News & Views
FOR MAGISTRATES
March 2001

EDITORIAL

Welcome to the first edition of *News & Views* for 2001. A very warm welcome from LRG to the two new staff members, Waheeda Amien and Anthony Sardien. Waheeda returns to LRG after a one-year stint as Gender Convenor at the UWC Law Clinic. Her many duties there included the supervision of students and files, litigation and the training of students. Anthony (Tony) was the Training Manager at the Gender Education and Training Network and brings to the Unit many crucial skills viz training, materials development, curriculum analysis, planning, management and evaluation skills. Both Waheeda and Tony join us as Researcher-Trainers, and we wish them a long and happy stay.

Amongst the many (crucial!) issues facing us this year is the ongoing debate on whether this year is the 'real beginning' of the new millennium. One school of thought argues that the year 2000 did not mark the transition from the 20th to 21st century as the Gregorian (Christian) calendar starts with year 1AD – so logically, the first year of the new century is always the year ending in figure 1. Other religions (for example Hinduism, Islam and Judaism) follow a different calendar – hence in acknowledgement of our cultural/religious diversity we could celebrate the birth of a new year/new millennium many times over. Oh, how fortunate we are!

The draft 'Legal Practice Bill' produced by the Policy Unit of the Minister of Justice has raised concerns about government control of the legal profession and the resulting loss of independence of the Bar (and consequently also the Bench).

The implementation of the Tobacco Control Amendment Act 1999 raised temperatures country wide. The crucial question is whether this law can succeed in making smoking socially unacceptable – by criminalising it? (Smokers out there – send us your views on this.)

Our best wishes for 2001.

— Rashida Manjoo

Patricia de Lille:

Campaigning for society's forgotten children

On 8 September 2000, Helen Alexander and Seena Yacoob spoke to PAC MP Patricia de Lille about her endeavours to get children detained at Pollsmoor Prison transferred to more appropriate facilities.

How did you become involved with the children at Pollsmoor?

I had heard about children being kept at Pollsmoor, but I never had time to see for myself. The week of 16 June was Children's Rights Week and I thought it was the perfect opportunity to visit Pollsmoor.

I was shocked at what I saw. There were 206 children there, 60 to 70 in each cell. The whole place stank of urine and one of the cells was infected with scabies. Gang members bully the children. The young children learn to behave like gangsters from the older ones.

It was terrible. Even though my sister was raped and murdered by one of these children, as a mother I couldn't let them stay like this.

The conditions in the women's section were cleaner, but it was still overcrowded. There are young, growing girls being kept with sentenced women, convicted criminals. It isn't right. How are they going to be rehabilitated?

I told the children that I would do everything I could to get them out of there but they must promise not to be naughty. I told them that we care about them, but they must also do their share. Some of them started crying. They try and be big men, acting tough, but when they start crying you can see the children inside.

I spoke to the doctor who goes to the prison once or twice a week. Obviously he can't always get to everyone. He had written reports about the conditions in the cells but nothing ever got done about it. He didn't know what else he could do.

Why were the children sent to Pollsmoor?

I tried to find out. The prosecutors have been ordered to send the children to the prisons but I can't find out who gave that order. I sent a letter to the magistrates to find out why the children were in Pollsmoor. From their responses it's clear that they didn't apply their minds to the cases. It seems to be standard for children to get sent to Pollsmoor to await trial.

Some of the magistrates said they didn't know what other options were available. They have never visited these places. They send the children to the prison every day but don't know what the conditions are like. They are still sending children to Pollsmoor even though there is all this publicity.

What would you like to see happen to these children?

I don't want them to get off scot-free. They must take responsibility for what they've done but they are still children. They need to be in a place that is suitable for children.

You know, there are suitable places, like the Porter School, which I also visited on that Friday. Pollsmoor is so overcrowded and just up the road there is this beautiful facility with single cells, bathrooms, a classroom and a big open area for the kids to play in which is now closed down.

Apparently these schools are being closed down as part of restructuring and rationalisation. I couldn't get any proper answers out of the Department of Welfare.

