

EDITORIAL

It's that time of year again, when the leaves start to change their colour from velvet green to honey brown. Yes, autumn is here and winter is upon us.

But unlike the animal kingdom that goes into quiet hibernation, we at the Law, Race and Gender Research Unit (LRG) are always abuzz with activity. Having just completed a successful training weekend with the Association of Regional Magistrates of South Africa, we are raring to go with another four in KwaZulu-Natal and the rural parts of the Northern Province. Not to mention our day court workshops and some good 'Justice College sessions.

And the highlight for this year is of course our new magistrate fellowship programme, which we'll be starting up pretty soon, and we'll let you know all about it in our next issue.

In case you're not aware of this yet, LRG has been asked to assist Justice College in redeveloping their Ethics course for magistrates. We realise that to make the course as real as possible for you, your experiences on the bench need to inform this redevelopment. So we urge you to contact our offices and flood us with examples and ethical tales of your time spent in judgment making. And if you would like assistance in running some social context sessions at your courts, wherever you are, just holler our way, and we will do whatever we can to help. Because LRG is our name, and Social Context is our game. Have a good mid-year!

- **Waheeda Amien**

Update on the Cape Town Divorce Court

Elizabeth Baartman, Presiding Officer, reports



Much has happened at the Court since its inception on 1 October 1998. Initially, the Court sat in Cape Town in a room that did not adequately accommodate any roll it had. However, now the courtroom is well furnished and can accommodate most of its roll. The Court has two computers, one of which is on loan from the Regional Court. But this does not include Internet access.

The recent appointment of a second presiding officer, Adv. Hester Fouche, at Mitchells Plain Court means that trial dates are immediately available, and it is

now possible to obtain a divorce in Mitchells Plain any day of the week. This should also aid parties in Rule 32 applications.

In Cape Town, the staff component consists of the presiding officer, the registrar, one typist and six clerks. There are also two volunteers per day who assist people in completing their summons, and they work two consecutive weeks at a time. As a result, they are being treated as temporary workers. The volunteers have proved to be indispensable in handling the large quantity of people who visit the Court daily. Their training is ongoing, and is provided by among others, attorneys and Legal Aid Clinics.

The Court has increased its circuits to new areas, including George, Oudtshoorn, Beaufort West, Swellendam, Worcester and Vredendal. A single sitting has also been held in Mossel Bay - that situation is being

monitored for possible future sittings. Each circuit court provides its own clerk for the court. The heads of office at some Magistrates' Courts such as Worcester, Swellendam, Knysna, George, and Wynberg, have made clerks available to assist members of the public in complying with the rules to process their applications for divorce.

There is a large community base interest in the Court. Various NGOs and paralegals from Caledon, Beaufort West, Vredendal and Guguletu have had workshops with the Court. People are

assisted at these offices daily and are referred to the Court. This assistance, however, is lacking in most rural areas.

Counselling services are also needed at the Court. In cases where a marriage has not irretrievably broken down, the parties have been sent to FAMSA. This has proved successful in a minority of cases only. However, plans to provide counselling services should soon be realised. Accommodation is the biggest stumbling block at this stage.

Notwithstanding the above and the fact that the Family Advocate's Office is fully involved in the Court, it still only has a pilot status. It is hoped that permanent structures will soon be put in place, as it is clear that a need for the Court exists. This has also been highlighted by a work-study conducted by the Department of Justice.

The trial roll is ever increasing. The statistics to date are:

Year	Files issued	Matters set down	Matters finalised	Court hours
1999	6175	3483	2897	481:45
2000	8877	7341	5712	952:20
Jan 2001	854	481	370	58:50
Feb 2001	669	747	542	110:10

Recognition of Islamic marriages in South Africa

- initiatives and challenges

By

Farida Mahomed
(Member of Parliament)



Early Muslims arrived in South Africa to work as labourers on sugar plantations. In 1652, the Dutch brought Malays from Batavia. During the 1700's the Dutch East India Company brought Muslim slaves, political exiles and convicts from Indonesia, India, Bengal and the Malabar Coast. In 1869, more Muslims came to Natal and Transvaal from India. These immigrants served the markets as wholesalers and retailers in urban towns, rural and coal mining areas.¹ In 1804, Muslims were granted religious freedom, which they still enjoy today.

