

Justice College wakes from its slumber

On 1 May 1997, Justice College gained a new Director after many months of uncertain waiting and lack of direction. LRG managed to catch up with the new Chief, Cecille van Riet, in between workshops and running the College. We spoke to her about the new direction of the College and got a glimpse into what can be expected.

Cecille came to the legal profession as an older student, having first obtained a BA and held a number of diverse jobs, one of which was teaching English and German at Pretoria Boys High School. However, environmental law grabbed her interest and this inspired her to embark on a career in law.

As a student Cecille worked as a research assistant and was instrumental in establishing the Centre for Human Rights at Pretoria University where she stayed on as a lecturer and found her focus turning from environmental issues to human rights. In 1989 she was part of an IDASA delegation to Harare and met with women of the ANC in exile. This reinforced her belief in the need for the transformation of the legal system and for the creation of a legal culture of human rights.

After Cecille obtained her LLB in 1988, she became involved in various public education initiatives which aimed at developing an awareness amongst lay people of their common-law rights. As part of her involvement in the Street Law movement, Cecille identified the need for a Street Law Manual on Human Rights and found herself moving to LHR (Lawyers for Human Rights) where she continued work on the Human Rights Manual.

At LHR Cecille launched the Human Rights Education Project, thus commit-

ting herself firmly to legal education. In her work at LHR Cecille always stressed the need to empower civil society through an awareness of human rights – with the proviso that, unless the courts and justice system react sensitively and with knowledge and information to the public they serve, the rights which people have are empty rights.

Cecille is excited about the "new" Justice College which is responding to the changing needs of the justice system. One of the foremost changes to the College will be its use of the skills and resources which exist in NGOs, academic institutions and civil society generally. This will occur in tandem with decentralising training to mirror the proposed court cluster system. It seems that in future there will be follow-up training in the different regions. This will be under the auspices of training committees which will involve academics, practitioners, NGOs and justice personnel respective regions.

The content of the training at Justice College is also set to change, with an emphasis on social context, diversity and human rights issues. Training will stress the need for the creation of a legal culture of human rights in South Africa.

Another goal of the College is to provide assistance and support in the process of integration of the judiciary.

It seems that the College is to arise from its slumber and begin setting trends. Under Cecille's open and approachable yet firm and decisive style of leadership, the College faces an exciting future. LRG congratulates her on her appointment and welcomes her initiatives aimed at transforming the College.



Cecille van Riet

FROM THE EDITOR

WE are pleased to bring you our second newsletter which we hope you will enjoy as much as the first one! Thanks go to all who responded to the June edition with such warm wishes. We do appreciate all comments and suggestions. This page carries a profile of the new Chief of Justice College – we thought it would be opportune to introduce her to you all.

We also have an interesting piece of research to share with you which demonstrates the complexity of issues to be faced by magistrates as you redefine your role in the transformation of our society. One of your colleagues delivered a challenging keynote address at a recent LRG conference which you will find on page 2. You will also find some comic relief to tickle the brain as well as some amazing initiatives taken by colleagues which we hope will inspire you (back page).

We welcome contributions to the newsletter and wish you happy reading.

*from the
Magistrate's
pen*

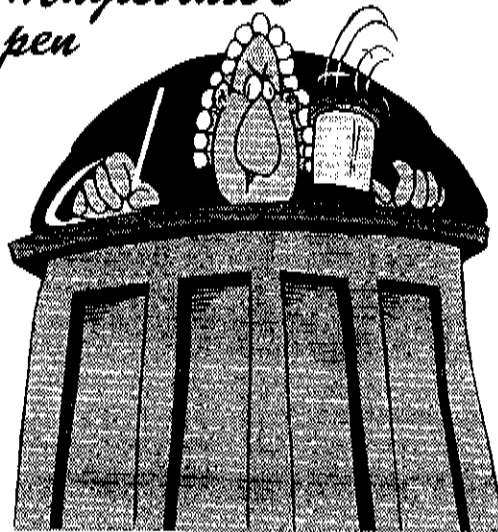
Lindiwe Mbassa (Senior Magistrate at Matatiele, Eastern Cape) delivered the keynote address at a LRG conference held at the Fish River Sun on Human Rights Day. She put some challenges to her colleagues who attended the conference and we thought that they were worthwhile sharing with all magistrates.

Prior to 27 April 1994, our country was plagued by gross human rights violations. The constant onslaught on human rights and racial justice by the State gave rise to authoritarianism and oppression. Women in particular suffered injustices and prejudice which resulted in inequalities and imbalances in terms of their access to human rights. With the slow liberalisation of racial and discriminatory laws, decisions that were unthinkable during the apartheid era have been forthcoming more recently.

The adoption of the Constitution was a giant step for towards the promotion of equality in South Africa. Our Constitution, which has been heralded as being one of the very best the world over, will guide our country for many years to come. The road to achieving this was, we know, very hard. What one could term the "cherry on the top" of all of these developments was the establishment of the Constitutional Court which has been handing down decisions which act as a guide to the ordinary courts.