Continued at the bottom of page 3

VICTORY FOR BATTERED WOMAN

by
Deborah Quenet
Women's Legal Centre

On 21 December 1998, Ms Mngxaso stabbed her husband once in the chest during an argument. He died immediately. She was charged with murder and pleaded not guilty on the grounds of self-defence. On 19 December 2000, Ms Mngxaso was acquitted of murder by Mr AW Kotze in Wynberg Regional Court, Cape Town. In his judgment, Mr Kotze took into account the history of abuse and stated that it may have had an impact on Ms Mngaxo's state of mind at the time of the murder.

Expert testimony on Battered Women's Syndrome (BWS) and Coercive Control was to have been led at the trial to demonstrate to the Court that Ms Mngxaso acted reasonably at the time of the murder. The defence team decided not to lead this evidence after the accused had given her evidence as it was clear that she had adequately set out a defence based on self-defence. If led, this evidence would have explained the context in which an individual woman who is in an abusive relationship acts at a particular moment so as to lend credibility and provide a context to her actions.[1]

The objective of such expert testimony is to show that an individual woman has characteristics of a larger group of women of which she is a member and to demonstrate that she acts reasonably both as an individual and as a member of that group. The subjective component of the state of mind of the accused at the time of her action and the objective component of what a reasonable battered woman would have believed in the circumstances should be considered within the "reasonable person" test. Schnieder argues that the focus of the "reasonable person" test should be on the battering experience of the accused and then on the reasonableness of her actions.

The early formulation of BWS incorporated a three phase cycle of violence identified by Dr Walker. These phases are tension building, acute battering, and loving contrition. More recently BWS has been recognised as a post traumatic stress disorder. Cognitive, emotional, behavioural and psychological reactions to violence are all symptoms of this disorder.

There is much debate about this definition of BWS, with some experts arguing that the more appropriate focus should be "coercive control". Judith Herman[2] explains coercive control as something that happens as a result of the captivity of a victim who is in prolonged contact with the perpetrator. The captivity creates a special type of relationship between the parties where the perpetrator is the most powerful person in the life of the victim and the psychology of the victim is shaped by the actions and beliefs of the perpetrator. The perpetrator establishes control by systematically and repetitively inflicting psychological trauma and using organised techniques of disempowerment and disconnection which are designed to instil terror and helplessness in the victim. Violence is not the only method of instilling terror and the threat of death or serious harm is often frequently used by the perpetrator. This relationship destroys the victim's sense of self in relation to others and isolates the victim so that s/he becomes dependent on the perpetrator.[3]

The perpetrator establishes control by inflicting psychological trauma and using techniques designed to instil terror and helplessness in the victim.

In a criminal case 'coercive control' can explain why a woman's effort to escape or resist violence is compromised and can highlight her isolation, intimidation, control and failure to seek help. In determining this entrapment one would assess the victim's access to money, food, social relationships, work, a helper, communication and transportation, as well as her ability to leave.

In other jurisdictions such as Canada, the USA, England, Australia and New Zealand, where a woman has killed her husband and where she suffers from BWS, expert testimony has supported defence strategies based on "self-defence".

In *R v Lavallee*[4] the Supreme Court of Canada recognized the inequities perpetuated by the "same treatment" model of equality when applied to self-defence in the context of abuse. The meaning of self-defence was examined in a contextualized way through considering expert evidence relating to BWS.

In *R V Malott*[5] this principle was expanded and it was argued that the legal inquiry must focus on the reasonableness of the actions of the battered woman within her personal experience based on her own history and the relationship of abuse between her and her partner. The next step is to look at her shared experience as a woman with other women within the context of a society and a legal system which has historically undervalued women's experiences. The legal inquiry should not be based on her status as a battered woman and her entitlement to claim that she is suffering from BWS, but rather the reasonableness of her actions.

It is hoped that in the future, where a woman has killed her husband and where she is suffering from BWS and Coercive Control, South African defence attorneys will lead evidence during the trial in order to challenge the "reasonable person" test.