The South African Muslim population grew from strength to strength. Currently, they comprise about 1.3% of the total population. Nevertheless, apartheid bruised the human dignity of many South Africans including the Muslim community. For more than 300 years Islamic marriages were not legally recognized, and they are still not afforded legal recognition.

Presently, Muslim marriages are supervised by informal patriarchal judiciaries such as the Transvaal and Natal Jamiat al-Ulama, Sunni Jamiat al-Ulama, Muslim Judicial Council (Cape Town), and the Islamic Council of South Africa. The clergy applies Islamic Law that dates back to the 9th century schools of thought namely, Hanafi and Shafi'. Modern scholars argue that the moral and ethical intent of Islam supports egalitarianism and social justice. Yet, as laws are dynamic, the origins of these laws bear traces of misogyny and patriarchy. Various studies have shown that Muslim women still continue to bear the brunt of unreformed application of Muslim Personal Law (MPL) as the male dominated clergy interpret the text according to their own understanding. Women are discriminated against, and there are reports of horrific incidences of violence against women and the girl child. As Muslim marriages are potentially polygynous, the state courts persistently failed to address the problems of the

Muslim community.

After the 1994 elections, the African National Congress began a process of consultation with the Muslim community to recognise Muslim marriages, which lead to the launching of the Muslim Personal Law (MPL) Board in August 1994. Only four women were represented among the eight founding member organisations. Due to conflict within the organisation, the MPL Board was soon disbanded.²

During 1997, the government again took up the challenge, and the South African Law Commission Project Committee was appointed on 'Islamic Marriages and Related Matters'. The Committee consists of nine members, only four of who are women. The Chairperson is Justice MS Navsa. Other members include Prof. Najma Moosa, Sheikh MF Gamicdien, Moulana AA Jeena, Mr MS Omar, Dr RAM Salojee, Ms Zubaida Seedat and myself.

The process is a consultative one, and enables interested parties to be part of the legislation making. The first Issue Paper³ was made available on 30 May 2000 in the print media and Internet for public scrutiny. About 40 responses were received and are still in the process of being scrutinised by the Project Committee.

The Issue Paper suggests the following: Couples contemplating marriage should have the right to choose a marital system governed either by MPL or secular law. The new statute should provide for new and existing marriages. Existing de facto marriages could be registered on receipt of satisfactory proof by a designated marriage officer. Parties should reach consensus regarding choice of a matrimonial property regime. Divorce (talaq) should be confirmed by a court before it takes effect. As for existing polygynous marriages, focused submissions are invited as these marriages have potential complications such as existing proprietary rights, maintenance, succession and social welfare benefits. A case

of an existing civil marriage and a subsequent Islamic marriage or vice versa also needs deliberation.

Parties were also invited to focus on related issues such as age of consent, actual consent, designation of marriage officers, registration of marriages, solemnisation of marriages, marriage formula, prohibited degrees of marriage, standard contractual provisions and prescription of penalties.

Some Muslim women expressed concern that codification would have negative implications on the lives of Muslim women. Yet, many debates conclude that considering socio-economic circumstances of society, traditional laws must be reformed, because unreformed laws would further enslave women to the whims and fancies of patriarchal interpretations of antiquated laws. Others argue that codification of Islamic marriages will allow women to be protected from disadvantage through the equality clause, as the recognition of reformed Islamic law will enable women to seek recourse in a court of law in cases of custody, maintenance, divorce etc.

In conclusion, Committee members are constantly alerted to the fact that the Constitution is the supreme law of the Republic, and will continue to debate the issues bearing in mind that the challenge for the recognition of aspects of MPL is to ensure that there is compatibility of such legislation with the Bill of Rights, particularly the equality clause.

Notes

1. Ebrahim Mahomed Mahina *History of Muslims in South Africa: A chronological Arabic Study* (1993).
2. Fatima Seedat 'The evolution of national politics: A gender perspective, Muslim Personal Law in South Africa' (Unpublished paper) (2000).
3. South African Law Commission *Islamic Marriages and Related Matters Issue paper 15, Project 59* (2000). www.law.wits.ac.za/salc/salc.html.

Thuthuzela Centre was conceived in a context of horrifying statistics about the frequency of rape and its low conviction rate. It is an attempt by a courageous group to realise the ideal of caring for rape survivors while simultaneously ensuring that the evidence taken will be relevant and accurate. It is a pilot project that opened in June 2000 and should run for 18 months.

