of legal fees are exorbitant. The Sash feels that this money could be better spent improving delivery systems and reforming the law.

As emphasised above, the Black Sash maintains litigation should be used as a last resort. At times the pride of an organisation can get in the way of making sober judgements. The Black Sash is aware of this and continually guards against it. Allison Tilley warns that organisations

*"[...] should not be intransigent about an issue and try to bend the issue to the point where it breaks."*

Organisations should maintain a sober, mature outlook, stick to their objectives and what needs to be done to reach them, rather than burning bridges and painting themselves into a corner.

Whilst high-impact cases are important for setting precedent that holds greater benefit for society more broadly, there are some challenges in taking on litigation, including high costs. Taking on litigation as an advocacy option can cost an NGO R100 000 or more<sup>14</sup>.

Legal NGOs like the LRC raise their own donor funds to support high-impact cases. But even if a legal NGO is used, advocacy organisations like the Black Sash caution against such partnerships if each partner does not have a clear own agenda to maintain control over the direction and purpose of the case.

According to the Sash, these relationships and partnerships are difficult to navigate because advocacy organisations and legal organisations come from different perspectives. The advocacy organisation can lose control of its own case. For example, legal NGOs do not have community consultation as part of their strategy when taking up high-impact litigation. As Isobel Frye puts it:

*"Most lawyers don't see it as their role to sit in communities to hear their stories or to report back to these communities. It's just different backgrounds."*

However, advocacy organisations taking on impact litigation need the services of legal NGOs, and legal NGOs need organisations like the Black Sash to access a client base. There is space to negotiate an equal partnership and establish mutual respect. It is important for advocacy organisations to maintain ownership of their cases in the face of an intimidating, new world such as litigation. One way to do this is to include social mobilisation and public advocacy as a support behind the litigation.

Another challenge in terms of litigation is that cases require groundwork preparation before going to court. This, together with the actual court case,

<sup>13</sup> *Social Assistance Bill and Litigation*, 8 May 2008. <http://www.pmg.org.za/report/20080508-social-assistance-amendment-bill-and-litigation>.

<sup>14</sup> *Telephonic interview with Geoff Budlender on 14 November 2008.*

can be very time-consuming.

In high-impact cases, the aim of the litigation route is to set a precedent and bring about change in law. If the preparation of the case is shoddy and not steeped in the progressive development of Constitutional Law, it is likely that the courts will reach a judgement contrary to what was intended. The consequence of this is that the law stays the same and a contrary precedent gets set in law. It then takes another litigation process to undo the damage.

Litigation can be an overwhelming experience, making it important to always stay focused. The high-powered nature of litigation is seductive. Organisations can get drawn into too much litigation, aligning themselves to issues and cases that are not part of their core focus.

Even the Sash found itself drawn into cases that did not fit its values and core focus. This endangered its strongly-held principle of independence. Yasmin Sooka offers the following advice:

*“An organisation must know its own agenda and what it wants to see happen in society. It must remain committed to its own foundational values. The organisation, regardless of what action is being taken, must always and constantly ask itself: Who is this going to benefit? And lastly, having built the reputation of the organisation, we must be careful that through the choices we make, we don’t lose that reputation.”*

When litigation appears to be the only choice, it is important to be clear about whether a case is the right kind of case to litigate on to ensure maximum impact. Thus far the Black Sash has won every case that it has taken to court.

The Sash recommends that litigation around public interest be accompanied by advocacy, such as social mobilisation or public advocacy. It should only be used when all other advocacy alternatives are exhausted.

The Sash also cautions that engaging in litigation has long-term organisational implications. It is therefore important to build and institutionalise solid advocacy and litigation knowledge and skills throughout the organisation. As Alison Tilley says:

*“Those engaging in advocacy work need to give power with both hands and take every opportunity for other people in the organisation to learn how to engage in advocacy.”*

In sum, it remains important to hold the bigger picture and the focus of the organisation in mind.

Finally, as has been emphasised above, a strength of the Black Sash’s engagement with the state through litigation is that it does not undertake litigation lightly. For the Sash, litigation is not a means to rub government’s nose in its own incompetence but rather to get government to be accountable to the people and the Constitution. The Sash is careful not to brag in the media about its litigation victories. Victory and results are enough.