Notes

1. E.M. Schnieder "Describing and Changing; Women's Self Defence work and the problem of expert testimony on battering" pp 161.
2. Judith Herman, M.D. "Trauma and Recovery – The aftermath of violence from domestic abuse to political terror" pp 75.
3. Ibid pp 77.
4. 1990 (1) S. CR.
5. 1998 (1) S. CR.

Do magistrates' courts have special needs?

The Constitutional Court contextualises the realities of the magistrates' courts.

by Seena Yacoob

The Constitutional Court held in *S v Steyn*[1] that an appeal procedure that is similar to that in the high courts is not adequate in magistrates' courts. This could easily be interpreted to mean that magistrates' courts need a different, less restrictive procedure because they are inefficient and unreliable. On closer reflection, however, it is clear that the Constitutional Court merely took into account the special circumstances in which the magistrates' courts function.

The applicant challenged the leave to appeal procedure in sections 309B and 309C of the Criminal Procedure Act as denying the right to a full and meaningful hearing by a higher court, pointing out that there had previously been an unconditional right of appeal from a magistrates' court. The Constitutional Court examined the nature of the leave procedure in the magistrates' courts and the institutional context in which the procedure takes place and found that the sections were invalid because they are inconsistent with section 35(3)(o) of the Constitution. The declaration of invalidity was suspended for six months, to allow the state to take steps to deal with the higher volume of appeals that would result.

Madlanga J referred to the test of 'adequate reappraisal' and the need to make an 'informed decision' that was first articulated by Didcott J in *S v Ntuli*[2]. He found that the Act did not require sufficient information to be lodged with the high court. Not even the judgment that would be appealed is required. There is no uniform practice among high court judges to request the judgment or court record from the magistrates' court. The procedure also does not allow for oral argument.

The high court procedure, on the other hand, ensures that sufficiently detailed information is placed before the Supreme Court of Appeal for a proper consideration of the application, and there is the possibility of oral argument.[3]

Under these circumstances, the accused person who wishes to appeal a magistrates' decision is in a much less favourable position than one who wishes to appeal against a high court decision. The position of the unrepresented accused is even worse, since such an accused person would be unable to formulate a petition effectively.[4] This means that the magistrates' court procedure does not allow for 'adequate reappraisal' of the matter.

The institutional context is considered important because fairness does not exist in a vacuum, but depends on the context.[5] Magistrates' courts and high courts are inherently different because they serve different purposes. The purpose of a lower court is to perform the bulk of less complicated judicial work inexpensively and expeditiously, while the higher court deals with more complicated matters and oversees the work of the lower court by means of appeals and reviews. While magistrates' courts in South Africa have over time begun to hear more serious criminal matters as well,[6] they are still meant to function inexpensively and expeditiously, and deal with a much higher volume than the high courts do.

Magistrates' courts differ from high courts not only in terms of standing and functioning but also 'in terms of human and material resources, participation by legal representatives and other relevant considerations'.[7]

These considerations include 'a heavy case load, numerous postponements and consequent part-heard matters, long hours, difficult working conditions, relatively inexperienced legal practitioners, interpreters and investigating officers, rudimentary library facilities, and an often unsavoury working environment',[8] as well as lack of legal representation and language problems on the part of unrepresented accused. It is acknowledged that these factors make the magistrates' task stressful and arduous.

Since the context is different, the way fairness is evaluated must necessarily also be different from the high court. The risk of error is higher in the magistrates' court than in the high court and the current appeal procedure does not fulfil the requirements fairness demands in this context.[9]

It can be seen that if the Constitutional Court did not take the special circumstances under which the magistrates' courts operate into account, it would be guilty of a gross oversight. As it is, magistrates are assured that the difficulties under which they operate are not unappreciated, and that any risk of error engendered by these difficulties is provided for.