Thuthuzela is located at Jooste Hospital in Manenberg, and is part of a Justice Bureau of Assistance initiative. The doctors and other medical personnel play a significant role in Thuthuzela, and are dedicated to its success. Prof. Lynette Denny and Dr Lorna Martin (University of Cape Town) are involved in the development of a form for the detailed clinical and forensic management of raped women. Prof. Denny acts as consultant to Thuthuzela, assists in reviewing completed J88 forms, and compiles the statistics. Dr Ferdi Frantz, Acting Medical Superintendent, checks that each J88 form is correctly completed. He manages Thuthuzela and ensures that the doctors are properly trained. He also advises doctors who are subpoenaed to give evidence in rape cases. His vision of Thuthuzela's success firmly entrenches the need to take optimal care of rape survivors while making the most of the opportunity to collect legally relevant and admissible medical evidence.

Social workers, administrative staff and lay councillors are also involved, and a prosecutor is on call. Thuthuzela receives survivors from Khayelitsha, Guguletu and Manenberg Police Stations. About 30 to 55 survivors are seen each month, and the intake is limited to persons over the age of 15.

On reporting to one of the above police stations, survivors are immediately shown into a private waiting room. They don't lay charges nor make statements to the police at this stage. Metro contacts the voluntary ambulance service from Emergency Medical Services, and an ambulance donated by Rotary is

Thuthuzela Centre – A place of comfort and hope

By Shaheena Karbanee
Law Faculty, UCT

used to bring the survivor to Thuthuzela. Metro also notifies Thuthuzela of the pending arrival so that staff can be mobilised. Police involvement and delays are thus minimised. The survivor enters an environment created to take care of her in the best possible manner.

On arrival she is shown into a lounge and offered refreshments. Her medical history is taken in the consultation room. Following this is a complete medical intervention, involving a six step medical examination and including visits to Thuthuzela over a three-month period. Only the survivor, medical doctor and assisting nurse are present during the medical examination. The survivor's clothing is taken as evidence, and tracksuits and underwear donated by Justice Bureau are given to her. Blood samples to test for sexually transmitted diseases and HIV are taken. A baseline pregnancy test is accompanied with AZT, prophylactic treatments and a drug to prevent pregnancy.

After the examination, the survivor can shower and bath. She may have refreshments before making her statement to the police. A police officer from one of the above stations comes to Thuthuzela to take her statement. Should a police officer not be available,

someone from Justice Bureau is on call. The survivor chooses whether to have support from a counsellor, doctor or nurse at this stage.

One week later the HIV test is followed up. AZT is stopped if the test is positive and the survivor is referred to support agencies. If the test is negative, the AZT is continued for 28 days. Two weeks after her first appearance at Thuthuzela, a liver function and full blood count is taken. Further tests are also conducted: one six weeks, and another three months after her arrival.

One of the initial problems experienced at Thuthuzela was the limited availability of crime kits. However, the intervention of the Deputy Minister of Justice and the Police Commissioner, has resulted in Thuthuzela being able to keep its own supply of crime kits. Furthermore, although Thuthuzela follows a three-month intervention, it finds that many survivors do not complete the full series of tests, counselling and treatment.

Thuthuzela is an example of the legal and medical professions working well together. The examination of survivors is usually described as intrusive and prolonging their distress. Thuthuzela's approach limits such negative effects. The collection of excellent forensic medical evidence and filling out J88 forms correctly ensures that the survivor's experience should not be dismissed by a court on the grounds of inadequate or inadmissible medical evidence.

Thuthuzela will soon move to new premises. Although it will remain within the hospital, it is completely independent. The self-contained unit has a reception area, lounge, kitchen, consultation room, examination room and bathroom. The colour scheme is understated and soothing. Privacy is maximized throughout without causing any obvious inconvenience. Those involved in Thuthuzela deserve to be commended for their dedication and remarkable achievements.

THE WIZARD OF ID

by Grant Parker
& Johnny Hart



LRG held two (two-week) courses on 'Social Context In Judicial Decision-Making for Magistrates' in April 1999 and January 2000. The participants were required to undertake projects in their own courts and communities related to the course.

