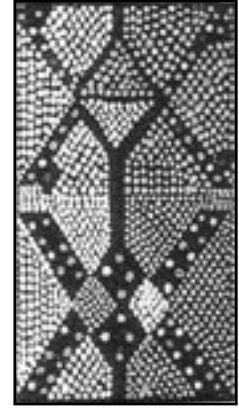


The Legal Assistance Trust

NEWSLETTER



Securing livelihoods within a
legal framework



George Bizos, Mandela's lifelong lawyer and friend was a constant visitor throughout prison years

In December last year, the Legal Resources Centre (LRC) celebrated their 25th Anniversary and International Human Rights Day while at the same time they paid tribute to the indomitable lead counsel and human rights lawyer, George Bizos. The occasion successfully demonstrated the continued support and interest that the LRC enjoys in the legal profession, corporate sector, funders present and fellow NGO's in South Africa.

In honouring George Bizos, the citation reads:-

"The Trustees, staff and friends of the Legal Resources Trust and the Legal Resources Centre have the honour of playing tribute to Advocate George Bizos for the contribution he makes and continues to make to the cause of justice, human rights and the Rule of Law. His work has never been simply technical or mechanical – it has always been accompanied by a deep sense of humanity and an identification with those whose cause he champions. He continues to demonstrate that the law can be used as a vehicle through which the lives of individuals and indeed the destiny of a nation could be changed. He serves as a shining example to many of us and we have been particularly privileged that he has chosen to work at the Legal Resources Centre."

Guest speakers at the function, the Deputy Chief Justice, Pius Langa and Tokyo Sexwale, reminded all of the relevance of institutions such as the Legal Resources Centre and the critical role that human rights lawyers and activists play in the present day South Africa.

These sentiments were endorsed by the consumer public when voting for the LRC for the Consumer Award in March 2005 which was held under the auspices of the Minister and Department of Trade

/Continued overleaf

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and Industry. The award appropriately recognised the work and commitment of the paralegals in the organisation.

There has hardly been a week without a report in newspapers or legal briefs on cases and interventions in which the LRC has been involved in. The organisation has successfully represented large numbers of clients but has also lost a few cases. In those which it has been unsuccessful, useful lessons have been learnt.

In reviewing the past 25 years of the LRC at the recent fundraising banquet, the organisation recalled with pride the pioneering vision and formative years. Apartheid at its worse was of little deterrent to the spirit and determination of the clients and communities that the LRC represented. With the dawn of a new constitutional democracy in 1994, new and different challenges and opportunities emerged through blazing new constitutional jurisprudence. However, as with other NGO's, the LRC also faced the pressures of foreign donors diverting their attention elsewhere either to the new government or problematic and needy areas elsewhere in the world.

Nonetheless, the LRC was spurred on by the opportunity of working within a rights framework in contributing to the uncharted jurisprudence on socio-economic rights. It adopted new strategies in its litigation, advocacy and educational work. New disciplines of economic and social research and analysis combined with greater collaboration with other organisations in civil society became increasingly necessary to meaningfully engage the Constitution through litigation and advocacy. Its lawyers and some of its Trustees were also called upon to assist with the drafting of new laws and policies such as in land restitution, environmental laws and with the Truth and Reconciliation Commission amongst others. The LRC had also successfully campaigned together with several other organisations for the inclusion of the socio-economic rights in the final Constitution. While reviewing its past, the

LRC paid tribute to the many, many clients it served over the years. Their confidence in the lawyers enabled the LRC to contribute, albeit modestly, to a young constitutional jurisprudence.

NEW POSTINGS AT THE LEGAL RESOURCES CENTRE

We would like to welcome Steve Kahanovitz to his new post as National Director. He first started working in an LRC supervised law clinic as a student and jointed the LRC full time in 1986 as an attorney in the Johannesburg office. Steve brings to the National Director post his previous experience as Regional Director of the Cape Town office and, more recently, Legal Director of the organisation.

He has represented clients through states of emergency and was one of the attorneys of record in the 4-year damages case flowing from the burning of the KTC squatter camp in Cape Town in 1986. Steve was active in representing numerous clients before the Truth & Reconciliation Campaign. His tireless efforts on behalf of the less fortunate have earned him an excellent reputation as lawyer and defender of human rights. We wish him all the best.