1987: The community of Potsdam struggled against a reign of terror in the Ciskei but was determined to find a home in South Africa. The Black Sash assisted them to compile a dossier appealing to foreign governments to put pressure on the apartheid government to provide them with a home.

**Photograph:** Black Sash Archives

The Sash also remains committed to assisting government in making human rights real and to making its systems work efficiently.

### The back pay case (1999/2000)

Analysing data in the Grahamstown Regional Office database in the late 1990s, Regional Director Jonathan Walton noticed an overwhelming number of clients had problems getting their grants approved timeously. When their grants were eventually approved, they did not receive any back pay.

The reason for this was the 1998 Regulation 11 of the *Social Assistance Act* of 1992. The regulation limited back payments on grants to 90 days from the date of approval of the grant. It did not take the date of application into account. This seriously disadvantaged applicants in provinces with long delays.

The Grahamstown Regional Office data showed people waiting from nine months and up to three years. No back pay had a serious impact on the lives of these poor people.

Geoff Budlender, the attorney who later took this case, described the scene as “taking food straight out of the mouths of poor people”. On the other hand, Eastern Cape government officials saw this as an opportunity to save the government money. Also, reports about fraudulent activities among some Eastern Cape DoSD officials responsible for grant payments surfaced later.

After monitoring the issue for a year, Jonathan Walton approached Allison Tilley, then Black Sash National Advocacy Manager, for assistance. Tilley checked with the other regional offices and found that the problem was a national one. She took all the facts and data to Adv Geoff Budlender at the LRC, who found grounds for a legal case. He formulated a case against both the National DoSD and the Eastern Cape Provincial DoSD on the grounds that Regulation 11, in relation to back pay, was unconstitutional. The right to social security has to be progressively realised.



1989: The Port Elizabeth Regional Office was almost destroyed in an arson attack.

**Photograph:** Bob Binnell

The Black Sash helped the case by documenting the stories of people affected by the regulation. Meetings were held with the Minister to deal with the issue but nothing came out of them. The case was lodged and a trial date was set.

Whilst this was in motion, Zola Skweyiya took over as Minister of Social Development. Ten days before the trial date, Black Sash Director Hillary Morris shared a platform with the new Minister. In her address she said that the Sash was saddened by the fact that it was about to take the DoSD to court.

The Minister was outraged that the issue had not been resolved and had gone as far as the court. He called several meetings with the Black Sash and the Finance Minister in an attempt to bring this case to resolution. A settlement was reached a day before the trial date.

In September 2001 the court set aside the regulation and issued an order giving people the right to back pay from the date of application. A year later, the President made R2.1 million available for back pay to all affected by the offending regulation.

At the time, the Sash recognised that the court order was not going to effect all the change needed. Thousands of people did not know about the court order, what it meant, or the process to follow to get back pay.

The Sash advice offices began a step-by-step analysis of the court order and how people could access back pay. It engaged in discussions with the DoSD and offered to assist in rolling out back pay.

The Sash asked the department for a print-out of all the names of people entitled to back pay. The DoSD sent these lists to the provinces to assist with the process.

Sash advice offices and kindred law firms took on the task of finding people entitled to back pay and bringing them to pay points to access their back pay.

Through lobbying, the Sash managed to get the DoSD to pay for pamphlets telling people about the court order and outlining how to access back pay.

# V. Conclusion

The back pay case was a huge victory for millions of South Africans, as well as for the Black Sash. As Sibongile Mkhabela puts it:

*“The back pay case opened the door for thousands and millions of people to walk through.”*

There were many successes in the Sash’s advocacy strategy, with some hinging on how events unfolded. As Minister of Social Development, Zola Skweyiya exhibited greater political will to resolve the crisis in his department, and he knew and greatly respected the Black Sash. At the same time, the Sash was fully aware of the Minister’s support for the organisation and knew how to maximise it to bring about the desired change.