MAGIST

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Leonie Windell (Magistrate, Potchefstroom) reports on two of her projects

Opening the gate

When I arrived back in my office in Potchefstroom after the two-week course, I felt quite different. For a long time, I had wanted to make friends with one of the local attorneys namely Mr Mafojane. I wanted him to see that I am a human being just like he is, and not the racist white woman I thought he perceived all white females to be. For my first project, I decided on a social event with attorneys, magistrates and prosecutors. I discussed this with my head of office who gave me the go-ahead. I then called Mr Mafojane and suggested that I would like to visit him at his house in the local township, Ikageng, and then he could take us to the local shebeen. I was surprised / ashamed to hear that he lives in Potchefstroom, but that he would love to take us to Tata's Tavern, a popular shebeen in Ikageng.

Mr Mafojane took me to Ikageng to show me the venue. It was a very smart place and the owner assured us that no unwelcome elements would be allowed inside the shebeen. Mr Mafojane then took me for a drive through Ikageng, and for the first time I had the opportunity to really make contact with a black colleague. It was not long before we started talking about children and music, and found out that we had more in common than we had ever realised.

On the appointed day, 35 of us (magistrates, prosecutors and attorneys) travelled to Ikageng in mini-buses. For most of them, it was their first visit to Ikageng as well as a shebeen. When we arrived at Tata's Tavern, the owner and his two sons were there to welcome us. They were very excited.

They played country music and the owner was proud of his selection of music. When I later asked him to play us some of "their local music", he was surprised and confused. At first, he couldn't understand why, but when I explained to him that one of the reasons we were there was to experience multiculturalism, he

was quick to change to kwaito.

When the dancing started all the barriers were broken down and some of the locals started to join the party. At about 11pm, the place was crowded and some of the guests started feeling threatened. Unfortunately, the jackets of three of the attorneys were stolen. As soon as the owner learnt about this, he stopped the music and confronted all the strangers in the room. He was very upset and felt humiliated by the incident. After he interrogated the "suspects", two jackets were found. A fight broke out between the attorneys and the suspects. That was when we decided to leave.

On our way back, some of the guests remarked that they had actually expected something like that to happen, especially in a shebeen. In my opinion, that remark was unfair, as it was something that could have happened anywhere.

Most of the feedback, however, was overwhelmingly positive. The owner of Tata's Tavern also invited us back and said that that type of occasion could contribute to building bridges between the different communities.

Breaking down the boundaries

For my final project, I wanted to do something for the staff at the Potchefstroom magistrate's office, to motivate them and to create a more tolerant environment. I decided on a day with a cultural theme. My head of office gave me permission to host the day, and we organised for the courts not to be in session.

The day started with drum majorettes from a local black school entering the court building. The public inside the building and the staff couldn't believe their eyes. All the black staff members

were dressed up in traditional wear and they looked marvellous. They entered the building with the drum majorettes and we had a traditional "toyi-toyi" in the hallway.

The participating staff performed a drama portraying child abuse and family violence. Speakers on Afrikaner culture and Tswana culture were introduced. There was also a psychologist who presented on cultural differences, and explained why people of different cultures have trouble working together. The staff engaged in a very fruitful discussion. For the first time, they spoke openly about their differences.

We closed the day emphasising the importance to respect each other as individuals, and the need to change within oneself. It was stressed that if one is not prepared to change towards different cultures, one has no future in South Africa.



Breaking down boundaries at the Potchefstroom magistrate's office

'RATES in action

Clarence Roberts (Magistrate, Noupoort) reports on his project

Juvenile justice

The two-week course on 'Social Context in Judicial Decision-Making For Magistrates' profoundly changed my perceptions and challenged me to evolve from what I was to what I can become if I allow myself. The words of Ken Keyes Jr "To see your drama clearly is to be liberated from it" brought me an immense enlightened realisation to make a clean break from my past prejudices and beliefs and to be continually liberated from it. To discover for myself, and adventure into this newness, holding back no benefit from those entitled to it, when it is in the power of my hand to perform. Taking this into account, I decided on Juvenile Justice as my point of departure.

Since November 1999, our magisterial district did not have a social worker. This caused serious problems regarding juvenile justice. Many of the juvenile offenders were not placed in a programme which previously existed and got lost in the system, while the prosecutor withdrew petty offences without diverting them into the programme.

After the two-week course, I contacted Julia Sloth-Nielsen (then Senior Researcher: Children's Rights Project, Community Law Centre, University of the Western Cape) to assist me regarding my project for Noupoort. She gave me the necessary information, and I contacted Cheryl Frand (Open Society Foundation) for funding, and Magistrate Neels Goosen and Mr D. Marais (Stepping Stones, Port Elizabeth) for assistance to establish a Child Justice Committee in Noupoort.

