

# The Child Justice Bill – children in conflict with the law

When South Africa ratified the United Nations Convention on the Rights of the Child (CRC) we bound ourselves to take all steps to implement it. A number of the rights are given constitutional protection: in all actions concerning children their best interests are of paramount importance; when a child is deprived of his or her liberty, this can only occur as a measure of last resort and for the shortest possible period of time and children should be kept separately from adults.

At present, children in conflict with the law are dealt with under the Criminal Procedure Act which does not conform with the children's rights culture envisaged by the CRC and Constitution.

The Child Justice Bill recognises that children do commit serious offences, and that they must be held accountable for their actions and take responsibility for the human rights of others. Generally the Bill deals with police powers and duties, arrest and court procedures. It provides guidelines for the exercise of judicial discretion for detention of children while awaiting trial. Significant changes include the minimum age of criminal capacity, the proposed preliminary inquiry, assessment, diversion and sentencing.

## Age of criminal capacity

Under the Bill, a child who, at the time of the alleged commission of the offence, is below the age of 10 years cannot be prosecuted. A child between 10 and 14 years is presumed not to have criminal capacity (s6(2)). This presumption may be rebutted. Children older than 14 years continue to have full criminal capacity.

## Preliminary inquiry

The preliminary inquiry makes use of current resources and personnel and its objectives are to:

- establish whether a child can be diverted and if so identifying a suitable diversion option;

By Jacqui Gallinetti

Community Law Centre, University of the Western Cape



- determine the release or detention of a child;
- establish whether the child should be referred to the Children's Court in terms of the Child Care Act 74 of 1983.

The inquiry involves a magistrate, prosecutor, the child and his/her parent or appropriate adult, the probation officer and any other person subpoenaed or requested to attend. Although the prosecutor remains dominus litis (s6(6)), the inquiry would be chaired by the magistrate. This provision introduces an interesting inquisitorial aspect.

## Assessment

Any child who is to appear at a preliminary inquiry must be assessed prior to that appearance, although an assessment can be dispensed with in certain circumstances (s42). An assessment is conducted by a probation officer and should include:

- an estimation of the child's age;
- the prospects for diversion;
- whether a child is a child in need of care;
- recommendations relating to the release or detention of a child;
- steps to be taken for children below 10 years.

The assessment is a set of recommendations submitted to the preliminary inquiry magistrate. This procedure will be invaluable in determining which children can be dealt with outside of the criminal justice system and ensuring that they realise that opportunity.

## Diversion

Diversion involves the referral of children away from the criminal courts, where appropriate. The purposes of diversion are to:

- encourage the child to accept responsibility for his or her actions;
- allow the victim to express his or her views on the harm caused;
- promote reconciliation between the offender and the victim(s) and community;
- avoid stigmatising the child and preventing him or her having a criminal record.

The Bill proposes various forms of diversion in a three-tiered structure, with level one options the least onerous and level three the most onerous. Options include a formal caution, a compulsory school attendance order, attendance of a specified programme, and referral to a programme with a residential element. The Bill allows the inquiry magistrate to develop an individual diversion option which meets applicable standards (s61(3)). This allows for flexibility and the use of existing community resources where formal diversion programmes are lacking.

## Sentencing

The Bill provides for imprisonment as a sentencing option for children older than 14 years only (ss90 & 92). Alternative sentencing options focus on community-based sentences and restorative justice (ss 87 & 88). These also involve programmes that are available as diversion options, including family group conferences and victim-offender mediation and conform to the international shift from rehabilitation to reintegration.

Once adopted and if implemented correctly the Bill will revolutionise child justice in South Africa. The Bill encompasses the goal of allowing child offenders to participate in a meaningful process of acknowledging wrongdoing, making amends and preventing re-offending.

## News from Joasa



## EFFECTIVE SERVICE DELIVERY

By *Connie Molwantwa*,  
Chairperson – Gender Equality  
Committee

On 15-17 March 2002, 30 magistrates including the national executive of JOASA attended a workshop in Pretoria to brainstorm issues around effective service delivery focussing on gender related legislation. The workshop was hosted by the Gender Directorate. It was an important preparation for the main conference in July 2002 which about 300 magistrates will be invited to attend.

We discussed problems in the implementation of Sexual Offences and the Domestic Violence and Maintenance Acts. We recognised and acknowledged that there is a need to treat these with the commitment they deserve.