Vincent Saldanha, who stood down as National Director after 2 years service, has taken a well earned 3-month sabbatical. We would like to express our appreciation to Vincent for his outstanding services.

In October last year the new Development Director, Mrs Thabile Mhalmbo was appointed. Thabile has had fundraising experience in both the NGO Sector and the State (Department of Health) and is a very welcome addition to the team.

We are pleased to report that in July this year Mr Rory Williams accepted the post of Financial Director. The LRC are extremely glad to have secured Rory for this critical position and we all wish him every success during his tenure.

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LEGAL ASSISTANCE TRUST NEWS

The past year has been a very busy but difficult year for the LAT. As expected, the level of donations fell away markedly from £559,000 to £57,853 with the ending of major grants from Atlantic Philanthropies and Comic Relief. On a more positive note, our unrestricted donations from individual donors and smaller trusts increased from £18,339 last year to £32,807, and, in our last financial year, we attracted almost 60 new individual donors. We are pleased to report that the estimated projected income for next year amounts to almost £237,000 which includes two instalments of a very generous new grant from Comic Relief for the LRC's housing project.

BBC 4 Radio Appeal. Sue MacGregor did a splendid presentation for us and the appeal went out on air on Sunday 14th November last year. For those of you who were unable to listen in, here is what she said:-

*“Twenty five years ago, in the dark days of Apartheid, a South African woman barrister living in Johannesburg had a vision – she established the pioneering Legal Resources Centre, which offered **free** legal advice to those who were particularly disadvantaged by the Apartheid laws.*

Today, ten years after the coming of democracy to the country, the LRC has grown to be one of the leading non-profit law centres in the World operating from 5 cities in South Africa. Apartheid may have gone, but its companion problems of poverty, dispossession and poor education have not. I have seen this at first hand, for I was brought up in South Africa and I return there regularly.

The LRC helps people like Ruth, a primary school principal with 152 pupils. I say school – it used to be two run down sheds with no running water, no toilets, no windows and no electricity. When it rained the roof leaked, when the doors were closed to keep out inquisitive snakes it was too dark to see properly, for 10 years Ruth complained to the local department of education. The LRC fought her case and now finally she has a decent school.

It helps people like Mzwandile, an illiterate former minder who lost all his fingers in an

accident at work. His pension had been stopped by provincial authorities – no reason was given. He had no income and relied on his elderly father for food. Thanks to the LRC and this test case, not only Mzwandile, but 90,000 other disabled people have had their grants reinstated.

It also helps the hundreds of thousands of pregnant women who are HIV positive. South Africa has some of the worse AIDS statistics in the World. The LRC was one of the organisations instrumental in compelling the Government to make anti-retroviral drugs available, which help prevent transmission of the disease to unborn babies.

Those are just three examples of how the lawyers from the LRC engage themselves in issues that create wide and lasting respect for the rule of law and human rights.

The LRC gets no Government support and relies on donations. Here in Britain, the Legal Assistance Trust was established as a UK charity specifically to support this vital and much needed work.

South Africa has made the transition from Apartheid to democracy, but democracy depends on equality before the law, and on constant vigilance.



Sue MacGregor

The appeal bought in over 200 donations ranging from £1 coins, and first class stamps to cheques for £100.00 Total donations received amounted to just over £3,600.

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LEGAL ASSISTANCE TRUST NEWS

Grant for Newsletter.

Thanks to the generosity of Matrix Chambers of Gray's Inn, London, who has provided a three year grant to cover the costs of producing our annual newsletter, we are, for the 2nd year running, able to bring you up to date with all our news in a special eight page edition. We are extremely grateful to Matrix as this publication is a very useful source of raising money and maintaining our profile.

Ex Chairman Recognised at Prize-Giving Ceremony. Guy Stringer, who retired from our Board in 1997, has recently been recognised at a recent convention for his commitment to the fundraising profession. Guy worked at Oxfam for many years, becoming Director in 1982 and oversaw a growth in income from £2.5m to £51m. He won his award for his huge influence in fundraising but unfortunately was too ill to receive the award in person. Guy is dearly missed at the LAT and we wish him well for a speedy recovery.