The Child Justice Committee was launched on 10 February 2000. All the relevant role players were invited including justice, police, education, health, welfare, community leaders, church leaders etc. The establishment of the Committee was a painstaking but rewarding exercise. Throughout the process I kept in mind the Annual Juvenile Justice Report (1994-1995) and Draft Bill on Juvenile

Justice, as my guidelines.

Our first training session was held on 16 February 2001. Funding was made available by Ms A Matthew (Provincial Project Co-ordinator, Eastern Cape) and the Noupoort Business Community. On 11 March 2000 the Committee decided that to enhance the process, assessment and sessional workers needed to be elected. Thus, ten candidates were elected, as well as 16 volunteers to manage the process and drive it forward. On 17 March 2000, Ms C Matshoba (Nicro, De Aar) and Mr Walker (Welfare Office, De Aar) trained the elected candidates and volunteers on how to run the juvenile justice programmes as well as how the assessment process works.

The sessional and assessment workers formed a sub-committee and started their functions on 20 March 2000. I allocated an office to them, and made available our conference room and stationery to assist them. These workers are all matriculants from our own community and are positive about the process, and are fully geared up to make a difference within our community. They are committed to making Noupoort a crime free zone for the youth at large, and to assist the youth to have a better life.

On 20 March 2000, the Chairpersons, Silvanus Mnweba and Anel Louw, with their respective groups, went into the community and identified youths with potential behaviour problems at schools or who were potentially abusing alcoholic and other drug related substances. The aim was to guide them into programmes and start playing a preventive and educational role to divert them from social evils that may lead to crime. Another group started with the juvenile justice programme, and for the first time started to make an impact on juvenile justice within our community.

The current programme consists of:

1. Training community facilitators which includes:
 - 8 training workshops focusing on counselling; developing facilitation



Magistrate Clarence Roberts

skills; workshop facilitation skills; and

- 8 discussion groups focusing on specific social issues to develop critical skills. Topics include: Development; violence against women; child victimisation; juvenile crime; suicide; substance abuse & addiction.
2. Practical involvement such as court observations and police patrols.
 3. Computer skills.
 4. A baseline study to track the project and the effective evaluation of the intervention, which includes: Community mapping; resource audit; mini victimisation survey; crime mapping and crime pattern analysis.
 5. Intervention planning.
 6. Structures for project management and physical infrastructure.

To reiterate the words of G. Zukar: "We have much to do together; Let us do it in wisdom and love and joy. Let us make this the human experience." This project required a great deal of my time, effort and commitment, but apart from this I realised that I am capable of achieving the impossible only if I allow myself to put my mind, heart and soul into the creation of something new and innovative. I am grateful and thankful to LRG for giving me the opportunity to become enlightened and discovering great dimensions of myself that I knew I always possessed. Viva Juvenile Justice! Viva LRG!

Anti-terrorism legislation

Cor-Lené Müller (Faculty of Law, UCT)

The Anti-Terrorism Bill is under fire from many quarters – not surprisingly since its security measures seem to contravene no fewer than 11 constitutional rights.

The Bill is meant to remedy shortcomings in existing legislation, which have been inadequate in curbing urban terrorism. A wide definition is accorded to "terrorist act" – one could be guilty of a terrorist act when striking or participating in a public march. A special interpretation clause, however, requires the definition to be interpreted in accordance with international humanitarian law.

Section 16 deals with custody of persons suspected of terrorist acts. The High Court may, on the basis of information supplied by the Director of Public Prosecutions (DPP) that a person is in possession of or withholding information about a terrorist act, issue a warrant for the detention of that person. The proposed maximum detention period is 14 days. This period can be extended under certain circumstances. Nevertheless, a detainee is entitled to consult with a legal and medical practitioner, and to be visited by a partner and chosen religious counsellor.

The Bill creates specific offences with severe penalties. The minimum penalty for being a member of a terrorist organisation is a period not exceeding five years without the option of a fine. These offences will be adjudicated in the Regional Magistrates' Courts and High Courts.

The Bill purports to conform to international anti-terrorist instruments. Yet, it remains highly controversial, especially considering South Africa's previous record of human rights abuses against detainees. Only time will tell if it will survive constitutional scrutiny.

