

Security concerns of the magistracy

The Magistrate's Oath states that magistrates undertake to 'administer justice to all persons alike without fear'. In the face of attacks, do magistrates not experience the very real human emotion of fear? Two regional court magistrates have been murdered and there have been three attempted murders in the last two years. A further attempted murder is under investigation. Regional court magistrate, Ockert Olivier, was shot and killed in his driveway in Nigel on 23 October 2002.

To understand the trauma and concern about attacks on magistrates, ARMSA conducted a national survey involving approximately 180 of its 230 members.

JOASA, Western Cape undertook an inspection of 29 courts in the Western Cape, which revealed shortcomings in security in certain courts but did not concentrate on the human resources situation.

Both the survey and inspection assessed security measures. The findings were:

- Regional court magistrates do the bulk of serious criminal cases, which were previously done by judges. The jurisdiction of the magistrates in terms of the Minimum Sentencing Provisions now extends to 25 years. Such jurisdiction opens magistrates to increased security threats. However, the security arrangements in place for judges have not filtered down to magistrates.
- Magistrates are vulnerable to attacks in courts, in their vehicles and homes. This vulnerability is increased when dealing with sensitive cases. The question arises as to how the Magistrates' Commission will deal with magistrates who refuse to sit in certain cases such as gang-related violence.
- Murder attempts, shootings and

By
*Pritima
Osman,*
LRG



other attacks receive media coverage. In private, magistrates live with threats to their lives and to the lives of their families, which are made in person, telephonically or by letter.

- The threats are so acute that some magistrates have indicated a need for 24-hour security in the form of bodyguards.
- Many magistrates revealed that they are extremely vulnerable when, after sentencing for instance, they run the gauntlet of family members and the public to get to their offices, which also lack any security measures.
- JOASA's survey revealed that 66.7% of the courts they surveyed had no security officers. Electronic sensors, where they exist, either do not work or need attention. Parking lots are unsecured and targets for attack.
- Many courts are located in high crime areas.

We asked Judge Hlope whether he could tell us what the security arrangements for judges are and in terms of which rules and regulations these are enforced. Unfortunately, the details were not open for discussion. He did state that the security arrangements are made in accordance with the terms and conditions of employment under the Judges Act. According to Judge Hlope a comparison between the terms and conditions of employment for magistrates and those for judges was a case of comparing 'apples and oranges'.

The fact is that when judges are appointed they receive a security

assessment and an upgrade of their homes. Magistrates, especially regional court magistrates, who appear to be the targets for serious and severe attacks, do not.

Discussions with magistrates reveal a sense of being demoralised and not being valued by the Department of Justice. It is well known that magistrates may not strike or engage in other forms of 'industrial action'. In the face of inaction and lack of concern by the Department, the only action magistrates may take to increase safety measures is to approach the courts for relief. Will it take another case of the Van Rooyen genre, for the Constitutional Court to decide on the Department's responsibility to magistrates? How many deaths and serious injuries will it take for the Department to justify expenses in respect of security for magistrates?

Both JOASA and ARMSA have developed a set of recommendations to the Department. ARMSA has embarked on a series of meetings with the Director on security in the Department of Justice. Questions of money and resources in the form of personnel and training also need to be addressed.

What will it take for the Department to take action? Hopefully, not more losses and injuries. An immediate interim measure would be to increase the number of police at court buildings.

It would appear that the lack of security for courts and magistrates threatens the independence and functioning of the courts. Protection of the independence of courts is enshrined in section 165(3) and (4) of the Constitution. Sections 7(2) and 12(1)(c) impose a duty on the state to protect its citizens. This establishes the constitutional basis for the call for protection and security for magistrates. A robust, urgent reminder needs to be made before more lives are affected.