South Africa House Dinner. Everyone who attended the dinner agreed the evening was an unqualified success. The prestigious dinner, attended by 120 guests, took place in February in the glorious surroundings of South Africa House.



Justice Albie Sachs and LAT's Director of Administration, Barbara Davidson

Justice Sachs spoke about how South Africa can serve as a legal role model for Africa and made several references to the excellent work of the Legal Resources Centre.

The Trustees of the LAT would like to offer their sincere thanks to the South African High Commission, in particular to the First Secretary, Mark Reynhardt for all his time and effort and to Cyril Ndaba, Deputy High Commissioner for standing in for the High Commissioner at the eleventh hour. They would also like to express their gratitude to Meerlust for supplying the fine wines, to Energy Africa for their donation of £1,000 towards costs and to the David & Elaine Potter Charitable Foundation for their very generous grant of £10,000 for LRC's core funding.

In July Justice Sachs returned to the United Kingdom and Jill Williamson, trustee and former Director of the LAT, travelled to Magdalen College in Oxford to interview him:-

Justice Albie Sachs has played, over many decades, a pivotal role in the struggle for justice in South Africa and by never compromising his beliefs has been justly rewarded. He has fought for and seen the transformation of South Africa into a democracy and has participated in the drafting of the acclaimed South African Constitution. His skills and commitment led to his appointment as a judge on the Constitutional Court, the highest in the land.

The Constitutional Court was established after the 1994 elections to ensure that all public power was exercised in keeping with the Constitution, its processes and values and principles. One of the 11 original Constitutional Court Judges, Justice Sachs was appointed by Nelson Mandela. A human rights activist, Justice Sachs began practising law as an advocate on the Cape Bar where he defended people charged under racist statutes. Banned and then placed in solitary

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confinement he went into exile in 1966. A bomb planted in his car in Maputo by South African security agents, resulted in his losing an arm and the sight of one eye.

Speaking from Magdalen College, Oxford, Justice Sachs emphasised the importance of the Constitutional Court and referred to a number of cases of fundamental importance. The first case the Court dealt with concerned the constitutionality of capital punishment. The Judges unanimously decided that the death penalty violated the values of the Bill of Rights. “The decision might not have been popular,” he said, “but it was required by the Constitution. Its effect was re-affirmed when it was adopted into the final Constitution with basically the same text that had led us to declare capital punishment unconstitutional. It was a very important case and has been cited in many parts of the world.”

The Legal Resources Centre, he said, has played a very significant role in bringing cases to the Court. “I am always pleased that the LRC is involved in cases before the Constitutional Court. I know that they choose cases of major significance, that they prepare very thoroughly and ensure that we have high quality legal argument. The LRC doesn’t always succeed but it does contribute to the richness of our jurisprudence and legal development.”

The LRC, representing the Treatment Action Campaign, was involved in a case of far reaching consequence. This related to the provision of anti retroviral treatment to pregnant women with the HIV/AIDS. After a unanimous judgment was given by the court obliging the government to provide such treatment, Justice Sachs said he found himself in tears on leaving the Court. “This was partly that HIV is a powerful theme in our national life,” he said. “The Court was packed with people of varied backgrounds, all wearing T-shirts saying ‘HIV Positive.’ That was the setting. What moved me to tears was that I was part of an institution that could guarantee fundamental rights to people facing marginalisation and social exclusion and

assaults on their dignity because they were HIV positive. It brought home to me the nobility of our Constitution and the meaning of living in a Constitutional state.”

The Grootboom case, argued by the LRC on behalf of the homeless, has been cited all over the world. “This case also brought tears to my eyes,” said Justice Sachs “It dealt with the enforcement of social and economic rights. We gave a carefully balanced decision that underlined the responsibility of Government to respond to the crisis situation without proscribing solutions for the destitute. The Government now have a programme in place to deal with the homeless, who find themselves destitute through fire, flood or eviction, living in the open air with no place to call their own.

“The Government has created a range of emergency programmes arising from this decision which did not have to instantly provide homes for every family. The Constitutional Court orders have to deal with the art of the possible” he explained.

Justice Sachs also praised the LRC as a marvellous training ground for young lawyers from varied backgrounds. “Diverse legal skills do not dampen their passion for justice.”

Concluding, Justice Sachs stated that just as the South African Constitution inspires democracy throughout the Continent so decisions of the Constitutional Court are being studied from South to North.