Notes

1. Unreported judgment, CCT19/00, handed down 29 November 2000.
2. 1996 (1) SA 1207 (CC); 1996 (10 BCLR 141 (CC); 1996 (1) SACR 94 (CC).
3. *S v Steyn* para 10-11.
4. para 12.
5. *S v Steyn* para 13.
6. para 17.
7. para 14.
8. para 18.
9. para 24-25.

Patricia De Lille: Continued from page 1

What did you do about it?

We eventually had to go to court about it. But we came to an agreement, which was made an order of court, that the children would receive medical and psychological treatment and that they would submit a report to the court on 10 August. They also agreed to move the children to Siyakhatala near Stellenbosch by 10 September.

Just before we went back to court we met with them and they said they weren't going to move the children any more. We've tried to negotiate and work out a plan with the authorities but they won't co-operate. We will fight this in court. They must do what they agreed.

Mrs de Lille withdrew her application on 14 September after coming to a further agreement with the authorities about more suitable arrangements for the children.

NEWS FROM THE LAW

By David Fisher, Senior Editor,

The new constitutional order that came into being in 1994 brought many changes to South Africa. One of the is the 'class action'. There hasn't been very much on the class action in the law reports since then. An important judgment dealing with particularly with locus standi in a class action is soon to be published in the South African Law Reports and, I am sure, readers of News and Views will be interested in what the case decided. The case is Ngxuza and Others v Permanent Secretary, Department of Welfare, Eastern Cape, and Another. The judgment, by Froneman J in the Eastern Cape High Court, was delivered on 27 October 2001.

As background, the following can be stated: Section 38 of the Constitution of the Republic of South Africa Act 108 of 1996 provides for the enforcement of the rights protected by the Bill of Rights not only by persons acting in their own interests but also, inter alia, by '(b) anyone acting on behalf of another person who cannot act in their own name; [and] (c) anyone acting as a member of, or in the interest of, a group or class of persons'. Arising out of a verification process in respect of beneficiaries of social grants undertaken by the Eastern Cape Department of Welfare, the applicants disability grants had been suspended by the Department. The applicants alleged that their grants had been unlawfully suspended as had the grants of numerous other people in the Eastern Cape, that payment of their grants had been stopped without any reasons having been given therefor, without any warning notice having been given and without their having been given any opportunity to make representations. Concerted efforts by advice offices and other organisations to resolve the problem had proved fruitless. The applications accordingly applied to the Eastern Cape High Court on their own behalves and on behalf of the many others in the Eastern Cape said to be in a similar position for a declaration that the cancellation or suspension of the grants had been unlawful and a retrospective reinstatement of the grants. The applicants also sought an order that the respondents provide them with the names of all persons in the province who had been deprived of their grants since 1 March 1996. While conceding that the first, second and fourth applicants were entitled to the relief they claimed on their own behalves (but not the third applicant because he was said to reside outside the jurisdiction of the Court), the respondents disputed the individual applicants' standing to act on behalf of other persons.