The Constitution has also made significant inroads in the promotion of gender equality in our country. Equality between men and women is now enshrined in our Constitution. The present government has ratified a number of United Nations Conventions on Human Rights (notably for women, CEDAW, which has had binding effect since January 1996). It is hoped that this will go a long way towards reducing gender bias in all situations and, most importantly, in judicial decision-making. We cannot deny that the law, the legal profession and legal reasoning are still dominated by male values, irrespective of the growing number of female graduates.

Notwithstanding the inclusion of gender as a category in which the discrimination in the exercise of human rights is prohibited, principles of human rights are not being used to their fullest extent to improve the position of



women in our society. The unequal status of women in reality is still the order of the day. Thus the position and treatment of women remains central to human rights in the international community.

There has been an increase in sexual offences committed against women, both black and white, over the past three years in South Africa. The statistics show that most of these offences are committed by non-strangers (ie. colleagues, friends, husbands). We need to realise that domestic violence is disempowering, cruel and degrading and can be directly linked to the inequality between men and women in our society.

Domestic violence is a complex phenomenon and is of grave concern. Its eradication requires the full involvement and participation of all in the justice system. The courts need to be sensitive and innovative in addressing domestic violence.

It is patently clear that the courts have an enormous role to play in addressing these concerns. The court system needs to examine its role in a critical way. The courts often view women's issues as trivial. This is reflected to some extent in the passing of ridiculously low sentences, a lack of prosecutorial zeal and the discouragement from pressing charges.

What is important to note is that every trier of fact (whether magistrate or judge), is almost always armed with not only the relevant legal provisions and decisions, but also with a set of race and gender orientated values and experiences which adversely impact on and/or discriminate against certain people, particularly women.

What clearly emerges from what I have said is that Magistrates are faced with great challenges which they must attempt to face head-on. Magistrates can play a meaningful leadership role in helping to eliminate gender bias and uphold human rights in the courts. Magistrates should set standards of behaviour in the courtroom. Inadequate facilities and poor working conditions should be viewed as a challenge to be overcome. A great deal is expected from magistrates - objectivity, fairness, sensitivity and empathy. Magistrates hand down decisions which affect people's lives, whether they be administrative or judicial in nature. If these tasks are to be performed in a satisfactory way, education on these issues must be consistent, comprehensive and of a high quality.

We need to ask ourselves these very important questions:

Do women have adequate access to the courts? Why do we demand more corroboration in sexual offences than in other offences? Are we doing enough to promote public confidence in our courts? In conclusion, there can be no doubt that the process of judicial reform has already commenced in our country. It is my fervent hope that this reform will snowball in our judiciary and help us achieve our ultimate goal, namely, equal justice for all.



Lindiwe Mbassa pictured at the LRG conference prior to delivering her keynote address

Accused requests black magistrate

Tracy Robinson, who was a visiting researcher to the Unit did some research on a topic which we are sure will have the tearoom buzzing. We have included a summary of her findings. Her more extensive paper is available on request.

The unreported case of *R v Collier* (Case No 25/862/94, Cape Town Magistrates Court) demonstrates some of the difficult issues which magistrates' courts are likely to face in the post-apartheid era.

Mr Brian Collier appeared in the Cape Town Magistrate's Court on charges of assault and *crimen injuria*. The charges arose from allegations that he had assaulted two messengers of the court and used racist and insulting language towards them. Mr Collier, a coloured man, applied through his attorney for the white magistrate hearing the case to recuse himself from the trial, and for the case to be tried by a magistrate more representative of the community from which he came – whom the accused described as a black magistrate. The magistrate was sitting with two coloured lay assessors, but the latter recused themselves from the trial during the course of the proceedings.

Mr Collier insisted that he was entitled as of right to be tried by a black magistrate because he would not receive a fair trial from a white magistrate. He argued that the magistrate, prosecutor, state witnesses and complainants were all white and that given the history of racism within the criminal justice system, the magistrate would be sympathetic and biased towards the complainants.

The magistrate, prosecutor and lay assessors challenged the arguments made by the accused and his attorney. They were concerned about the implications of allowing the accused to succeed, that it would be impossible for the State to provide every accused person with a magistrate who shared a similar background. It was also pointed out that the Interim Constitution had no regard for colour, and his request for a black magistrate was inappropriate in the context of the new South Africa. In response to the allegation that there was a possibility that the magistrate would be

biased, the latter pointed out that the accused did not personally know him, that he was not Afrikaner and that he was not an old apartheid regime magistrate. The question was also put to the accused of why the presence of the coloured lay assessors did not meet his need to be tried by black adjudicators.

The magistrate denied the request that he recuse himself, holding that the right to a fair trial under the Interim Constitution did not include the right to choose a magistrate of one's own race. Mr Collier appealed against this decision to the Supreme Court. On June 2, 1995 *Hlophe J* dismissed the appeal, holding that there was no reasonable likelihood that a white magistrate, without more, would be biased against a black defendant, and that the magistrate's refusal to recuse himself did not contravene the equality clause or the right to a fair trial enshrined in the Interim Constitution. The *Collier* case could not have been a pleasant one for the magistrate and lay assessors. Collier 'got personal' by asking for a recusal of the magistrate and dismissing the importance of the lay assessors. To expect a magistrate in post-apartheid South Africa who considers himself to be a person of integrity to recuse himself because he made a determination that there was a possibility that he would be biased against a black defendant is bordering on the absurd.