AN LRC INTERN’S EXPERIENCE IN JOHANNESBURG

by Melanie Bejzyk

Every year, law school students and graduates from various nations spend several months working as interns at one of the LRC’s offices in South Africa. Most individuals are sponsored by their universities or organisations in their home countries and are selected for their interest and expertise in different aspects of public law, such as

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refugee law, access to housing and health issues. I can now count myself as one of these fortunate interns, having spent several very rewarding months working at the Johannesburg office of the LRC this year. I had the privilege of meeting Barbara during her visit to see first-hand the work of the LRC, and I was glad to oblige when she asked me to write an article for the LAT's newsletter about my experience in South Africa. My work at the LRC covered two main areas: first, refugee rights and secondly, land reform and housing, the latter of which I would like to report on.

Housing and Land Reform

One of the most shocking cases that arose while I was in South Africa was the mass eviction of over 20,000 residents from Chris Hani, an impoverished informal settlement in Gauteng province.

The LRC provided legal representation to a substantial number of the residents, who were rendered homeless by the eviction.

A Sheriff, accompanied by a private eviction company and municipal officials, had arrived at Chris Hani and forcibly evicted our clients, purportedly under a court order granted to the municipality. Several of my LRC colleagues and I set aside whatever we were working on at the time in order to interview a number of evicted residents, who described how their shacks had been broken down and demolished by the eviction company. One woman told me how she was at home when the eviction company arrived. She attempted to remove her belongings, but was forced to flee because employees of the eviction company had started to demolish her home while she was still inside. She was unable to retrieve her belongings from the site as employees of the eviction company set fire to the site where her home used to be. While the municipality claimed it had given adequate notice of the eviction in the form of notices posted in the settlement in English, such notice was inadequate given that many of the evicted residents do not read English, but rather have

an African language as their mother tongue.

In court, the LRC argued that there was inadequate notice of the eviction, that the eviction was carried out without any offer of alternative accommodation or shelter being made available by the municipality as is required by law, and that the appalling circumstances under which evicted residents were living violated their rights. Prior to the eviction order being executed, no attempts were made by the municipality to engage the community and arrive at an agreed or mediated solution to their occupation of the land. Their homes were simply demolished and they were left to fend for themselves. The LRC was successful in obtaining an order from the court compelling the municipality to provide emergency assistance to the evicted residents including access to sufficient food, water, sanitation, and basic temporary shelter. This case has required much follow up by the LRC as the municipality has failed to adhere to many aspects of the court order.

Such breaches of individual rights to dignity, adequate housing, shelter, and other basic necessities of life continue to occur with disturbing regularity in South Africa today. These evictions are a consequence of the wider legacy of racial segregation and racially-skewed land distribution laws which, for example, reserved only 10% of the land mass for blacks and forcibly removed them from areas where black occupation was deemed illegal. In addition to litigation, the LRC has participated in the drafting of some of the legislation, including the 1994 Restitution of Land Rights Act, aimed at compensating people dispossessed of their rights to land as a result of past racially discriminatory laws and practices.

It was truly a pleasure being a part of the LRC, an organisation that has consistently advocated on behalf of the most vulnerable individuals in South Africa.

Melanie Bejzyk is a graduate of the University of British Columbia Faculty of Law in Vancouver, Canada.

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LAT VISIT SCHOOLS IN DURBAN

Mahendra Chetty, Director of the LRC's Durban office took us to meet the principal of Clareville Primary School, Sangith Bhairporsad – an extremely enthusiastic gentleman, devoted to the success of his school and its pupils.

Clareville School was built by the community about 50 years ago. 90% of the 570 pupils are refugees from other countries or from neighbouring informal settlements and townships that now surround Clareville.

Informal investigations led by the school found that many of these children come to school hungry and without lunch for the day. "Their only meal is in the evening, which may be either bread and water or beans and pap. This prompted us to start our feeding scheme" said Mr Bhairporsad.

Bhairporsad said he first applied to the Department of Social Welfare, originally responsible for providing school feeding schemes, but later learnt that the school was turned down because it was in a "so-called advantage area". In 2004, when the education department took over the nutrition programme, every school, except Clareville, was given application forms. Even after the principal managed to acquire the forms and sent them off to the department, they received no response.