The use of force in effecting arrest

By Boyane Tshehla

Department of Criminal Justice, UCT

Section 49 of the Criminal Procedure Act, which regulates the use of force in effecting arrest, was amended four years ago. The subsequent debate around this amendment has been heated and characterised by misinterpretations and misconceptions. The amendment however, did not change much in the law of South Africa, as Kriegler J correctly stated in *S v Walters & Another* 2002 (2) SACR 105 (CC). The question is what has really changed? To answer this, it is necessary to consider the practical implications which arose from the section in its pre-amendment form and those that arise from the amended version. The following were the most important practical implications of the *old* section:

- If a person was reasonably suspected of having committed a specific offence contained in Schedule 1 of the Act, an arrestor (police officer or member of the public) trying to effect arrest could use force, even lethal force if necessary.
- It was justifiable to kill such a person who committed the offence if s/he tried to flee. An explanation of the limits of justifiable homicide is important for determining the purposes of the amendment. If a person had committed a Schedule 1 offence (e.g. murder) and tried to flee after an attempt to effect arrest had been made, use of force and lethal force was legitimate in order to stop him/her from fleeing, within the requirements laid down in *Matlou v Makhubedu* 1978 (1) SA 946 (A). The requirements were that a warning shot and an incapacitating shot be fired.

The new section does not use the nature of the offence as the determining factor. At the risk of oversimplification the practical implications of the *new* section are:

- Arresting persons are entitled to use force if necessary in effecting arrest. This is the same as its predecessor except that lethal force cannot be used if the suspect is simply fleeing and does not pose a threat to the arrestor or a third party.
- Use of lethal force is not allowed unless life or bodily integrity is in danger at that particular point or in the immediate future. This is perfectly in line with the law relating to self-defence and necessity.

In essence, if an unarmed person, who poses no threat to the physical integrity of others, steals property and flees arrest for this offence, the use of lethal force to stop him/her is not justifiable. *Govender v Minister of Safety & Security* 2001 (4) SA 273 (SCA) provides a good example.

Police officers saw suspects driving a car that had been reported as stolen. They tried to stop the suspects so that they could arrest them but these suspects got out and ran away. In terms of the *old* section the police could shoot at them because:

- The alleged offence falls under Schedule 1.
- The suspects were trying to flee while it was clear that an attempt to arrest them was being made.

But in terms of the amendment this cannot be allowed because:

- The nature of the offence is not the determining factor.
- The suspects were running away and therefore not posing any threat to life or bodily integrity of either the arrestor or anyone else.

I therefore find it difficult to understand why some prominent members of the SAPS consider the amendment of section 49 a threat to police officers. It is a trite fact that police are often in danger and that apprehending criminals is fraught with danger. Why is this danger seen to be increased by the amendment? In terms of the new section, police can still defend themselves. Nothing has changed in that regard. It is therefore misleading for this amendment to be misrepresented as making police officers 'sitting ducks for criminals'.

It is of concern that the SAPS has been shifting the goal posts. In 1999 when the amendment was effected they cited 'lack of time, resources and adequate training'¹ in delaying implementation of the amendment. Now the SAPS attack the amendment by implying that it makes police officers vulnerable. As stated above, this argument cannot be sustained. On the contrary, there is ample evidence to show that the section, in its pre-amendment form, gave police officers and citizens excessively wide powers to use force when dealing with suspects. For example in 1994 a 10-year-old boy was shot dead by a police officer simply because he attempted to run

What would you do?

By Anashri Pillay, Law Faculty, UCT

The accused was a citizen of Angola and a refugee from his country. He was charged with attempted theft from a motor vehicle and convicted and sentenced to imprisonment for eighteen months in the magistrates' court. He was eighteen years old at the time the offence was allegedly committed. He had initially pleaded guilty but a plea of 'not guilty' was entered by the court, following the questioning of the accused under section 112(1)(b) of the Criminal Procedure Act. The accused had indicated that he wished to apply for legal aid. However, he did not have legal representation at any stage of the proceedings. When the matter was automatically reviewed, the magistrate was asked for a comment on the fact that the accused did not have legal representation even though he had indicated he would be applying for legal aid. The magistrate's written comment indicated that the accused had been informed of his rights with respect to legal aid in terms of s 73(1) of the Criminal Procedure Act. His application was refused on the basis that he was not in the country lawfully. The magistrate did not explain his rights to him after the rejection of his application for legal aid but only asked him what he wished to do. The accused stated that he would carry out his own defence.

