



Annual Report

2015-2016

Natural Justice

Lawyers for Communities and the Environment

Mercantile Building ~ 63 Hout Street ~ 8001 Cape Town
South Africa

NATURAL JUSTICE

ANNUAL REPORT 2015-2016

MESSAGE FROM THE ASSOCIATION

During the course of this year, Natural Justice's Association has worked to reorganize its organizational structure, both in terms of the management and programmatic work. This is in response to the recognition that the 'association model' of governance, which has served us well in the past, had outlived its efficiency due to changes in the organizations' increased size, areas of expertise and geographic spread. After careful deliberation, it has been decided that the organization should be led by an Executive Director, a Chief Finance and Operations Officer and a Director of Programs. This model has subsequently been approved by the Board and will be implemented during the course of the 2016/2017 financial year.

In the meantime the organization is reorganizing its work according to the following programmatic areas, namely:

- Governance of Lands and Natural Resources Program
- Conservation and Customary Use Program
- Traditional Knowledge and Benefit Sharing Program
- Sustainable Finance Program
- Climate Change Program
- Extractives and Infrastructure Program

Each of these programs has a Program Director, who provides strategic leadership to the programs development. They all are cross-regional thus facilitating important lesson-sharing across the organization's offices.

Programmatically, this year has been very productive. Herewith a few highlights: Under the **Governance of Land and Natural Resources Program** we engaged in strategic legal advocacy work as part of the African Commission's Working Group on Indigenous Populations/Communities and launched The Chronicles graphic novel as part of the Heroes project at the District Six Museum. Under the **Conservation and Customary Use Program** we have finalized the 'Human Rights Standards in Conservation' and are working with partners to support their integration into the conservation debate. Under the **Traditional Knowledge and Benefit Sharing Program** we continued to support the Khoi-San in their benefit sharing negotiations surrounding their traditional knowledge (TK), in particular supporting the Khoi-San in regards to key plants such as Buchu and Rooibos (ongoing). Natural Justice also supported Khoi-San traditional structures in reaching out to historical Rooibos farming communities along the Cedarberg belt region in the Western Cape. Under the **Climate Change Program** we provided evidenced-based advocacy on TK at the Paris Climate Change Conference; under the **Extractives and Infrastructure Program** we entered the final year of a cross regional project that compares the use of community protocols in four different mining/infrastructure scenarios (Argentina, India, Kenya and Zimbabwe). As part of the Sustainable Finance Program we provided ongoing input into the World Bank safeguards review process.

1. PROGRAMS

GOVERNANCE OF LANDS AND NATURAL RESOURCES PROGRAM

Program Director: Lesle Jansen

Context

Natural Justice's **Governance of Lands and Natural Resources Program (GLNR)** finds inspiration in the 'bundling of rights' approach as outlined by Darrel Posey around traditional resource rights and communities. The GLNR program is supporting the Southern African indigenous peoples to approach their collective rights gains within this traditional resource rights context. The Southern Africa indigenous communities continue to experience the effects of their community resource and governance rights not being formally recognized. Through the bundling of rights approach, Natural Justice could support the Khoi-San communities around key technical policy inputs and legal empowerment initiatives to ensure they find their voice through various policy frameworks. Through this work strategy, Natural Justice could include their development priorities, which has been historically excluded in both South Africa and Namibia. These different elements add to their community building. We extend these technical advising in East Africa as well through key land policy frameworks.

Elements & Work

The GLNR program aims to contribute towards supporting communities through a human rights based approach to help secure land tenure and natural resource rights, with a focus on gaining recognition for their contributions to the conservation and sustainable use of biodiversity.

- This program collaborates closely with the Conservation and Customary Uses program.
- Governance has been a key focus of this program. It has worked around legal advocacy for inclusion of the indigenous communities' governance priorities and approaches being reflected in both regional and national level policy development processes.
- International advocacy at the level of UN Permanent Forum on Indigenous Issues in New York has also been a focus at strategic times within the program. This work was largely supporting the Khoi-San in their collective rights around land, governance and language that remain outside the South African legislative frameworks.
- The program also took on African regional advocacy as part of its Program Director's membership with the African Commission on Human and Peoples Rights special mechanism called the Working Group on Indigenous Populations/Communities. This platform has been used to inform on the human rights issues affecting the indigenous communities Natural Justice has been supporting in Southern Africa.