The main conference will look at ways to deal with all problems identified. It will be divided into three:

- Training on domestic violence, maintenance and sexual offences.
- Interrelationship with other role players.
- A Judicial Officers' Gender Equity Forum will be formally launched.

*All women and engendered colleagues are encouraged to attend this magnificent event. Anyone with ideas for the conference is welcome to send these to Ms B C Molwantwa: fax (012) 326 4288 / Private Bag X659, Pretoria, 0001.*



## Social context training at Justice College

by *Belinda Molamu and Fehmidah Hoosen*

After the LRG/Justice College intensive course we found ourselves excited but scared, ashamed and embarrassed. Thinking back to cases that were decided, this was time for reflection and soul searching. We realised that hiding behind the veil of judicial independence and being creatures of statute were justifications that allowed decision making to be unfair and sometimes unjust.

Challenges necessitated the formation of the Social Context Committee at Justice College. The Committee's objectives are to:

- Provide a consistent and tangible support structure for trainers of social context issues.
- Ensure that, despite the negativity surrounding social context training, this training continues and does indeed become integrated into every course offered by Justice College.
- Develop and conceptualise training programmes.

LRG plays a leading role here and the College is indebted for the excellent research and material we are able to use and for their unwavering support to Justice College.

We look forward to any new suggestions and ideas regarding future programmes, which readers would like to share with us. Belinda may be contacted at (012) 334-7804 and Fehmidah at (012) 334-7753.

## NEW LRG MEMBER

## Pritima Osman, senior trainer/researcher

*What the hell does one put into a profile of ONESELF? Most of the personal stuff is boring (and just that, personal) in any case. So, a zany version was called for. Here goes....*

I am told I am a free spirit (what does that mean?) I love people who are genuine and real. I love flowers and rain.

I am passionate about justice despite (or in spite of) being an attorney. Here I mean justice for the people – right down (or up to) the ordinary person. During my clerkship I was accused of rooting for the underdog – this has not changed.

Since I am passionate about delivery, I work hard at getting to know my 'clients' and give my time, dedication and love to what I do.

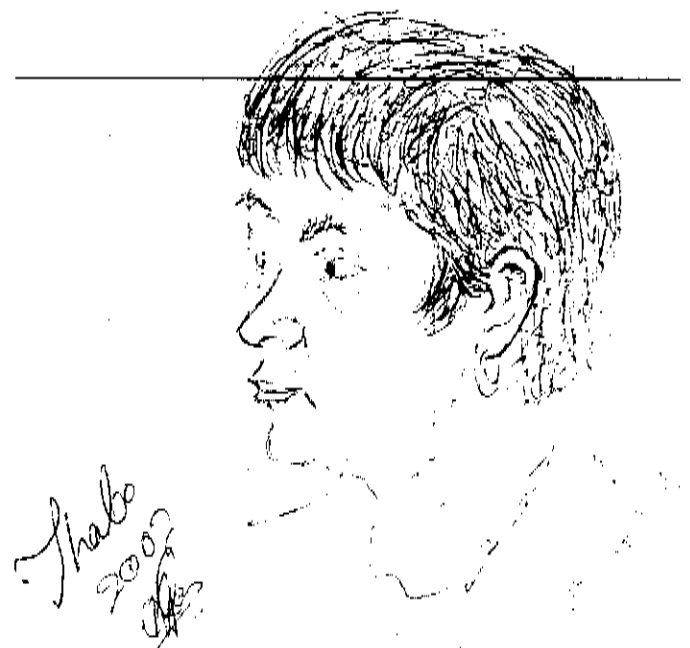
I believe that we have not reached the stage in our rebuilding of South Africa where we put the interests of the damaged people and victims of all kinds of harm uppermost. The work continues. I barely suffer politicians who make unrealistic pronouncements and then leave the battle for delivery to the public servant who then gets all the criticism.

Within LRG I thrive on ongoing contact with magistrates who respond to our calls for info, news and problems in connection with their work. This is an open invitation, phone (021-650-5643) or email (posman@law.uct.ac.za) When I request your assistance in the form of input I do mean it seriously. This is the only way to ensure that the work we produce is relevant to you in the training.

I am practical most times, a good organiser and solver of problems. I think I leave people intact rather than in tatters. I am accused of being an eternal optimist – but this infects others! I read, play very loud music at times (to which I try to sing) and very soft music at times (to which I cry). I write for my own sanity (no, you may not read these works – that would require us to be far better acquainted!).

That's me.