What do you think? Was the accused afforded a fair trial? Answer on page 7

away. The boy and his friend were hunting doves on someone else's property.² The policeman who shot and fatally wounded him believed that they were 'guilty of housebreaking with intent to steal.'³ South African citizens surely need protection from this sort of gratuitous violence.

The late Mr Tshwete's concern about the 'massive violent assaults against the police' was a legitimate concern not only for police officers but for all of us. But, with respect, the SAPS misses the point completely by thinking the safety of police officers is undermined by section 49 either in its old form or its amended one.

Hopefully the judgment handed down by Justice Kriegler has now settled the matter by declaring the original section 49(2) constitutionally invalid.

NOTES

- 1 Aaron Nicodemos 'Delay in new law aimed at staying trigger fingers' *Daily Mail & Guardian*, 26 May 1999.
- 2 *Raloso v. Wilson & Others* 1998 (4) SA 369 (NC)
- 3 *Ibid.*

Anticipating the Child Justice Bill: Drumming with youth

African drumming out of a life of crime

Danny Petersen of African Djembe Entertainments launched a unique youth rehabilitation and development programme at Bosasa Horizon Youth Centre in Eersterivier. The programme undertakes the therapeutic and stimulating effects of African drumming to help children in conflict with the law. The plan is to roll out in the Western Cape and ultimately all provinces.

In a youth centre, in a large room filled with chairs and African drums, a magistrate, a pastor and other assorted grown-ups gathered in a semicircle. Inside the semicircle were more chairs and drums. Children from the centre entered and sat in the middle. There were shy greetings and shuffling of bags. Danny Petersen welcomed everyone and introduced the launch of 'African drumming to help children in conflict with the law'. Typically inclusive, he set our minds at rest - 'You don't have to be a musician to play a drum. If you have a heartbeat you can drum. The only ones who are excluded are the dead. Only they are not allowed.'

Then it was over to the drums. At first we beat wildly, an un-orchestrated chaos of drumming. Danny interrupted the cacophony and introduced a rhythm, a simple, upbeat beat. Then he stopped us 'you can't beat an African drum and not smile!' We laughed and returned to that rhythm. The drumbeat filled the room so loudly that we felt it vibrating through our bodies. And as Danny took the rhythm even faster and louder, we hit an euphoria, like racing at top speed. There were smiles then from the grown-ups and from the children, voluntary smiles! It was one of those rare moments of connecting in the embrace of the drumbeats vibrating through us all, a moment beyond argument and conflict.

Danny emphasised 'this is not just to rehabilitate and say goodbye ... maar dit is 'n manier om kos op die tafel te sit en om positief na jouself te kyk'. This will be achieved by children themselves facilitating drumming sessions.

There were a number of speakers with encouraging words. Thandi

By Paula Soggot, LRG

Makoko, the Director of the youth centre, gave us a brief history of the programme. She said 'The process began with Law, Race and Gender, when Tony Sardien sent me a letter indicating that magistrates wished to visit the centre. Visiting magistrate, Andre Dippenaar was impressed and he asked me to contact Danny Petersen. So I said 'Yes your worship'. We met to speak about the contradiction of children in prisons yet they are our future. The Child Justice Bill challenges us to be more creative, to divert children out of the criminal justice system. If a magistrate can buy into a drum as a form of therapy then my recommendation as a social worker will be given.'

Magistrate Caron Lehmann described the reactions of her colleagues to a drumming session at an LRG workshop. 'We were not happy to look silly, with drums between our legs. But then we didn't look silly because we had so much fun. We wondered if this is so great for us, imagine how children would be moved! It is such a good way to have children participating and to release stress. It's a skill which can earn one money.' She held the children in her gaze and said 'I expect to see at least one of you on stage in Africa or anywhere in the world.'