Children of Clareville Primary School enjoying a nutritious meal of savoury rice and vegetables

The matter was then put to the school governing body, which turned to the LRC to represent them in Court. This test case began in May last year and in March, 2005 we were delighted to learn that Clareville was finally placed on the government's Primary School Nutrition Programme.

The LRC represent 20 desperate schools who are preparing to go to court to force the state to feed their children.



Mahendra Chetty (back row, right) pictured with LRC/LAT representatives and children of Fairleigh Primary School

In our last Newsletter and in our radio appeal, we reported how for five years Ruth Diamini, principal of Fairleigh Primary School, had fought the KwaZulu Natal Department of Education to build a formal school for her pupils who were being taught in two run-down sheds with no water, toilets and no electricity.

With the help of the LRC the children now have all the facilities our children take for granted. The new school has 5 classrooms and an administration block, clean drinking water, desks, chairs, chalk boards, electricity and toilets. The children grow their own vegetables and flowers. Younger siblings are also taken care of as often there are no guardians at home to look after them.

Photographs taken by Barbara Davidson, Administrative Director, Legal Assistance Trust

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LAND CLAIM COULD CHANGE THE DESTINY OF A PEOPLE

Gert Domroch has lived in the Nama village of Kuboes in a remote corner of South Africa's Northern Cape Province for all of his 75 years. From his backyard, the old man gestures with his pipe to the surrounding expanse of windswept desert against a backdrop of jagged volcanic mountains: "This is the land of our forefathers and we've been dispossessed".

The land he is referring to is known as the Richtersveld and extends about 100km to the south to include the villages of Eksteenfontein and Lekkersing, as well as encompassing Richtersveld National Park to the north and the coastal towns of Port Nolloth and Alexander Bay. It was on the green, coastal plains surrounding Alexander Bay that Domroch's grandfather and the majority of the Nama descendents of Kuboes used to graze their livestock.

Following the discovery of diamonds in the area in the 1920's, their land was seized by government and the Nama people were driven into the harsh desert interior, where most of them still live in tin shacks and small cement houses without electricity or running water. The community's isolation from the outside world is ensured by unpaved roads that are virtually impassable without a four-wheel drive vehicle. Domroch was among five community members who began a legal battle to reclaim the land of his ancestors in 1998. Two of the five had died in the seven years that have elapsed, but the last stage of the battle is almost over.

For the approximately 5,000 inhabitants of the Richtersveld, most of whom lack jobs and access to basic services, such as schools and hospitals, the outcome of the case may mean the difference between continued poverty and joblessness and the possibility of a better future for their children. The case is also likely to have repercussions for the government. State owned Alexkor, has been extracting diamonds from Alexander Bay since 1927, and if the court rules in favour of

the Richtersveld community, the government may be required not only to transfer ownership of the company to the community, but to compensate them for all the diamonds removed from the land in the last 80 years.

A Constitutional Court ruling, in October 2003, had already recognised the legitimacy of the community's claim to the land and mineral rights, but 18 months of out-of-court negotiations between Alexkor and the claimants have failed to yield a restitution package that both parties can agree.

Legal proceedings began in the Land Claims Court in Cape Town in April, 2005 to determine the nature of the restitution. Domroch, speaking his mother tongue, Nama, told how as a young man he laboured for a pittance on the state-owned diamond diggings that his community is now reclaiming. Speaking through an interpreter and bundled up in the jackets of two members of the community's legal team against the cold of the court room air-conditioning, he told the court that the fencing-off of the diggings when diamonds were discovered had devastating consequences for the community. The fences cut them off from grazing land and from the grave of a chief. "This dispossession, this denudation meant our human dignity was taken away – we were stripped of everything." Demroch said. Henk Smith, one of the LRC lawyers representing the community, asked what could be done to put this right, he said "I think the person who took a thing from you must give it back".

The hearing of the Richtersveld community's R2.5m land claim has been postponed to October, 2005. Land Claims Court Judge Antonie Gildenhuys says that 7 weeks had been set aside: 5 of them would be used for further testimony, one to allow the batteries of advocates to prepare their arguments and one to present those arguments in court. However, if evidence takes longer than expected the hearing might have to resume in 2006.

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