*Here's a disclaimer. All this is just fiction – the real person is away on holiday!*



Sketch of Pritima by Mr Thabo Ramahanelo of Pretoria North Magistrates' Court

# MEN'S ROLES IN ENDING VIOLENCE AGAINST WOMEN

By Tony Sardien

Extracts from a talk given on 8 March 2002, International Women's Day Conference, Cape Town

Helen Moffett has described the statistics for gender and sexual violence in SA as 'an unacknowledged gender civil war'. This statement provides a context for thinking about what men are going to do about gender-based violence.

Our Constitution is different from others in that it places a duty on the state to transform social and institutional arrangements to correct historical imbalances. Public institutions and citizens therefore have a duty to work towards equality between women and men.

One of the first steps in working towards equality involves understanding the relationships of domination and subordination between women and men; men and men; and between women and women. The following definitions of gender and patriarchy are useful:

'Gender refers to social differences in contrast to biological differences between women and men... Patriarchal culture shapes the unequal power relations between women and men. A patriarchy is a society ruled and dominated by men. It also provides the basis for the prescription of roles and activities associated with women and men in a specific context.'

Customs and traditions assume the superiority of men over women. The inequality is maintained by monitoring and enforcing the expression of feminine and masculine identities. This is done in overt ways as well as via a myriad of subtle comments, gestures and expressions.

Depending on the situation, abusive behaviour patterns can range from a certain look, gesture, silence or more active forms such as emotional, verbal, economic or physical abuse.

According to the Medical Research Council:

- One in three South African women will be raped (which I read controversially but fairly accurately – as meaning one in three SA men will rape in their lifetime).

- More than 40% of men have beaten their domestic partners at least once.
- Fewer than one in 20 rapes are reported to the police.
- Less than 1% of rapes are successfully prosecuted.
- One in ten rape victims will become HIV positive.

Men evade responsibility for sexual violence. The media usually reports on only the extreme and narrowly defined set of cases, which include rape – murders, rape of young children and white women by black men.

## What can men do to end gender-based violence?

Accepting responsibility for violence against women means that the responsibility and the duty of each man is to uphold equality and the bodily integrity of each person.

When men begin to change inside, different priorities emerge and they become more focused on their families and their relationships. This includes an increased sensitivity to the needs and interests of women and girls.

Men will continue to hold leadership positions and the control over most of the resources of the world and this country for some time. In families, communities, workplaces and in government,



men should listen, understand, re-prioritise the use of resources and start using the resources for the ending of violence against women.

As men, we should:

- Stop using the major share of the household

income for our individual needs such as golf. Discuss with our partners the allocation of the household income so that everyone's needs are met.

- Stop allocating most of the business revenue to male leaders e.g. to buy expensive cars. Through negotiation, allocate that share of the revenue to advance family-focused needs of employees and projects that build communities free of gender-based violence.
- Stop using a significant share of the resources of the country to acquire arms. Negotiate to reprioritise the allocation of resources to promote development and peace.

Men should open themselves up to the possibility of listening and speaking to women with whom they work and share their lives... to begin to appreciate the viewpoints, concerns and interests of women. The greatest resource in this instance is simply the willingness to change.

## What would you do?

By Anashri Pillay, Law Faculty, University of CapeTown

In a bail hearing in the Wynberg Magistrates' Court, a represented accused was charged with murder and illegal possession of a firearm and ammunition. The magistrate did not warn the accused that his testimony could be used against him in later proceedings. In terms of the Criminal Procedure Act, the bail proceedings can be made part of the record of the trial '[p]rovided that, if the accused elects to testify during the course of the bail proceedings, the court must inform her of the fact that anything she says may be used against her at her trial, and such evidence becomes admissible in any subsequent proceedings' (s60(1B)(c)). The accused alleged that his attorney had not explained the impact of this section to him. The attorney did not recall advising the accused of the consequences of testifying at the bail proceedings but stated that he would have done this as a matter of course.

What do you think? Would the accused's testimony in the bail proceedings be admissible in the trial? Answer on page 8.

# THE INTENSIVE COURSE – *applications of what we have learnt*

## Standing up for children

A magistrate in a town which is a three hour drive from the nearest child custody facility and which has no official social worker, visited children in custody in the police station. They were being kept with adults, one had cigarette burn marks and bruises. They had allegedly been assaulted and sodomised and denied medical attention. The station commander was aware of the situation and oblivious to the pleas of parents. The magistrate confronted him in his office and challenged him about the alleged abuse of the children. He listened to her and the problem was not addressed. She then reported the matter to the Regional Magistrate who was involved in this specific case and he then reported it to the Regional Commissioner of Police. The assaults continued and the children were still not moved from the adults until she threatened to inform the Minister of Police. Only then the children were moved and given medical attention.