Then the launch was over and the children were ushered out. There had been many words from the adults, but

no opportunity for the children to speak. Mmm...we'd fallen into that trap again, not listening to the children. How do we expect children (who have been betrayed since birth) to integrate into the world, if we do not show a genuine interest in their experience?

We caught up with the children and asked how their drumming session was? The answers came with broad smiles: 'baie lekker'...'prettig'...'it felt nice and happy'...'it was my first time'...'I want to drum again'...'I would like to play in the community and on stage!'

'If a magistrate can buy into a drum as a form of therapy then my recommendation as a social worker will be given.'

- Thandi Makoko, Director, Bosasa Horizon Youth Centre



Children drumming, finding a rhythm.



Above: Danny drumming up support.
Left: Danny Petersen and Magistrate Caron Lehmann.



Commentary on the Van Rooyen Judgment

By **Graham Travers**
Regional Magistrate, Pretoria

The Van Rooyen judgment¹ leaves me with mixed emotions. The judgment will mean some *real* changes for magistrates but the *tone* of the judgment was most disappointing!

Ironically our highest court has now held that the magistrates' courts possess the core protections of judicial independence, while the UN Special Rapporteur on the Independence of the Judiciary concluded after a mission to South Africa in May 2000 that these same magistrates' courts were 'not perceived to be independent!'²

Firstly, in my respectful opinion, *insufficient* attention was paid to the fact that the magistrates' courts decide on the *liberty* of persons charged with criminal offences. The Director of Public Prosecutions decides the court where an accused will be tried. The majority of accused are tried before the regional courts, even on serious charges such as murder and child-rape.

Secondly, I respectfully differ from the Constitutional Court that accused will be able to seek protection from the superior courts. Most accused cannot afford to do so. Legal aid is not readily available for bringing review applications.

The status of magistrates

The Court held that magistrates are *judicial officers* and *not employees* of the Department of Justice. Employment law will therefore not apply, instead administrative law and particularly the Promotion of Administrative Justice Act 2000⁷ will henceforth apply to magistrates.

Acting and temporary magistrates

Acting magistrates appointed under section 9(3) of the Magistrates' Courts Act, 1944⁴ may now only be removed after an enquiry and after being found unfit for judicial office. An appointee enjoys security of tenure for as long as the office remains vacant or the permanent incumbent remains absent.

Temporary magistrates appointed under section 9(4) in the past enjoyed no security of tenure. That section was declared invalid. Parliament has a year to remedy the invalidity.

The removal of magistrates

Section 13(4) of the Magistrates Act, 1993⁵ was declared invalid. Parliament can no longer remove a magistrate with-

out a recommendation from the Magistrates' Commission. In future, Parliament will finally decide on the removal of a magistrate after receiving a recommendation that the magistrate is unfit for office. The Commission will henceforth decide whether a suspended magistrate will receive full salary or not.

Magistrates' powers, duties and functions

Additional magistrates now have the powers and duties assigned to them by law. The chief magistrate or Minister may no longer restrict the powers and duties of an additional magistrate under section 12(2)(b) of the Magistrates' Courts Act, which was declared invalid.

The Minister may no longer assign powers and duties to a specific magistrate under section 14(1) of the Magistrates Act. That portion of section 14(1) is invalid. The Minister may still assign general administrative powers and duties to magistrates under section 14(2) of the Act, which remains valid. Magistrates may not perform any administrative duties that are incompatible with judicial independence.

The remuneration of magistrates

Section 12 of the Magistrates Act remains valid. The Court felt that the Commission could play a role regarding the remuneration of magistrates. With respect, the Commission was not designed to perform the task of a judicial remuneration commission. Many problems concerning the remuneration of magistrates have arisen in the past because the Commission was assigned that task.