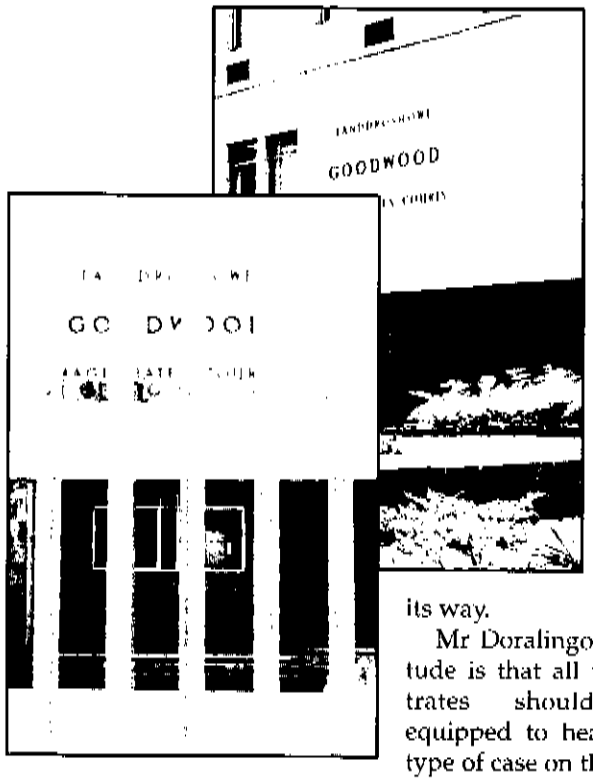
After emphasising that under the Constitution the exercise of public power had to conform to the principles of legality and that it was the task of the Courts to ensure such conformity, the Court held that s 38 of the Constitution had introduced far-reaching changes to the common law of standing. There was no justification, particularly in relation to so-called public law litigation, for a restrictive interpretation of the section: a wide range of persons might be affected by the litigation and the emphasis would often not only be on redressing past wrongs but also on ensuring that the future exercise of public power was in accordance with the principles of legality. Furthermore, Froneman J held that, while it was true that public law litigation created problems of its own (those associated with ensuring (1) that only those who wished to be involved were; (2) that those wishing to be involved were given the opportunity to make such representations as they wished; and (3) that the party presenting the case adequately represented future interests), these were not factors militating against a broad view of standing. At most they required safeguards to ensure the broadest and most effective representation in and presentation of public interest litigation. The absence of a formally binding precedent on the interpretation of s 38(b) and (c) could be filled by examining the Constitution as a whole and the changes it had effected to the social context in which it should be applied. Thus, for example, the Constitution specifically stated that the public administration had to be governed by democratic values and the principles of the Constitution and that it had to be accountable (s 195); and had appointed the Courts as the final instrument of ensuring the accountability of the exercise of public power. On the facts, the evidence showed that a large proportion of the people living in the province were poor; many lived in rural areas far from access to lawyers; roads were often in poor condition and public transport not always easily available. If and when people reached a lawyer they were likely to be told that the legal aid system provided by the State was in dire straits and that they might not find the necessary financial assistance to enable them to take an unhelpful and unresponsive public administration to Court. In addition, the evidence clearly established that the applicants (and, on the probabilities, all those who had had their benefits suspended since 1996) had had their social grants suspended without a proper hearing. That necessarily implied that their constitutional right to just administrative action provided for in s 33 had been infringed. Their right to social security provided for in s 27(1)(c) might also have been infringed by the suspension or cancellation of their social benefits. The evidence showed, too, that many persons in circumstances similar to those of the applicants were unable individually to pursue their claims because they were too poor, did not have access to lawyers and would have difficulty obtaining legal aid. They were, effectively, unable to act in their own names. Thus, so Froneman J held, the practical difficulties associated with representative and class actions could not justify the denial of such an action when the Constitution made specific provision for it. A flexible and generous approach was called for to make it easier for disadvantaged and poor people to approach the Courts on public issues and ensure that the public administration adhered to the fundamental constitutional principle of legality in the exercise of public power. The Court went on to hold that, though the common interest of all those affected might be broad and vague, the determination of a common interest sufficient to justify class or group representation would depend on the facts of each case: s 38 demanded that the common interest should relate to the alleged infringement of a fundamental right, which the applicants had shown. Whilst it was true that some members of the group might not wish to be associated with the representative litigation, that problem could be minimised by procedural requirement ensuring, as far as possible, that only those in the class who wished to associate themselves with the action did so. Nor was it an answer for the respondents to say that it would be difficult to give redress to cases involving thousands of people. If necessary, the Courts would have act innovatively, and if State admin-

istrations acted within the principle of legality, it was unlikely that it would be faced with such litigation. The Court accordingly held that the first, second and fourth applicants had standing to sue under s 38(b) and (c) of the Constitution.