Minimum mandatory sentences

James Matsheka (Faculty of Law, UCT)

The transition from apartheid to democracy has not been smooth. South Africa faces a litany of challenges, such as the escalating crime rate. In the face of this, Parliament introduced the Criminal Law Amendment Act 105 of 1997. The purpose was, among others, to make provision for minimum sentences for certain categories of serious offences. Parliament saw this as a step in the right direction, evidenced by the fact that ss 51 and 52 were meant to have only temporary effect – they would cease to have effect after two years from the commencement of the Act. The President, with concurrence of Parliament, extended this period for one year at a time (now until 1 May 2001).

The Act received mixed reactions from crime-weary South Africans and the legal fraternity. To assess the impact of the new legislation, the South African Law Commission undertook studies on sentencing patterns, and the attitude of key role-players. Regarding sentencing patterns, the Commission found that "there were significant disparities for serious offences, particularly on regional lines, and that these had persisted even after the coming into effect of the [Act]". However, it found that sentencing for some offences, particularly rape, increased significantly.

Regarding attitudes to the Act, the Commission found that opinion was divided. Strong opposition was voiced by judges who argued that the provisions tampered with the courts' sentencing discretion. On 15 December 2000, the Eastern Cape High Court in *S v Dodo* (Case no CC 43/2000), declared s 51 unconstitutional, on the basis that it violates the principle of separation of powers and the accused's right to a fair trial. The decision was referred to the Constitutional Court. On 5 April 2000, the Constitutional Court declined to confirm the order, confirming that minimum mandatory sentences are constitutional and s 51 still forms part of our law.



Message from JOASA

The Gender Equality Committee was

established at a special meeting of JOASA's Executive Committee on 27 January 2001 in Pretoria. Its objectives are:

1. To promote gender equality and advancement of women within JOASA and the workplace.
2. To ensure that special needs of women are addressed.
3. To increase representation of women in managerial and professional positions.
4. To integrate concerns of women in mainstream policy and planning.

Although government is committed to the practical implementation of the right to equality, women in the magistracy still find they are largely excluded from decision-making. The Committee therefore invites colleagues to contact them regarding any gender-related problems experienced in the work place and within JOASA itself.

Members of the Committee can be contacted at the following offices:

- **Connie Molwantwa** (Magistrate: Klerksdorp) Ph: (018) 462 6411
- **Naomi Chuene** (Magistrate: Themba) Ph: (012) 717 2179
- **Bessl du Preez** (Magistrate: Pietermaritzburg) Ph: (033) 355 5193

Firearms Control Bill

Margie Keegan
Gun Free Society



Thirty-three people a day die in South Africa as a result of firearm injuries. Many more are injured. In the face of this, the Firearms Control Bill is awaiting Presidential signature.

The Bill introduces a comprehensive system for controlling firearms. For legally held firearms, it establishes a procedure to apply for and renew licences. For illegally held firearms, it grants courts strong powers and penalties. The Bill also contains presumptions, which in certain cases limit a defendant's right to silence.

To obtain a firearm licence, the applicant must first obtain a

competency certificate that has a number of strict requirements. Different licenses will be issued for different purposes, including self-defence, occasional hunters, dedicated hunters, and business purposes. In each case, the applicant must show that s/he has a need for the firearm and the capacity to store it safely.

The Bill requires the court to declare a person unfit to possess a firearm in a number of instances, including when a person is convicted of sexual abuse. The Bill also introduces penalties, ranging from one year to 25 years imprisonment. However, it contains an innovative system to streamline matters: the accused has the option of paying a fine to SAPS Central Firearms Register if the penalty is five years imprisonment or less.

Choosing Judges

Cor-Lené Müller
(Faculty of Law, UCT)

The Constitution gives the Judicial Service Commission (JSC) the right to choose High Court and Supreme Court of Appeal judges who must then be appointed by the President. On 3 and 4 April 2001, it conducted interviews in Cape Town. Most of the candidates had spent time in practice and had experience acting as judges.

After examining each candidate's background briefly, the JSC, chaired by Constitutional Court President, Arthur Chaskalson, questioned candidates on how their respective appointments would aid the transformation of the judiciary. Concerns over language proficiency, judicial training, political affiliations and membership of secret organizations were raised. Candidates who had been acting judges were asked to describe their time on the bench, relating the types of cases they had heard, their interaction with colleagues and the number of judgments they had written. Some nominees were also required to disclose any complaints leveled against them. No women were interviewed.