The Court signalled approval for the proposals in the Judicial Officers Amendment Bill, currently before Parliament, that the President determine the remuneration of magistrates on the

recommendation of the Independent Commission for the Remuneration of Public Office Bearers. The enactment of these amendments will greatly improve the process of determining the remuneration of magistrates.

The discipline of magistrates

Regulation 26(17), which provided for the 'sentences' that the Minister could impose upon a magistrate found guilty of misconduct, was declared unconstitutional. The Commission must henceforth sanction a magistrate found guilty of misconduct by either reprimanding the magistrate or recommending that the magistrate be removed from office by Parliament.

The Commission may no longer fine or transfer a magistrate without consent *as a punishment*. The Commission may transfer a magistrate without consent for an objectively justifiable reason.

The composition of the Magistrates' Commission

The present composition of the Commission remains valid but the members may themselves now only be removed for an objectively justifiable reason.

Unlike the Judicial Services Commission, the full Commission will still sit when deciding on the removal or disciplining of a magistrate. Commonly the majority of the members of the body taking such a decision are judicial officers. A minority are usually from the legal fraternity or the executive.

Justiciability of decisions concerning magistrates

The Court held that decisions concerning the appointment, transfer, discipline, removal and remuneration of magistrates could be reviewed by the superior courts. Any decision regarding these matters would have to meet the standard of both lawful and procedurally fair administrative action.

NOTES

1. Reported at 2002 (8) BCLR 810 (CC) and 2002 (2) SACR 222 (CC).
2. Report of Dato' Param Cumaraswamy (E/CN.4/2001/65/Add.2) dated 25 January 2001 at paragraph 84 (page 24).
3. Act 3 of 2000.
4. Act 32 of 1944.
5. Act 90 of 1993.

Bela Bela, Warmbaths

By
*Maryna
Swanepoel*



Warmbaths, now Bela-Bela, is situated 110 kilometres north of Tswane/Pretoria and 200 kilometres south of Polokwane/Pietersburg. It is known for its Aventura resort and is mainly a holiday town. The name refers to the natural, hot, mineral springs and Bela-Bela means boiling water in Sepedi and Tswana.

The Magistrates' Court is near the centre of the town and within walking distance of the Post Office and shops. For strangers, the Court building is easy to find as it is in the main street, Pretoria Avenue. It is an old building and a pre-fabricated structure forms part of it. This structure has offices for the Interpreters, the Domestic Violence Officer, the Small Claims and Legal Aid Officers.

Although the building is old it is still in good condition. In 1997 the holding cells, public toilets and exterior walls were renovated and decorated with festive art as part of a Community based project known as 'Project Maemo/Dignitas'. The purpose of the project was to uplift the morale of the prisoners and restore their dignity.

The office comprises a Judicial Head of Office, Mr Pienaar, two Additional Magistrates, three Prosecutors, an Administrative Head, two Interpreters, Clerks, three cleaners as well as six volunteers who help out as Typist, Switchboard operator, Domestic Violence Officer Assistant, Clerk of the Criminal Court Assistant, Interpreter Assistant and Prosecutorial Assistant.

The first woman Magistrate (myself) was appointed to Warmbaths/Bela-Bela Magistrates' Court in November 1996 and the first Magistrate of colour, Mr Rameetse, was appointed in January 2001.

Maintenance and domestic violence

In 1996 maintenance and domestic violence received very little attention. This changed in 2001 with the implementation of the Domestic Violence Act. A separate Division for Maintenance and Domestic Violence was initiated and a Clerk was specially transferred to the Division.

The Clerk, Miss Rademeyer (then) and Mr. Mphahlane (now) received intensive training from the Department. Suddenly people's attitude began to change towards these issues as they were receiving more and more attention

from the Department and LRC of the University of Cape Town.

There is now a Domestic Violence Officer available and a Maintenance Officer who really cares for the Division. Prosecutors who had dealt with these matters, did not have the necessary training or sensitivity to deal with domestic violence and maintenance.