An insight from the Black Sash’s advocacy strategy is thus that one should always know when and what to feed into any opportunity that may arise in the political environment, which is fluid and constantly shifting and changing. Organisations need to be embedded in what is happening in the policy and legislative world so they can be responsive, flexible and pro-active.

A further insight is that advocacy organisations should always strive to build a rights-based culture to support their strategies and approaches. Many issues can be settled before and out of court. Advocacy organisations need to look at how to build constructive engagement with government, labour and business institutions.

Engaging in advocacy, more especially litigation, means organisations are playing in a very powerful field. Doing advocacy can be seen as high-profile work. A key learning from the Black Sash is the need to ensure that power as well as advocacy skills and knowledge are shared and grounded in the broader organisation.

The Black Sash’s experience also shows the importance of using media and publicity strategically and for the right reasons. During the back pay case, for example, the Sash received much media attention. They used a comprehensive media strategy to keep the issue on the agenda and to keep people informed as to what was unfolding. At the time victory was handed to the Black Sash, however, there was no compelling need to go to the media. The Sash felt that the victory itself was sufficient. The Sash never wanted to



1982: The women of Crossroads fight tenaciously for the right to permanent residence in Cape Town.

*Photograph: The Argus*

show up government as inadequate or raise the profile of the organisation for its own sake.

Another key lesson from the Black Sash is that organisations advocating for change need to maintain a balance between their own agenda and profile, and achieving the aims set out at the start of an advocacy campaign. In all the work the Sash engages in, there is a solid thread that runs through its staff, Board, choices and advocacy strategies: The core values of the organisation. The Black Sash is a values-driven organisation. It holds its core values close to its heart and deep in its mind.

The Black Sash's advocacy model also clearly shows that advocacy cannot just be an add-on function. It needs to be incorporated as an approach to programme implementation and to reach organisational objectives.

Another insight from the Black Sash is that organisational integrity is only possible through honest and transparent relationships with government and





civil society organisations. In advocacy, organisations must interrogate why particular steps are taken and who is going to benefit from an intervention. Being transparent in advocacy work means always keeping the target of an intervention informed and always including partners in the strategy. For example, having integrity means knowing when to stop with litigation in favour of using cooperative forms of engagement. It is also important to accept victory with humility and recognise the contribution of partners in advocacy campaigns.

The Sash is extremely protective of its independence, which has allowed it to cultivate its reputation. The Sash is equally respected by government and civil society. However, no advocacy organisation needs to go it alone. The Sash invites all advocacy organisations to share in its knowledge, experience and resources. In its more than 50 years of existence, the well-funded, well-resourced Black Sash has built up a sophisticated machine, which it shares generously.

The Black Sash, with its unique, rich history and resources is a model for other organisations in the field.