The Court, with regard to the first, second and fourth applicants, (a) declared the cancellation or suspension of the applicants' disability grants unlawful and invalid; (b) declared their entitlement to payment of their disability grants from the date of suspension or cancellation; and (c) ordered the respondents to reinstate the applicants' grants and to pay them the arrears owing with interest. The Court granted these applicants, assisted by the Legal Resources Centre, leave to act as representatives on behalf of anyone in the Eastern Cape Province whose existing disability grants had been cancelled or suspended between 1 March 1996 and 28 September 2000 in the further conduct of the proceedings (the class action) for similar relief to that granted to the applicants in their personal capacities. To this end the Court issued directions concerning the practical implementation of the order and the means of bringing it to the attention of potential members of the class.

Court by surprise

by Cor-lene Muller



The Goodwood Magistrates' Court is situated on the infamous Voortrekker Road, the lifeline that cuts along the Northern Suburbs of Cape Town. The newly established Grandwest Casino is just around the corner. The district is also gang territory and the court serves notorious haunts like Elsies River and Bishop Lavis. The court came into being in 1974 to help relieve the caseload of the Parow Magistrates' Court.

In recent years, however, the Goodwood Court and its branch court in Bishop Lavis have received much media attention due to eruptions of gang violence in and outside their courthouses. Ms Sabrina Sonnenberg, magistrate in charge of quasi-judicial matters at the court insists that these are isolated incidents and a reality for most courts dealing with gang related crimes. It is not difficult to believe her, since the court gives the impression of being a well oiled machine quietly going about its business of dispensing justice to its community.

Even though its critics are quick to place the Goodwood Court in the same category of poor service providers as other courts in the country, it is committed to providing a more efficient administration of its court roll. So much so that the SAPS in Bishop Lavis requested longer postponements of matters since it does not have the resources to speed up investigations to keep up with the roll.

Thanks to the dedication of its magistrates and prosecutors who were willing to work over weekends the court succeeded in reducing a staggering amount of outstanding matters to a more acceptable figure. Senior Magistrate, Mr Mervyn Doralingo attributes the court's success to a more active role played by magistrates in court management.

In the past the ten magistrates of the court had little to do with the daily planning of the court roll. Prosecutors were responsible for determining new court dates. Now there is a greater awareness on the part of magistrates as to how the roll is organised independent from the prosecutors' diary which enables them to make suggestions in respect of postponements. Maximum postponements should not be longer than two to three weeks. Also in the spirit of section 35 of the Constitution, magistrates have become more interventionist in matters where accused persons have been held without bail for more than thirty days.

Ms Sonnenberg feels that an inquisitorial approach regarding such issues, outside the merits of a matter, assists in fulfilling the moral duty that each judicial officer has towards distributing justice. Hence neither the defence nor the prosecution is given the opportunity to derail cases for their own gain. The efficiency of the court is indicative of a personal commitment to a human rights culture. Through proper management it has succeeded in translating very formal and abstract constitutional ideals into a reality for everybody who enters its doors.

Future plans to streamline the court's operations include concentrating all Family matters, such as domestic violence and maintenance cases at one branch (possibly Bishop Lavis) instead of dividing these between the two courts. Mr Doralingo feels that unlike other districts where courts might experience an influx of one particular type of matter because of its demographic composition, the Goodwood court deals with the full spectrum of offences in equal measures. Contrary to SAPS predictions that certain types of crime would increase after the opening of the Grandwest Casino, no such thing has happened. Nevertheless, the court is prepared for any matter that will come its way.

Mr Doralingo's attitude is that all magistrates should be equipped to hear any type of case on the roll. Hence the court is hosting its first in-house magistrates' training programme this year covering a variety of topics including insolvency, judicial independence and domestic violence. Some of the court's magistrates will have the opportunity to discuss their particular field of expertise with their colleagues.

Training does not only extend to the magistrates, even the clerks of the court have been made aware of their constitutional duty towards the community. In harmony with the promotion of equity, the court also plans to implement social awareness programmes whereby officers will take part in an exchange of cultural ideas to improve interaction amongst people from different backgrounds.

The building in which the court is housed has been the source of many problems. Ironically, it is fundamentally insecure because it is so accessible to the public with the courtrooms almost adjacent to the offices of the magistrates. On the other hand it is completely inaccessible to the disabled! There are no proper metal detectors and a handbag scanner was only installed for the first time in the beginning of this year.