The JSC recommended the appointment of the following persons:

Supreme Court of Appeal
Mr Justice KK Mthiyane

Judge President Free State Provincial Division

Mr Justice JP Malherbe

Deputy Judge President – Natal Provincial Division

Mr Justice B Galgut

Eastern Cape Provincial Division

Mr B Sandi

Free State Provincial Division

Mr MH Rampai

Transvaal Provincial Division

Mr A Cachalia

Adv JP Horn SC

Adv. VM Ponnar

Adv. CP Rabie SC

Cape Provincial Division

No recommendations were made.

CHILD JUSTICE ALLIANCE

Stefan Gilbert (Community Law Centre, UWC)

The Child Justice Alliance is a network of NGOs, CBOs, academic institutions, and individuals working together to promote the Child Justice Bill, which is due to enter Parliament this year. The Alliance is based on a common vision endorsed by all its members, that, in part, seeks to ensure that the rights of children and victims are secured by the Bill.

Workshops have been held throughout South Africa, and have brought together people from all sectors of society. The workshops provided different organisations an opportunity to learn about the Bill, to engage with their colleagues in similar fields, and to formulate strategies that would maximise resources and avoid duplication of efforts.

One of the main objectives of the Alliance is to ensure that accurate information informs the debate around the Bill. To this end, the Alliance will seek the participation of all stakeholders on issues of child justice so that all sectors in South Africa

have the opportunity to be heard.

Everyone is welcome to support the campaign to pass the Child Justice Bill. To accommodate varying needs and interests, the Alliance offers two levels of affiliation: Join as an Alliance partner or sign up as a Friend of the Alliance to indicate your support of the Bill. If you have any comments or questions, please forward them to the Alliance Co-ordinator, Ms Jacqueline Gallinetti, Community Law Centre, UWC, Private Bag X17, Bellville, 7535, or phone (021) 959 2950.

• Launch – Western Cape Justice Centres

The Western Cape Justice Centres were launched by the Legal Aid Board in Athlone, Western Cape on 13 March 2001. The Centres are offices of the national Legal Aid Board that provides legal assistance to indigent people. They are based in Athlone, Cape Town and Mitchell's Plain. The keynote address was delivered by Minister Penuell Maduna. The Centres have a mandate to do both criminal and civil work including divorce, domestic violence, maintenance, children's issues, land issues & constitutional issues.

• World Court of Women

The World Court of Women Against War, For Peace was held in Cape Town from 6 – 9 March 2001. The first three days consisted of roundtable conferences on issues impacting on the lives of women such as poverty, religion, culture, race, violence against women, etc. The final day consisted of the actual Court, which saw testimonies from numerous women regarding the abuses and discrimination they suffer. A jury then gave judgment. Other events included a 'Women in Black Vigil'.

'Black Tie Affair'

Connie Molwantwa

Chairperson – JOASA North West

JOASA North West hosted a 'Black Tie Affair' on 18 November 2000 at Bakgatla Gate, Rustenburg. Invited guests who included attorneys, judges, businessmen and friends were all surprised that we could look so beautiful, not clad in black and red togas. Our President, Mr Andre Le Grange, delivered a speech on 'The role of JOASA within the judiciary'. Mr Joe Raulinga delivered a speech on the theme of the evening namely Judicial Independence. And finally, the keynote speaker, Judge Khumalo, gave an eye and ear opening address on 'The Judicial Office: Its attributes and responsibilities'.



'Empowering the judiciary through social context awareness': LRG workshop for the Association of Regional Magistrates of South Africa (ARMSA)

>>> FROM THE BENCH <<<

● **Administration of Estates:** In *Moseneke & Others v The Master* (Case No CCT 51/00), the Constitutional Court found s 23(7)(a) of the Black Administration Act (38/1927) and regulation 3(1) to be unconstitutional and invalid. These sections provided that intestate estates of black people could be administered by a magistrate, and not the Master of the High Court. Yet, the deceased estates of all other racial groups could be administered by the Master's Office. The Court suspended the order of invalidity for two years to give the Master's Office an opportunity to prepare for the additional work. Nevertheless, the Court ordered that in the meantime, black persons have a choice whether to approach the Master's Office or a local magistrate to administer an intestate estate.