- Assess our land, human rights and resource related community experiences and related mechanisms to meaningfully inform our approach, evaluate gaps in the law and make connections.
- This program focused on the element of cultural revitalization through the creation of the Heroes project. This work was to ensure that a recognition and sensitivity is built into our work as lawyers of the historical trauma communities are still struggling with. The Heroes project developed different cultural tools and resources such as the launch of a graphic novel drawing on Khoi San mythology to inspire youth. We held youth participatory workshops to raise the issues addressed in the graphic novel in collaboration with York University from the UK. We participated in a comic festival to share the graphic novel and raise awareness of these issues.
- Key publications were developed such as the Living Convention.

CONSERVATION AND CUSTOMARY USE PROGRAM

Program Director: Harry Jonas

Context

From 2011 to 2012, Natural Justice, with the support of SwedBio, coordinated a Legal Review and Recognition Study relevant to ICCAs. These comprehensive studies, undertaken in fourteen countries, provided strong evidence on the external pressures facing indigenous peoples and local communities (communities) and their environments.

It included the obvious pressures, such as broad trends characterized as 'globalization' and specific threats such as extractive industries and infrastructure project. But it also highlighted that conservation continues in many countries to have a negative effect on communities who want to maintain their connections to their territories, including through customary forms of conservation. In this context, the Conservation and Customary Use Program supports indigenous peoples and local communities to manage their territories according to their customary approaches and be recognized for their efforts, whether as protected areas or other-effective area-based conservation measures.

Elements & Work

The **Conservation and Customary Use (CCU) Program** is focusing on three areas of work.

- Community work near Bwabwata National Park in **Namibia**: We are assisting the Khwe community to develop a community protocol to secure: recognition for their association (Kyaramacan Association), land rights, access to veld and forest resources, the protection of the Khwe's traditional knowledge, the community's



Bwabwata BCP Process in Namibia (2014).
©Giulia Sajeve

right to free, prior and informed consent before the implementation of activities on their land, and the recognition of their customary institutions. The Image opposite shows a community meeting taking place as part of the work in Bwabwata.

b. Community work in Bushbuckridge, **South Africa**. This work was begun in 2009 when Natural Justice assisted the Traditional Healers of Bushbuckridge to develop a community protocol. Natural Justice continues to support the community to claim access rights to local protected areas to ensure a supply of medicinal plants and the continuation of their traditions and knowledge.



The Kukula Traditional Health Practitioners Association and SANParks Indigenous Nursery Staff, conduct a veld walk in Kruger National Park, to identify medicinal plant species of interest. ©Natural Justice

c. Our [Human Rights Standards for Conservation](#) work is an attempt to apply the Living Convention to the conservation industry and in doing so, reduce the number of instances of 'conservation injustice'. A draft is being circulated and a revised version will be presented at the IUCN World Conservation Congress (September 2016) and the Conference of the Parties to the Convention on Biological Diversity (December 2016). Partners include: [IIED](#) the [Whakatane Mechanism](#) and the [Green List of Protected and Conserved Areas](#). The image shows Kalahari-based culture that is threatened by exclusionary conservation initiatives.

The [Benelex](#) team of researchers from the University of Edinburgh are working with us in Bwabwata and Bushbuckridge, as well as a research site in Asia (Bario, Sawarak, Malaysia).

The program developed a series of case studies on UNDP's landscape approach in 2015 and as a follow up Natural Justice is developing a landscape-related tool for the self-assessment of landscape governance.

This programme is closely linked to the ICCA Consortium, which we hope will be funding NJ to run more legal studies and to conduct work in Kenya.

TRADITIONAL KNOWLEDGE AND BENEFIT SHARING PROGRAM

Program Director: Barbara Lassen

Context

Access to Genetic Resources and Benefit Sharing (ABS) has a long history at NJ, as it was the first issue that the organization worked on, and indeed ABS 'launched' Natural Justice as an organization through a first grant with the GIZ ABS Capacity Development Initiative. We were very active in the international negotiations that led to the Nagoya Protocol, among other things we served as legal advisers to the African Group and we were instrumental in the inclusion of "community protocols" into the final text.

Traditional Knowledge is a cross-cutting issue in our work, and it plays a role in many of our program. We still decided to include it specifically here for now, because of the strong links between the two issues.