Workshops held by LRG inspired us to initiate a community based project together with the South African Police Services and the Community in 2001. The project called 'Project Broken Heart' involves visits to schools by a Voluntary Drama Group. Educational talks are given to the pupils before they watch the performance which includes scenes on domestic violence, child abuse, rape and maintenance. Educational materials are also distributed.

Those involved in the project are myself, Mr Rameetse, the Interpreters, Mr Mareane and Mr Mphaka, the Domestic Violence and Maintenance Officers Miss Rademeyer and Mr Mphahlane, Constable Kolobe and Inspector Tshabalala of the South African Police Services. The project has reached over 4000 pupils and teachers. A positive result is that pupils have laid complaints of violent acts against them.

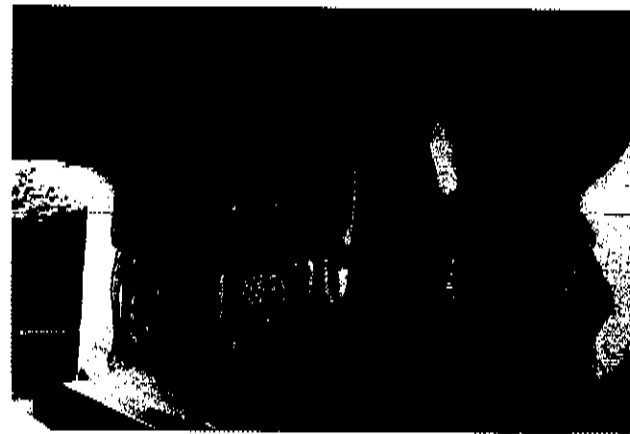
Attitudes towards the magistrates have changed due to this project. We are now greeted in the streets and even get

hugged by school children. Children now believe that the Magistrates' Office is accessible.

I must emphasise that LRG was mainly responsible for changing the perception of the personnel, and indirectly, a large part of the community, on domestic violence and maintenance issues.

Mr Mphahlane, the Domestic Violence and Maintenance Officer, is a compassionate man. He is also Vice-Secretary of the Victim Empowerment Committee, a Sub Committee of the Community Policing Forum.

The court is also very AIDS conscious and condoms are at all counters. At the information desk are AIDS awareness, Domestic Violence and Customary Law educational materials.



The public waiting area, decorated by the community-based project.

The Magistrates rarely go to Court for Maintenance hearings as the Maintenance Officer is very efficient. It is only for difficult matters that a trial goes before the Magistrate. A matter which raises concern is the long queue of women who come to receive their maintenance monies. Maintenance payouts are only made on Thursdays from 08h00 to 12h00. There are no chairs available and insufficient space as the payment counter forms part of the general office. Maintenance monies are paid out at the same counter as fines and licenses. We have been promised a new Magistrates' Court building which we are greatly looking forward to.

Warmbaths/Bela-Bela Magistrates' Office is therefore an office that tries to render the best service by applying the Batho Pele principle: People First.



The entrance to the Magistrates' Court.

Constitutional Court focuses on maintenance

– Does this signal change in the maintenance system and courts?

On 7th November 2002 the case on *N Bannatyne v L N Bannatyne* CCT 18/02 was heard in the Constitutional Court. This case is a classic example of the difficulties and frustrations that women who enter the maintenance system go through to ensure that children are supported by their fathers.

Briefly, the facts of the case are that the parties were divorced at the High Court and the Divorce Order made provisions for maintenance. On 5 January 2000 Mr Bannatyne's application in the Maintenance Court for a decrease in maintenance was allowed and resulted in the High Court order being replaced by a Magistrate's Court order. Mr Bannatyne defaulted on the payment of maintenance. Mrs Bannatyne's two attempts in the Maintenance Court to enforce payment were frustrated by

By **Lulama Nongogo-Ngalwana**
Commission on Gender Equality,
Legal Department



delays and ineffectiveness which led to her failing to enforce the maintenance order. She then approached the High Court for an order for the committal of the Respondent for contempt of court. The order of committal was granted, but was reversed by the Supreme Court of Appeal on the basis that the High Court did not have jurisdiction for committal of Respondent for failure to comply with a Magistrate's Court order. The Applicant referred the matter to the

Constitutional Court as she believed that it raised constitutional issues.