Yet, despite a lack of security, there is one thing that stands out about the court – its commitment towards service delivery. It can certainly not be an easy task to be involved in something as magnanimous as making the Constitution work in less than ideal working conditions.

Taking on a language challenge

LRG and Justice College have run 2 two-week courses on social context in decision making for magistrates. At each course, magistrates reported on work that they had done in their courts and in their communities. A report follows.

Caron Lehmann, Magistrate, Cape Town, took on a language challenge in her courtroom:

I was transferred in my capacity as a magistrate from the Eastern Cape to the Western Cape and felt very nostalgic about the people I had left behind. I took to greeting anyone who could possibly be Xhosa-speaking with a loud MOLO! And I was happily rewarded with Xhosa responses. It made me feel that I was in a familiar environment.

It then occurred to me that if I was feeling so strange in this environment, the accused and witnesses must be feeling doubly so. The court is unfamiliar and so is the language usage in court. I decided to greet the people in my court courteously in their home language and to ask their names in that language.

What started out as an exercise in making me feel less alien became an enormously beneficial technique for enhancing communication between myself, accused and witnesses in my court. The difference is startling. The court environment becomes less threatening and hostile to the participants. Their anxiety that they will not be understood in a far more profound way than merely language usage seems to disappear. Their identity is recognized and respected and the dignity of the proceedings is enhanced.

Now I don't know how to speak Xhosa very well and my pronunciation is appalling but no accused or witness has laughed at me yet. Do you know how to play dare, truth or promise? You do? Good. I dare you to greet the next person appearing before you who speaks an indigenous language in their home language and I promise you that your willingness to cross the divide will enhance the quality of justice you dispense.

Where in the world?

FAMILY COURT CONFERENCE

15 – 16 NOVEMBER 2000, CAPE TOWN

LRG, the UCT Law Faculty and the Centre for Socio-Legal Research co-hosted a Family Court Conference, as a result of increasing concerns that the 5 Pilot Family Court Centre Projects based in Durban, Johannesburg, Port Elizabeth, Cape Town and Lebowakgomo were not functioning effectively. Participants included academics, Justice Department officials and staff, social workers, legal practitioners, NGOs and the coordinators of the 5 Pilot Projects.

In light of the pluralistic nature of South African society, the programme included inputs on both the global and the African perspectives on Family Courts. The structures available in both contexts for the handling of family law cases differ to a large extent, depending on resources available, religious and customary practices prevalent and the mode of dispute resolution practiced (whether adjudicative or non-adjudicative). Other sessions included inputs on the components of a Family Court, the role of social workers and Family Advocates in a Family Court and the perceptions of legal service providers who use the court.

Some of the concerns raised about the functioning of the Family Court Centres included the lack of clarity/uniformity on the concept of a family court; the lack of inter-departmental and inter-sectoral co-operation in the state sector; the lack of an integrated and holistic manner of functioning; budgetary constraints which hampered progress; the lack of appropriate enabling legislation and the need for appropriate training of all staff. The overall view was that the problems identified serve to exacerbate the position of a family in crisis when the Family Court Centre is approached for assistance. Judge Belinda van Heerden observed that the Pilot Family Court Centres are considered to be less important and are resourced on an inferior basis and that there is a perception of two systems of justice, the High Court for the wealthy and the Family Court Centre for the poor.

A decision was made that the wealth of information generated at this conference should be disseminated to the relevant policy makers. Participants agreed that: a submission be made to the Justice Department with regard to the problems identified; a letter be sent to the Legal Aid Board expressing concerns over the budget allocation for Family Law matters and a submission be sent to the Taylor Commission on Social Welfare expressing concerns over cut-backs in state maintenance/welfare despite the fact that the private maintenance system is ineffective.

LRG has undertaken to coordinate the follow up work required and to publish the conference proceedings.