Elements & Work

We entitled it the Traditional Knowledge and Benefit Sharing Program because in our understanding, issues of Benefit Sharing go way beyond the narrow scope of ABS and genetic resources. Moreover, we make it explicit in our strategy that while ABS holds a number of potentials for communities, it also bears risks if poorly implemented. For strategic reasons, we are still going to focus strongly on ABS in the next couple of years: there is a window of opportunity while governments are implementing the Nagoya Protocol, and we have a strong partner, the ABS Initiative, who is our main donor for the activities under this program.

Our strategy includes working:

At the local level through



legal empowerment of communities that want to engage with ABS: We currently work on local ABS processes in three countries:

- **Madagascar**, where we are advising GIZ in conducting a BCP pilot in the Boeny Region with several communities who provide plant material from *Cinnamosma fragrans* for use in essential oils (pictured above).
- **South Africa**, where we are supporting the National Khoisan Council in, among other things, negotiations over their traditional knowledge associated with genetic resources. The work has already brought about two ABS agreements. We supported them in negotiating two key plant species, namely Buchu and Rooibos (Nestlé). The work is now expanding to include traditional Rooibos farming communities as part of the benefit sharing negotiations around the Rooibos industry wide agreement.
- **Benin**, where we are providing support to the national NGO CESAREN, who are facilitating a BCP process with two local communities on, among others, the TK associated with plants found in their sacred forests.

At the national level by providing input to government policies and laws: This is relatively *ad hoc* at the moment. Our team members are periodically providing input to legislation in **South Africa** and **Namibia**, and we are supporting the national ABS process in **Benin**. We are still working closely with the ABS Initiative, and have recently participated in several scoping missions to partner countries of the Initiative, which led to road maps for ABS implementation in the next years.

At the regional and international level by bringing our experiences and those of our community partners to the debate, and influencing policy where it is still developing: Since the Nagoya Protocol was adopted, the intensity of engagement with the CBD on ABS and TK has diminished. However we still follow relevant CBD meetings, including on Article 8j. In April we provided a submission to the 9th CBD Working Group on 8j about the use of BCPs for Prior and Informed Consent, drawing on our lessons learned about good BCP process over the years. We are intending to follow the negotiations at WIPO more closely in the future. We also provided input into the Guidelines for ABS implementation of the African Union.

This year and next we plan to develop guidance materials on the involvement of indigenous peoples and local communities in ABS. This will draw on our experiences but also others around the world (good and bad).

CLIMATE CHANGE PROGRAM

Program Director: Cath Traynor

Context

As early as 2007, Tauli-Corpuz and Tamang stated that Indigenous peoples do not only suffer from the effects of climate change, in some cases they can suffer from the *solutions* to climate change. The mitigation policy reducing emissions from deforestation and forest degradation (REDD+) is a prime case, and has been cited as

a contributing factor in forced and illegal eviction of the Sengwer Indigenous peoples' from their ancestral lands in the Emboult Forest, Kenya, has resulted in restrictions on forest use for indigenous peoples in Mai-Dombe, DRC.

Adaptation policies and actions may also be problematic for peoples and communities, for example, hunter-gatherer and pastoralist communities face existing discrimination and their priorities are not reflected in national policies, or government policies to address climate change may result in detrimental impacts, for example, increasing agricultural production has resulted in pushing pastoralists into more marginal areas. Adaptation actions can therefore result in 'maladaptation' where activities increase risks from adaptation and can also increase vulnerability.

Natural Justice's Climate Change Program Strategy aims to promote and protect Indigenous peoples' and local communities' rights in mitigation and adaptation policies and activities designed and implemented to address the adverse effects of climate change.

Elements & Work

The program focuses upon four key areas as follows:

1. Local Empowerment: Natural Justice is working to support communities to ensure their free, prior and informed consent and meaningful participation in climate change policies, programs and projects that may affect them. During 2012-13 NJ developed e-modules and hosted multi-stakeholder African dialogues on reducing emissions from deforestation and forest degradation (REDD+), a mitigation policy under the United Framework Convention on Climate Change (UNFCCC) (funded by OSISA & HBF). Currently, NJ partners with Griqua and Nama Indigenous Peoples in **South Africa**, in the '[Empowering Indigenous Peoples and Knowledge Systems Related to Climate Change and Intellectual Property Rights](#)' project [funded by the Open and Collaborative Science in Development Network ([OCSDNet](#)) through IDRC, and a related project focusing on community elements through the [Foundation for Human Rights](#) South Africa].