The Commission on Gender Equality* (the Commission) was granted leave to intervene as *amicus curiae* (friend of the court). The issues that the Constitutional Court directed the parties to deal with were:

- Whether the High Court has jurisdiction to make an order for committal for contempt of Court where the Respondent has failed to comply with a maintenance order from the Magistrate's Court; and whether this issue is within the jurisdiction of the Constitutional Court.
- Whether in light of the provisions of section 28(2) of the Constitution, the question whether the High Court should or should not have made an order in the circumstances of the present case, raises a constitutional matter.
- Whether in the present case, such an order ought to have been made by the High Court.
- Whether the Supreme Court of Appeal erred in setting aside the High Court order.

Briefly, the arguments, some of which were supported by Applicant, made by the Commission in its submission are that:

- The High Court, on a proper interpretation of the express provisions of the Constitution does have jurisdiction to make an order committing the Respondent for contempt of a maintenance order by the Magistrate's Court;
- To the extent that a High Court has a discretion as to whether to make an order of committal for contempt, this discretion must be exercised with due regard to the gendered nature of maintenance and the constitutional rights of women and children, and;
- In order for the rights of women and children to be respected, promoted and fulfilled, there should not be any unnecessary limitations of remedies available to enforce those rights.

Does this case signal hope for women and hopefully a change in the effectiveness of the maintenance system? This question will be answered when the Constitutional Court makes its decision.

* The Commission was established in terms of Chapter 9 of the Constitution, to ensure the promotion and protection of gender equality.



Magistrates take their bows after performing in a play on ethics at the Ethics workshop held on Robben Island, 4-6 October 2002. From left to right: Caron Lehmann, Judy Van Schalkwyk, Ian Yuill, Sabrina Sonnenberg, Cagney Musi and Judy Naidoo.

Commonwealth Magistrates and Judges Association

Report on Council Meeting and Jubilee Conference

By **Takalani Joe Raulinga**, CMJA Regional Vice President of East, Central and Southern Africa

In June 2002 I was part of a CMJA delegation invited by the Commonwealth Secretariat to attend the 'Commonwealth Judicial Colloquium on Combating Corruption within the Judiciary' in Limassol, Cyprus. The Limassol Conclusions were drawn and are to be submitted to a meeting of the Commonwealth Senior Ministers. Once they are finalised they will be the Commonwealth Guidelines for ethics for magistrates and judges.

The CMJA conference in London in September also took part in celebrating the Golden Jubilee of our Patron, Her Majesty the Queen. The Limassol Conclusions were again discussed without any amendments. The focus of the conference was women's rights and HIV/AIDS. I delivered a paper entitled 'Some Reflections on the Rights of Women in South Africa'. This also addressed the recent TAC case, which saw a victory for pregnant mothers who are HIV positive. A follow up Colloquium is planned for the Eastern, Central and Southern Africa regions, in April 2003, in Pretoria.

The Council also discussed the CMJA's 13th Triennial Conference, scheduled for 24-29 August at Lake Malawi. The theme is 'Human Rights: Human Rights Needs Seeking a Judicial Talisman'. I encourage magistrates and judges to attend this conference.



A note from us to you

These last few months have seen a number of workshops devoted to specific social context issues. We have had workshops on racism and the administration of justice; deaf people in the courts; introduction to social context; ethics, masculinity and the law, protecting the rights of those living with HIV/AIDS; domestic violence; maintenance and facilitators training.