# Sources of Data

## Interviews

### **National Office**

Marcella Naidoo, National Director

Jane Coombe, National Programme Director

### **Black Sash regional office**

Leonie Caroline, Regional Director: Western Cape

Thandiwe Zulu, Regional Director: Gauteng

### **Board of Trustees**

Sibongile Mkhabela, Chairperson

Jenny de Tolley

Di Oliver

Yasmin Sooka

### **Former Black Sash staff**

Allison Tilley, former National Advocacy Manager

Isobel Frye, former National Advocacy Manager

### **Others**

Geoff Budlender, Attorney on the back pay case

## Literature

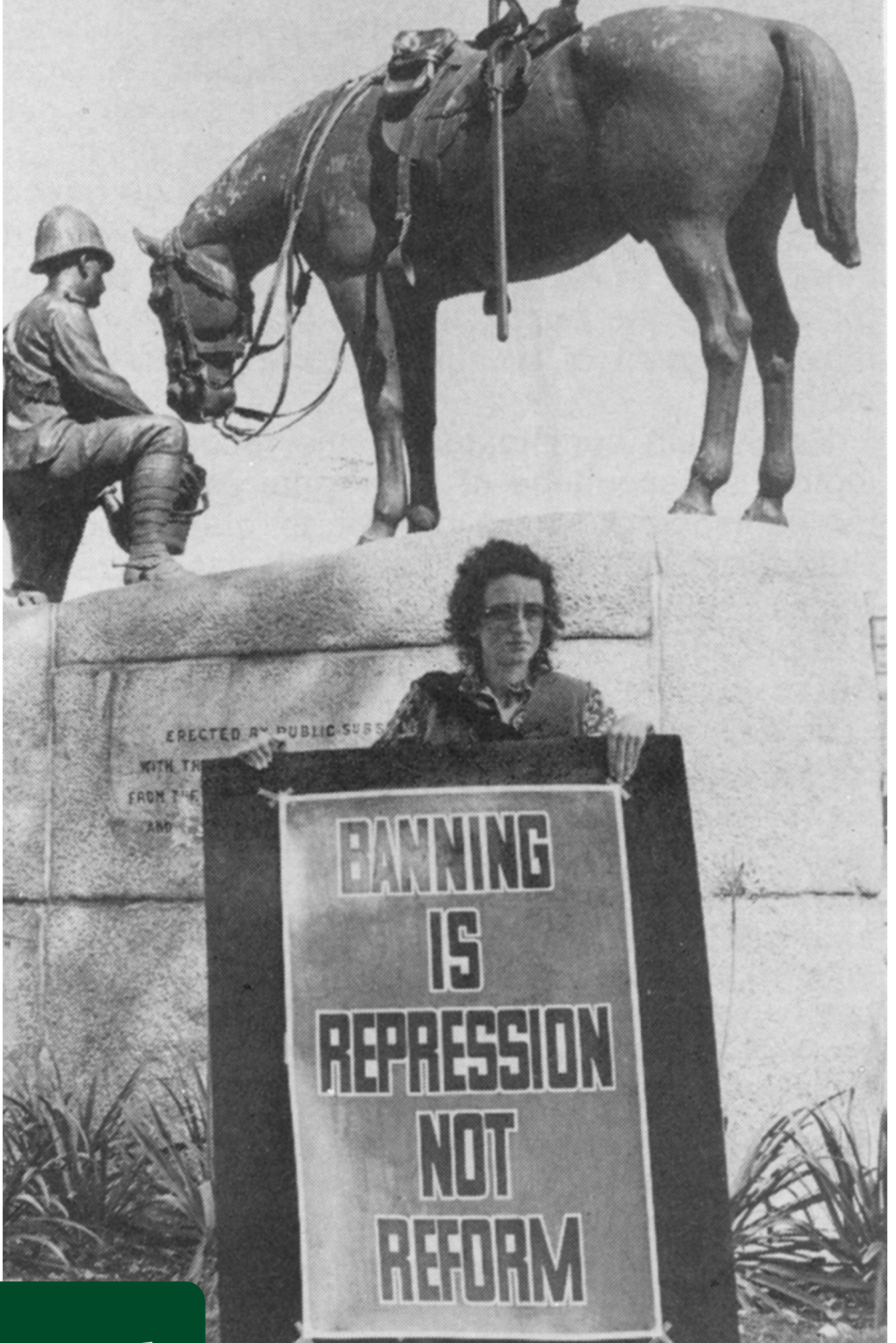
- Black Sash (2004), "Conference on Promotion of Administrative Justice Act 3 of 2000 – a tool for transforming delivery in South Africa".
- Black Sash (2005), "The Golden Jubilee Report: 1955-2005".
- Black Sash (2006), "An overview of the work of the Black Sash: 2005-2006".
- Black Sash (2008), "Black Sash – Making Human Rights Real. The Black Sash Report for 2008".

## Website references

- Black Sash: [www.blacksash.org.za](http://www.blacksash.org.za) (archives)
- Legal Resources Centre: [www.lrc.org.za](http://www.lrc.org.za)
- Parliamentary Monitoring Group: [www.pmg.org.za](http://www.pmg.org.za)
- Department of Social Development: [www.welfare.gov.za](http://www.welfare.gov.za)

**Back Cover:** 1981: A Black Sash member pickets alone. Open-air meetings were prohibited. More than one person protesting was an 'illegal gathering'.

**Photograph:** Mike Vincent, Eastern Province Herald



## Case Study

### **HOLDING GOVERNMENT TO ACCOUNT**

Advocacy in an emerging democracy: The story of the Black Sash