THE INTERNATIONAL CRIMINAL COURT (ICC)

– an NGO perspective

The Rome Treaty, which was passed in 1998, is the statute which will govern the ICC. The ICC will be a permanent court (based in The Hague in the Netherlands) that will investigate and bring to justice individuals who commit serious violations of international humanitarian law viz. genocide, war crimes and crimes against humanity. The Court will have universal jurisdiction but will be complementary to national jurisdictions, i.e. it will only act when national systems are unable or unwilling to act. The ICC will physically come into existence when 60 states have ratified the Rome Treaty. South Africa was the 23rd state to ratify on the 27 November 2000.

Six preparatory meetings have been held in the last 2 years for governments to draw up the Elements of Crime and the Rules and Procedures – to facilitate the functioning of the Court. NGOs present play a crucial role in advocacy and lobbying to ensure that substantive (as opposed to formal) justice will be a feature of this court.

Some of the gains of NGOs include: the inclusion of an overarching principle of gender justice in the Treaty; the explicit inclusion of sexual and gender violence crimes (such as rape, sexual slavery and forced pregnancy) as crimes against humanity and war crimes; the inclusion of a requirement that the ICC must have a fair representation of women and men and legal expertise on violence against women and children must be taken into account in the selection of staff for all organs of the court; the protection of victims requires the court to take all appropriate measures to protect the "safety, physical and psychological well-being, dignity and privacy of victims and witnesses"; the participation of victims at appropriate stages of the proceedings; the provision of protective measures, counselling and other appropriate assistance by a Victims and Witness Unit etc.

The benefits of such gains are that they will have an effect on domestic laws and practices – once a state ratifies the treaty. Signature and ratification of the Treaty by a state, will require a review of domestic legislation and the enacting of domestic implementing legislation to comply with the obligations contained in the treaty. Global problems such as evidentiary rules relating to sexual violence, victim/witness protection, victim participation, court composition and administration, are all issues that are grappled with on a local level as well.

The advantages of freedom in the new South Africa
– high-flying Rastafarian lawyers!
(Prince v President of the Cape of Good Hope and others

BITS *pieces*

LRG recently co-hosted a conference, 'Equality: Theory and Practice in South Africa and Elsewhere'. The papers that were presented at the conference are available on the Internet at http://www.uct.ac.za/depts/lrgru/equality.htm

A new LRG project, 'Magistrates and Ethics', will start soon. We hope to develop training materials using relevant cases and issues facing magistrates. Any ideas, examples, problems etc would be most welcome. Contact Waheeda Amien at (021) 6503080 or wamien@law.uct.ac.za

Francois Botha is on the move again, this time as director of his own company, 'Braveheart Associates'. He describes it as a legal advice office and consultancy on gender and justice issues. Contact Francois at (021) 7823333, 0721433830 or braveheart@rescueteam.com

BOOK REVIEWS

Sheer escapism!

An Instance of the Fingerpost – by Iain Pears

Set in 17th century Oxford, this is a story of how there can be many versions of the truth, each in its own way equally valid. A crime is committed in the slums of Oxford – or is it a crime? A woman is convicted and sentenced to death. A man is not what he seems. A scientific experiment goes wrong, but only the 20th century reader knows this. Iain Pears describes the events three times, each time from the point of view of a different character, and each version seems as convincing as the one that went before. The reader is left to make up her own mind about the truth of the tragic events, something that is not as easy as it may seem.

The book is beautifully written, with an impressive attention to detail. It is an unusual crime novel, richer and more enjoyable than most others of that genre.

The Blind Assassin – by Margaret Atwood

Five years after her last novel *Alias Grace*, Margaret Atwood's new novel, which won the Booker Prize in 2000, is definitely worth the wait. The book was written with the assistance of four researchers and two editors, justified by the depth of detail that is evident almost from the beginning. Three main stories intertwine throughout the book and there is a smattering of short science fiction tales for good measure. The different narratives fit together convincingly to tell the complex story of two sisters, Iris and Laura, who each, in her own way, rebel against the roles society has mapped out for her. An unexpected ending makes a satisfying con-

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