In Commemoration of World AIDS Day on 1 December, we wish to acknowledge and honour all those fighting against stigma and discrimination and for better treatment and care. The theme this year is Stigma and Discrimination and the slogan is 'Live and let live'. An inspirational leader has been Anglican Archbishop Njongonkulu Ndungane. He recently said 'Statistics dazzle us, like headlights. But they take away the humanity of the pandemic. No one should suffer alone, and no one should die alone. We have to shout it from the rooftops – HIV is not a punishment from God.' (*Cape Times*, 4 November 2002, p5)

Thank you very much for all your contributions to *News and Views*. Please keep up the correspondence and debates. From all of us at LRG, we wish you a peaceful and joyous holiday season.



Precious, baby boy born to Ilze Olckers of LRG and Stef Snel on 27 August weighing 3.5 kgs. Ilze has done one too many social context workshops. This has resulted in a total New South Africa multi-cultural name mix-up! So far he has a Xhosa name - 'Zanenvula' referring to the opening of the skies, after all there was much rain around his birth and a hailstorm on the day he came home from the hospital. His final name is still on its way.

Researching various social security systems

Magistrate Thebenare Rampe, from Mogwase, spent a month in Germany researching its social security system for a comparative analysis of the SADC and EU systems for his LL.M thesis. He found significant differences, such as the principle of territoriality, which allows for residents in Germany to qualify for grants, irrespective of nationality. In South Africa, the only grants for non-citizens are foster grants. Another difference is that in South Africa we still apply a means test for old age grants, whereas the Germans use a universal grant system. Thebenare considers this to be a better system than ours, however we are moving in Germany's direction. This is apparent from the report released in August by the Committee of Enquiry into the Social Security System of South Africa. In addition, there have been recent increases in grants and foster grants. Nevertheless we still have far to go.

Tribute to Debbie Quenet

By Michelle O'Sullivan, Director, Women's Legal Centre, Cape Town

Debbie Quenet, who joined the Women's Legal Centre in January 2000 as the attorney responsible for the violence against women project, passed away tragically in May this year. Debbie was a vibrant person with enormous energy who in a short space of time conducted extensive litigation and advocacy in the area of violence against women. She litigated many cases dealing with sex workers rights, the Hoogenhout matter – a damages claim on behalf of adult survivors of child sexual abuse, the Mngaso case, where she successfully defended a woman accused of killing her husband and many others. She also assisted with developing a policy for dealing with child sexual abuse in the Western Cape.

Last year the Women's Legal Centre co-hosted a Public Interest Litigation Course for women lawyers from Uganda, Tanzania and Kenya in Uganda. At the course, Debbie presented a session on the challenges of being an attorney dealing with violence against women. She identified the major challenge of having to deal with very traumatised clients who need both an attorney and counsellor and the challenging nature of bridging this divide. She also spoke of the need for activism as an attorney and how this often meant challenging established substantive or procedural law. She spoke of the vicarious trauma that attorneys experience when dealing with such cases. She highlighted the difficulties that clients experience, particularly clients who are poor and who struggle to afford transport to consult their lawyers. They often experience language and cultural barriers in the justice system and a lack of emotional support from their families and their own communities. The media's depiction of violence against women is also a challenge which Debbie identified for attorneys working in this area.

Although many of Debbie's cases were high profile, her clients were ordinary South African women – security guards, domestic workers and farm workers.

Debbie's extraordinary spirit lives on in the work that she did at the Centre and the many lives that she touched in her own life's journey.



Debbie Quenet



Ayoyisa (Victory) Lithe-tha (Sunshine) – perfect, baby girl born to Zanele Ntambo of LRG and Amos Makendlana on 30 September, weighing 3.6 kgs.

Published by: The Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town, Private Bag, Rondebosch 7701.

Tel: (021) 650 3914 Fax: (021) 650 5647 Email: lrg@law.uct.ac.za Website: www.uct.ac.za/depts/lrgu/lrg.htm

LRG gratefully acknowledges the financial support of SIDA (Swedish International Development Cooperation Agency)

Editor: Paula Soggot

The views expressed in this magazine are not necessarily those of the editor or the Law, Race and Gender Research Unit.