## Resisting silence about rape by educating

*Elizabeth "T" Mosese, Alberton*

Five out of ten rape cases in Alberton Court involve children. In one case that T presided over, she found a man guilty of raping his daughter, now 10 years old, since 1999. The child faced a double betrayal as her mother denied the child's allegations and protected her husband. T has noticed that this is a trend – women turning a blind eye to protect the sole breadwinner. She formed an organisation Concerned people against Abuse. She has identified buildings in Katlehong, Eden Park and Alberton where she runs workshops.

## Intercepting sexist badgering in court

*Dewald Allers, Port Elizabeth*

In a rape matter the attorney for the defence asked the complainant during cross-examination 'Is it normal, Madam, for a woman to have more than one lover at a time?' Presiding officer Dewald

**LRG and Justice College  
ran another two-week  
intensive course on social  
context in decision-making  
for magistrates.  
Magistrates reported on  
work they had done in their  
courts and in their  
communities.**

Allers intervened and asked the attorney. 'Would you have asked a man this question?' The attorney withdrew the question.

## Assisting women where the abuser is in jail and there is no bread on the table

*Vido Vuyani Msikinya, Mqanduli*

Victims of domestic violence suffer economically when the offender is imprisoned, this can mean starvation as Vido realised. He visited women in this situation. One, whose husband had stabbed her with a knife in the spinal cord, can no longer walk. She has no source of income and was dependent on her husband who is now in prison. In order to assist the woman apply for a disability grant, Vido took her to Zitulele Hospital where her injuries were declared to be of a permanent nature. The doctor recommended a disability grant and helped complete the application form. Now the woman is receiving food parcels from the Department of Social Development. Vido also assisted another woman apply for child maintenance grants for her 3 children.

## Overnight shelter

Vido also found that many victims of domestic violence travel from rural areas, up to 45 kms from town and usually the police cannot serve the protection order on the same day. It is therefore impossible for the victim to go back to her home and there is a glaring need for an overnight shelter. Vido found an old house. It is solid but the doors and floorboards are broken, the ceiling and wall paint are peeling. The community has volunteered to help Vido resurrect the

house for a shelter for women. Fund raising plans include a fun run.

## Retribution or restorative justice?

*Rose Mogwera, Port Elizabeth*

A woman was seriously assaulted by her husband who stabbed her with a bottleneck. The woman was emotional while testifying and the prosecutor was inexperienced. Rose confronted the control prosecutor who promised to substitute an experienced prosecutor. This did not happen. The inexperienced prosecutor cut testimony short. Rose intervened and asked additional questions and countered the approach of the defence attorney who 'put the woman on trial.' Rose saw herself mid knee-jerk reaction - 'this guy is guilty as hell, I'm sending him to jail!' and she asked instead 'what would most benefit the victim?' Rose ordered the accused to pay the woman's medical expenses and an additional amount of R1300. She advised her to apply for a protection order.

*'Who is who in the Criminal Court' by Izak Scheepers from Louis Trichardt. Inside a suitcase, Izak has constructed a miniature court with a delightful cast of characters and an explanatory pamphlet. This was prompted by Izak's realisation that so many people, including his family, do not know who is who in the criminal court.*



**Not all magistrates know about HIV/AIDS**

As *Kate Pillay from Durban* found out. As a remedy she organised for Jerome Amir Singh to give a talk. Present were colleagues, prosecutors, clerks, attorneys, police and social workers. Jerome discussed medico-legal issues and ethical principles guiding health care professionals: informed consent; confidentiality, bioethical implications of compulsory testing of sexual assault suspects for HIV; new statute for deliberate infections? - international perspectives and much more.

**A kombi and R100 000 each: dealing with customary law and intestate succession**

*Ponele Seshai, Tzaneen - the 'quiet, contextual, traditional man.'*

In a matter of customary law and intestate succession, the question was: given the principle of primogeniture (where the eldest son of the family head is the heir) how should a judicial officer concerned about gender inequality and congruence with the Constitution proceed? In a matter where two daughters were disinherited according to customary law, Ponele conducted meetings and addressed the issue of gender inequality with all parties including the executor and deceased's father. This resulted in a decision where each daughter received

R100 000 and a kombi. Ponele had intervened just in time as there is still R500 000 unaccounted for. There was another unexpected surprise, the court personnel were so delighted that they bought him a cake to celebrate.