2. National and Regional Level Processes: We provide specialist advice on rights-based approaches to climate change, and in particular technical advice on the REDD+ Safeguards and standards to governments, civil society and communities especially in the African region. NJ is a member of the Adaptation Network in South Africa, and recently we have been active locally in SA, linking with adaptation professionals and practitioners (see blog posts on [SA CSO COP21 Feedback](#)).

At the regional level, we contributed towards a Pan-African climate change and food security campaign which promotes women, small-holder farmers (see '[womenfoodclimate](#)', its [Facebook page](#) and our blog on a '[Research Validation Workshop](#)'). This year we are also producing a Policy Brief on the Right to Food within 3 southern African countries (as part of our OSISA grant), and we will participate in the Pre-AMCEN African Post Paris/UNEP MGSF Consultative Workshop (April, 2016) and the African Ministerial Conference on the Environment ([AMCEN](#)).

3. International Level: We support Indigenous peoples and Local community caucuses in the United Nations Framework Convention on Climate Change negotiations. In 2015 we co-hosted two UNFCCC Side Events on the [value of indigenous knowledge in landscape scale responses to climate change](#), and highlighted the need to [protect IK and IK holders rights in adaptation](#) where Griqua Community Co-Researcher, Reino Le Fleur co-presented and we built his capacity to engage in UN processes. Through NJs Skill Share session we shared our understandings of the UNFCCC COP21 Paris Agreement and produced a Working Paper on the binding nature of the agreement and implications for indigenous peoples.



UNFCCC COP21 Side Event co-hosted with IIED & GTA: Natural Justice's Dr. Cath Traynor & Community Co-Researcher Mr Reino le Fleur (far right). ©Natural Justice

Together with the Sustainable Finance Program, in 2015 we contributed to [policy discussions](#) concerning civil society participation in the Green Climate Fund.

4. Research: Within the 'Empowering Indigenous Peoples and Knowledge Systems Related to Climate Change and Intellectual Property Rights' project, a collaboration between ourselves, the University of Cape Town and Indiana University, we employ [Participatory Action Research](#) methodologies to examine processes of open and collaborative science related to Indigenous Peoples, climate change and intellectual property. We employ a critical reflective approach to scrutinize the research process itself, see our blog on '[Multi-institutional research collaboration: Regulation, ethics and power](#)' and we are enhancing our capacity, for example through NJ skills share on '[Coding in Grounded Theory Practice](#)'. The project has been selected as one of 8 projects globally for the 'Exploring the opportunities and challenges of implementing open research strategies within development institutions' research project, we will explore issues around openness and indigenous knowledge (IDRC grant).

EXTRACTIVES AND INFRASTRUCTURE PROGRAM

Program Director: Gino Cocchiaro

Context

The desire for resource extraction and mega-infrastructure developments continues unabated in sub-Saharan Africa and India. Such projects continue to have massive impacts on local communities and their environments. Though laws may exist to mitigate impacts and provide remedies for communities, they are rarely enforced to adequately protect them. In many cases, communities are completely unaware of project proponents legal obligations and their own rights to a clean and healthy environment.

Under the Extractives and Infrastructure Program, Natural Justice has continued its work in Kenya, Zimbabwe and India aimed at ensuring community voices are heard on extractives and infrastructure projects so that laws are followed, their environments and ways of life protected

Elements & Work

1. Local Legal Empowerment

In Kenya, we are supporting communities to strategically use laws to engage in decisions affecting their lands and resources. In Lamu, we have supported community members in monitoring the development and of a port and ensure the environmental impact assessment process for a coal power plan follows environmental regulation. In Kilifi and Marsabit Counties we have begun to assist community members monitor the environmental license conditions and file complaints with regulatory authorities in relation to salt industry projects and the construction of a major highway. In 2016, we will begin a para-legal program to further assist affected communities use law to ensure legal compliance.

In Zimbabwe and India, we are supporting a community to develop and utilise a community protocol in response to mining taking place in their local areas.



Chiadzwa, Zimbabwe - communities affected by diamond mining meet to develop their community protocol. ©Natural Justice



Marsabit County, Kenya - Highway being built.

2. National Level

Natural Justice carried out analyses of the energy and petroleum sector bills and assisted in making submissions before Parliament, with the Kenya Civil Society on Oil and Gas and the Kenya Working Group on Oil and Gas. We continue to track policy developments in the petroleum sector and were involved in participating in the development of Kenya's Petroleum Master Plan in early 2015. In 2016, the Access to Information Bill, 2015, was filed in Parliament and given its relevance and importance in our projects, remains an essential law to keep track of.