However, if one takes the names and faces out of this story and speaks in general terms about the concerns raised by Collier, then the picture changes dra-

matically. Simply put, his concerns about racial bias in the criminal justice system echo what is described as the 'legitimacy crisis' facing administration of justice in South Africa. While his request for a black magistrate may appear distasteful, one cannot overlook the efforts of the Justice Department to make the Bench more representative of the communities they serve by including more blacks and women in the administration of justice. The reality of reasonable concerns about racial bias in the justice system do not make cases like *R v Collier* any easier for magistrates to decide, but it may make magistrates more sensitive to the complexity of the issues involved.

LRG BRAINTEASER

Tell me Doctor . . .
How can I be SLIM?
I only eat normal meals,
but look at me!



What does the doctor reply?

(see back page for solution)

WOMEN'S LAW PROGRAMME

The University of Zimbabwe (in Harare) offers a post-graduate diploma course in Women's Law, focusing on theories and methodologies appropriate to the understanding of the legal position of women from a gender perspective. The programme is staffed by an international faculty with expertise in the area of gender.

The programme is divided into two semesters. The first runs for 15 weeks and is conducted in Zimbabwe, with lectures, seminars research and methodology practicals. The second semester runs for 30 weeks and takes place in the student's home country under supervision and involves fieldwork and the completion of a 15 000-18 000 word dissertation.

The course is always in demand and places are limited. It is ideal for magistrates interested in the particular problems that women face in Southern Africa. Magistrates from other countries have attended the course with great success in the past.

For more details contact: Dr Mary Maboreke, The Course Leader, PO Box MP 167, Mount Pleasant, Harare, Zimbabwe. Tel: 303211 Fax: (263) (4) 333407

The Cape Town magistrates' court is leading the way with innovative and sensitive ways of dealing with matters relating to domestic violence. **Johan Venter**, civil magistrate at **Cape Town**, made LRG aware of procedures followed by his court in cases of domestic violence where an interdict is applied for in terms of the Prevention of Family Violence Act.

If it is apparent that the respondent fails to support the applicant and her children, a complaint is immediately taken in terms of the Maintenance Act. A subpoena for a maintenance enquiry is issued and handed to the applicant to be served by the Sheriff simultaneously with the interim interdict. The dates of the respective hearings are set for the same date.

Should an applicant mention that the respondent has threatened to shoot her or her children, the court contacts the relevant police station to take action to remove the respondent's firearm in terms of section 11 of the Arms and Ammunition Act.

BRAINTEASER SOLUTION

The doctor says: "Don't worry, a lot of men tend to put on weight around your age."
Even those who pride themselves on their sensitivity to gender issues may be unconsciously trapped by the picture into assuming that the man is a doctor.

When Love Hurts

A video of the NICRO Women's Support Centre

Four different abused women tell their stories of the abuse they suffer and talk about the men who abuse them. The video is an attention-grabbing 26 minutes long and is a good tool for introducing a discussion on the topic of domestic violence.

Movers & Shakers

Betty Rawheath, Regional Magistrate from **Stanger** would like to put a question to colleagues regarding the fact that many respondents in domestic violence cases are firearm licence holders. She proposes an amendment to the Prevention of Family Violence Act that it be an offence for anyone convicted of a breach under the Act to possess a firearm.

The formidable trio from **Verulam**, **Renuka Subban**, **Sophie Reddy** and **Judy Naidoo** took up the challenge issued by the Department of Justice on International Women's Day, the 8th of March, and arranged a highly successful open court day for women. The local media and radio stations advertised the event which resulted in a good turnout from the community and live coverage of the day by

Radio Zulu. The video, "When Love Hurts" (see review below) was shown, followed by a discussion which informed women about their rights in cases of domestic violence.

Afternoon activities included information desks set up by social workers, SAPS and prosecutors who explained court procedures which included maintenance, family violence interdicts and criminal prosecutions for domestic violence. A guide booklet for rape complainants in English and Zulu was also made available to the public. In future, complainants will be told about the booklet when a subpoena to give evidence is served on them.

Below: The Verulam trio in Malaysian dress at an LRG conference. From the left, Judy Naidoo, Renuka Subban and Sophie Reddy



VIDEO review

The video looks at what abuse is and why it happens. It also examines some of the most frequently asked questions such as: Why do women stay in an abusive relationship? Do some women en-

joy being abused? What types of women are abused?

A handbook with discussion ideas accompanies the video, making it a useful package for magistrates to use when attempting to sensitise court personnel to issues of domestic violence.

The video is available in many public libraries or can be purchased from the NICRO Women's Support Centre, tel. (021) 22 1690 at a cost of R 66.00



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