On the tack of personal growth, Ponele indicated that before the course he considered marrying more than one wife, 'maybe three or four'. After the course he decided that only one woman should say 'this is my man' - not for many women to say 'this is our man'.

**A far cry from Oom Flip**

*Nico Carstens from Stanger* realised that he was inclined to seek 'quick settlement' of cases after watching Oom Flip in IRC's video, Court in the Act. Now he takes the route of investigation. In a domestic violence matter he intervened to check if the applicant actually wanted to withdraw. It emerged that she wanted to have marriage counselling but did in fact not want to withdraw.

**Exposing the magistracy**

*Mervyn Dorolingo from Goodwood* found that in areas of the Western Cape, interim protection orders are delayed as a result of unwillingness of some magistrates. In one matter a disabled pensioner had to walk to court 4 times covering a total distance of 120 kms before an interim protection order

was granted. On the third day he was met with the response 'why didn't you phone?' Mervyn has organised training in domestic violence with the cluster head to motivate judicial officers and impress on them the urgency of matters involving domestic violence.

**Rejecting assumption or rural communities that she provoked rape**

There was a high probability that, prior to the intensive course, *Pandelani Mudau from Louis Trichardt*, would have discharged two accused in a matter of rape. There was strong evidence for the prosecution, but the complainant had contradicted herself. Pandelani was alerted to issues of stereotyping, identifying with the familiar and rape trauma syndrome and rejected the assumption that the complainant provoked the incident.

**Listening patiently**

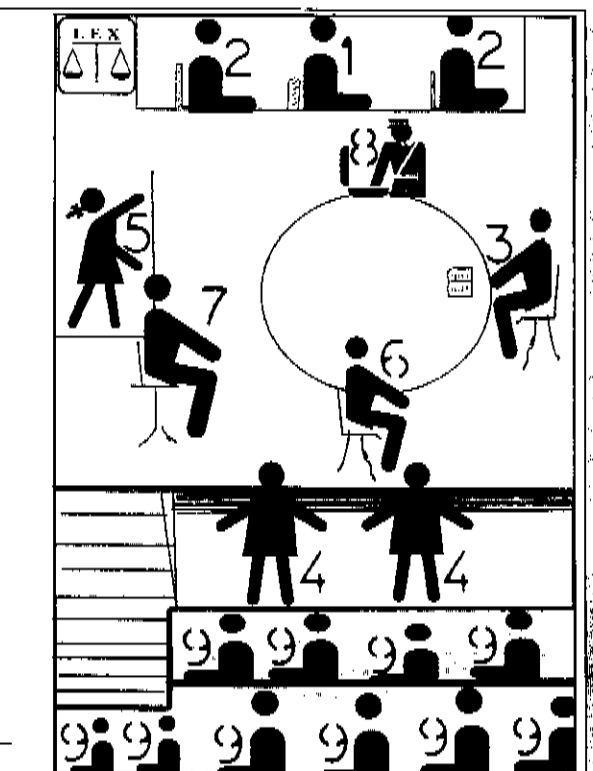
*Nosiso Ngcongolo from Mdantsane* listened to a young grandmother's woes - her daughter gave birth to a child after being raped and now sought maintenance for the child. Nosiso had previously approached the bloated court roles with impatience for the grief-stricken personal stories. Now she found facts were revealed that were relevant to the amount and set the maintenance at R580 and not the usual, meagre rate of R200.



**Who is who in the Criminal Court ?**

- The Magistrate**  
The presiding officer who is independent and subject only to the constitution and the law, which they must apply impartially and without fear, favour or prejudice
- The Assessors**  
People out of the community who assist the Magistrate to make a decision
- The Prosecutor**  
The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary function incidental to instituting criminal proceedings
- The Accused**  
The person standing trial for an offence alleged committed by him by the state
- The Witness**  
The person called by the prosecutor to give evidence on behalf of the state
- Attorney or Advocate**  
The person acting on behalf of the accused -defending him
- The Interpreter**  
The person interpreting from one language to another where different languages is spoken in court so that everybody understand what is going on in the case before court.
- The Court Orderly**  
A member of the S.A.P.S. He or she sees to it that order is maintained in court
- The Public**  
The community that has one or other interest following what is happening in court

Drawn up by  
I.J. Scholgers



# Sweating it out in the trenches

## - the Deputy Minister volunteers in court

Tony Sardien & Paula Soggot of LRG speak to Ms Gillwald



s Cheryl Gillwald and others from the Department of Justice volunteered to work in various courts in March.