3. Research

In collaboration with Heinrich Böll Foundation, we have continued our work on the "Community Protocols in Extractives" Project. Now in its final year, the project has collated the experiences of community protocol development and use in Kenya, Zimbabwe, India and Argentina.



Community Protocol discussions in Lamu Kenya. ©Natural Justice

SUSTAINABLE FINANCE PROGRAM

Program Director: Jael Makagon

Context

The Sustainable Finance Program (SFP) was started in 2015 in recognition of the fact that decisions by global financial actors have impacts on communities' rights. For example, development finance institutions such as the World Bank often fund large

infrastructure or extractive projects that can displace communities. Decisions about financing regional or continental infrastructure plans are made in bodies such as the G20 or the New Partnership for Africa's Development. Yet communities often have no voice in these institutions or processes. The SFP seeks to build links between financial decisions made at the national and supranational level and the effects of those decisions at the local level.

Elements & Work

The SFP has several goals at the local, national and international levels:

Local:

- Provide our community partners with information and advice related to the financing of development projects, such as through strategic investment mapping;
- Provide partners with tools to communicate with companies should the need arise.

National:

- Support regional offices with assessing how financing initiatives should influence our national strategies.

International:

- Engage with institutions and processes that finance development in order to ensure that communities are taken into account with the guidance from our regional programs and their partners;
- Link activities with other NJ programs, such as infrastructure and extractives as well as climate, especially in relation to strategically targeting our work on the international level.

To date, the major work under the program has been at the international level, specifically engaging with institutions.

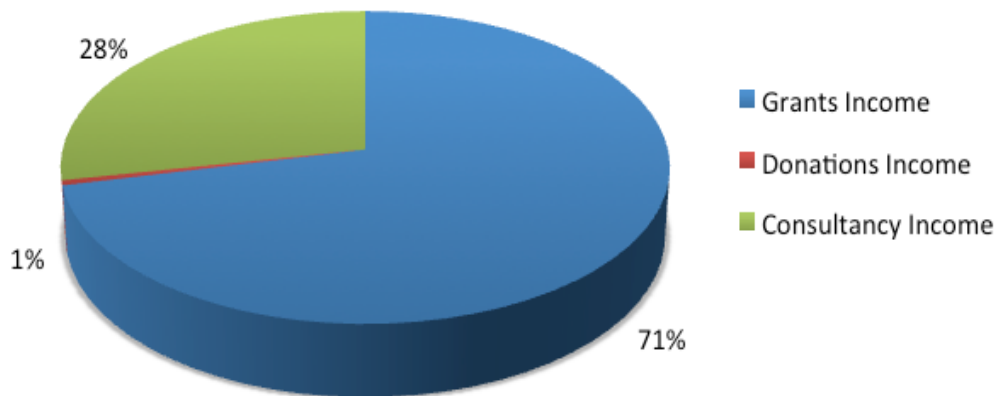
- World Bank: participating in consultation process of updating World Bank's environmental and social safeguard policies. Blogs [here](#) and [here](#).
- African Development Bank (AfDB): [participating in consultation process](#) of updating policies of AfDB's grievance mechanism.
- Advocacy on grievance mechanisms of development finance institutions: case studies and research for publication analyzing effectiveness of DFI grievance mechanisms. Blogs [here](#) and [here](#).
- Additionally, Natural Justice together with several partner organizations is currently leading on the planning of a Workshop in New York in April 2016 to learn more about global financing trends and gaps in accountability in order to help develop strategy for the SFP.

2. FINANCES

Chief Finance Officer: Laureen Manuel

Grant funding remains our primary source of financing, accounting for 71.4% of our overall funding for the year under review. This funding provides support for our work with communities, research projects and contributions towards our operations and overheads. Funding received through our consultancy work for the provision of technical services to partners, collaborative projects with partners and governments, has increased to 28% of total funding for the same period last year, while donations remains below 2% of the total.