● **Written reasons for convictions?** *S v Januarie* (Case No C2009/2000) posed two questions: a) Should a record of the proceedings in a criminal case contain a written judgment or written reasons for a conviction; and b) What remedy is there, if any, to cure the failure by a presiding officer in a Magistrates' Court to provide such a written judgment or reasons. On review, the Cape High Court said: a) The judgment and reasons form part of the record of the proceedings and should be in writing when the record is sent on review or appeal; but if this is not done then b) The review court has to consider the evidence afresh to determine whether the evidence on record justifies the finding of the Court.

● **Justice with dignity:** In an appeal in *Kok v S* (Case No CA & R 162/99), the Northern Cape High Court found that the magistrate, the prosecutor and the defence attorney had been disrespectful to the appellant and two witnesses, by referring to them as 'jy' or 'jou' or on their first names, whereas the complainant was referred to as 'meneer', and 'u'. The magistrate even referred to the complainant's son as 'kleinbaas' in the judgment. The complainant was a farm owner and the one witness was an illiterate employee on the farm. The court found that even though the witness had used the term 'baas' to describe the employer, this was "no excuse for the court a quo and the ... court officials to perpetuate the distasteful appellation which has to be discarded as a relic of apartheid. Magistrates must censure very strongly incidents of this nature from recurring in their courts to avoid the erroneous perception that may be created in the minds of litigants or witnesses that they were disbelieved because they were 'jy' or 'jou' ... and that the evidence of 'u' or 'meneer' or 'baas' was accorded credence because the court was perceived to have placed the latter category at a higher level of sophistication." For the full judgment, go to www.uct.ac.za/depts/lrgu/lrg.htm and follow the links.

● **Man's pension held for kids:** In *Jordaan v Bianchina* (Case No 1432-264/94), Magistrate NAJ Van Niekerk ruled that the pension of a man who left the country without making provision for maintenance of his two children, be attached. In her testimony, the children's mother said the father had contributed to a pension fund and had maintained a current bank account. The magistrate ordered a warrant of attachment against the bank in the father's name in respect of arrear maintenance in terms of ss 26 and 27 of the Maintenance Act (99/1998). The magistrate also ordered that a fixed amount per month as per the maintenance order be recouped from the pension in respect of current maintenance in terms of s 16(2) of the Maintenance Act. However, Magistrate Van Niekerk has cautioned that the pension fund for current maintenance should only be attached in exceptional circumstances where no other avenues are left to maintain the children.

BITS - pieces

Ethics for magistrates

LRG and Justice College are redeveloping the Ethics course for magistrates. We would appreciate any comments or direct examples from the bench to aid us.

Please forward your contributions to: Waheeda Amien, Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town, Private Bag, Rondebosch 7701.

Ph: (021) 650 3080 / 3914 Fax: 021 - 650 5647

Email: wamien@law.uct.ac.za.

Justice on the Web

● *The Children's Rights Project, Community Law Centre, UWC, invites you to visit its web-site. It gives users free access to on-line legislation, national and international documents, organizations, institutions, and other resources relating to children's rights. There are 34 precedent setting judgments from the Divorce Court, High Courts, SCA, and Constitutional Court, at: www.sn.apc.org/users/clc/children/*

● The Child Justice Alliance web-site contains information on the Child Justice Bill, including summaries and background papers. See www.childjustice.org.za

● 2001 is "International Year of the Volunteer". The South African leg, called *Volunteer South Africa 2001*, is being run by members of volunteer organisations and the Department of Social Development. Visit www.volunteer.co.za

● Also, visit LRG's bibliography & resource centre at www.uct.ac.za/depts/lrgu/lrg.htm and follow the links.

REVIEWS



The Oscars 2001 have come and gone. Understandably, Ang Lee's **Crouching Tiger, Hidden Dragon** won numerous awards. The film, based on traditional Chinese kung-fu movies, has

been taken to greater depths emotionally and visually. With beautiful choreography, and breathtaking cinematography, it explores timeless themes of love, honour, justice and spirituality in a sensitive and powerful manner.

**The Memory of Stones by Mandla Langa**

Written by the prolific South African poet and author who is also Chairperson of the Independent Communications Authority of South Africa, the novel

is set in KwaZulu-Natal, and focuses on a young woman who challenges traditional ways of doing things when her father, a traditional leader, dies. The book deals with the transition to a 'New South Africa' from a perspective not often heard in the media. Faction fighting, reconciliation, nation-building and traditional values are among the controversial and painful themes explored.