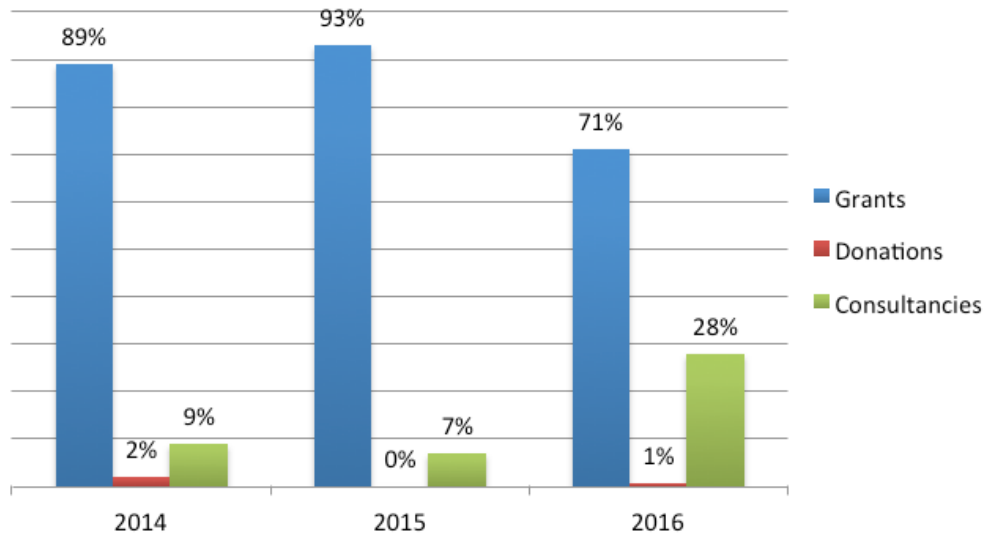
Funding Sources (Year ending February 201)



While we have had an increase in consultancy funding compared to previous years, our overall income has declined by about 17% compared to last year. Despite this decline, we were still able to deliver on all our programs.

We are immensely grateful to all our funders, donors and partners for their ongoing support, without which we would not be able to do what we do.

Funding Sources Year on Year % Comparison



Financial Summary (in ZAR)

for the year ending February 2016

Grants Income

American Jewish World Service	459,406
Ford Foundation	839,918
Deutsche Gesellschaft Internationale Zusammenarbeit (GIZ)	578,764
Foundation for Human Rights	4750
Heinrich Böll Foundation (Southern Africa)	2,103,530
International Institute for Environment Development	165,311
Open and Collaborative Science in Development Network	280,208
Open Society Initiative for Southern Africa (OSISA)	321,509
Swedbio	724,844
The Christensen Fund	127,880
Total	5,606,221

Donations Income

Advanced Human Rights Courses	500
-------------------------------	-----

International Development Law Organisation	2,029
--	-------

Just Giving – World Pay Donations	941
-----------------------------------	-----

Mwamboia Coastal	12,418
------------------	--------

Namati	3,638
--------	-------

SOMO	3911
------	------

Total	40,977
--------------	---------------

Consultancy Income

Both Ends	63,531
-----------	--------

Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ)	1,301,212
---	-----------

Forest People's Program	5,798
-------------------------	-------

Friends of Lake Turkana	81,180
-------------------------	--------

Global Forest Coalition	8,464
-------------------------	-------

Heroes Workshop	7,869
-----------------	-------

International Institute for Environment & Development	2,029
--	-------

Kivulini Trust	9,931
----------------	-------

Oxfam	2,300
-------	-------

Phytotrade	198,036
------------	---------

Roundtable on Sustainable Palm Oil	60,451
------------------------------------	--------

Tokyo Institute	571
University of Edinburgh	314,588
The United Nations Office for Project Services	85,693
Total	2,209,546

TOTAL INCOME **7,856,743**

Expenditure

Personnel Costs	1,396,463
Consultant Costs	2,761,962
Administration & Organisational Costs	417,116
Bank Charges	101,847
Project Travel	2,628,461
Total	7,305,849

3. HUMAN RESOURCES

BOARD MEMBERS

Natural Justice Board members for the 2015/2016 financial year are:

Hennie van Vuuren

Julian Sturgeon

Loretta Feris

STAFF AND CONSULTANTS

Gino Cocchiaro

Stella James
Lesle Jansen
Alphonsa Jojan
Harry Jonas
Barbara Lassen
Jael Makagon
Shalom Ndiku
Revati Pandya
Cath Traynor
Johanna von Braun

FELLOWS

Bhuvana Balaji
Yvette Le Fleur
Zembi Odera
Prerna Talukdar
Nayana Udayashankar
Ivan Vaalbooi

FINANCE TEAM

Ilse Booysen
Nicoleen Joubert
Laureen Manuel

ASSOCIATES INTERNS AND RESEARCHERS

Rose Birgen
Lorna Born
Shaun Dunn
Luchino Ferraris
Quirine Govers
Mark Ogada
Hilary Price