We spoke to her about her effort, which is part of the project 'Vusi goes to court' named after DG Vusi Pikoli.

Cheryl was allocated the maintenance court at Philippi and had the opportunity to process maintenance payments. She was briefed and supervised by Mr Elvis Zondani, a maintenance clerk with excellent 'people skills' who according to Cheryl, works at four times her pace. He gave her work for over an hour and 'no more as they were too terrified to let me loose! I would have slowed down the process abominably!' Women were amused and although they 'found her slow' there was not a murmur of complaint in the queue. She operated the manual system, which she likens to 'putting money into a shoebox and then taking it out. There are opportunities to make about seven mistakes before the money even gets to the bank'. (We did not ask her if she made any.)

The largest pay-out was R300. The smallest of R120 was for a woman who had last received maintenance in November 2001. Cheryl emphasised that in such cases the court should be proactive. We should advise women how to access state child support grants for any child under seven years old. This was not

to suggest that defaulters should be let off the hook - they should be dealt with in a separate process. This is what is meant by social justice. It also makes the state machinery so much more effective.

It was a very personal experience for Cheryl. She was a single parent until recently. Seeing women, dependent on maintenance, move through the court she thought - 'there, but for the grace of God, go I'.

One of the most memorable aspects of her visit to Philippi was the intolerable heat. She said the office was so hot that they 'nearly melted'. Air conditioning was ordered six weeks ago but there was no follow-up. The matter has subsequently been rectified.

She is saddened by some courts. 'In

some areas, administrative staff are struggling because they have no power and the value of their work is not recognised as important and integral to the overall process. Racism in the workplace must be eliminated - it is not just an altruistic issue, it's about sound management and increased productivity. If we could just internalise what the Constitution has to say about dignity! We need to start feeling passionate about our Constitution and all that it stands for'.

Cheryl remarked that the provision of infrastructure does not always equate with better service delivery. Some magistrates work under very difficult circumstances but nevertheless display superb leadership. This in turn instils the will to change and improve service. Enthusiasm and professionalism sometimes endure despite conditions.

Her message for magistrates is:

- Get enthusiastic and passionate about your jobs! Love and live the Constitution daily and let everything that you do be informed by it. This should be true in the workplace and in the home.

- The Constitution exists not to ensure that rules work, but that Justice works. We need to give effect to the spirit and letter of the Constitution so that even in rural courts the notion of social justice is realised. For example my role needs to go beyond the physical building that I work in and the hours that I keep. If there is no waiting room for victims of sexual offences, make my office or even my car available to victims so that they do not have to confront the alleged perpetrators in the corridors. This gives effect to social justice. It means going the extra mile and making innovation a part of one's daily work. As in medieval times people could seek shelter from impending harm in a church, so today people should see our courts as places of refuge and symbols of justice. People must know that the magistrates and officials in our court buildings are people that will try their best for the public.

We applaud the precedent of visiting courts set by the Minister, 'Vusi goes to court' and all those who have taken part in it. It is valuable to enter the trenches and sweat it out, to witness the poverty and patience, to become familiar with people on the ground and the officials trying to make those connections.

May 'Vusi goes to court' flourish!

# COURT BY SURPRISE

By Pritima Osman, LRG

**M**y visit to the province of Limpopo and surrounds during February 2002 was in many respects traumatic. Witnessing some of the conditions under which you and your colleagues work left me reeling with shock.

Memories of constant, unbearable heat, of dry, gritty waves of inescapable sun and grinding poverty remain with me. I asked myself 'how on earth does justice survive when the scales are so precariously balanced and influenced by factors not recognised in legislation and laws?'

In many courts, segregation of toilets for whites and non-whites still exists. The pretty, scented toilet is locked and one has to approach the clerk's office for the key. It is a picture to behold the shock when a person of colour asks for the key.

I started at the Tzaneen Magistrates' Court. James Norval had organised a wonderfully full programme of meetings with persons who add value to the work done both in and out of the court building. The community outreach programme, which looks for inspiration from 'their' Magistraat, is an excellent example of organisation and dedication from local people, professional persons, state bodies (eg police) co-operating with community networks to meet the needs of the community.

The picture changes drastically at the nearby Naphuno and Ritavi courts. These rurally based courts struggle to meet the needs of the community they're located in. It is difficult to find 'nice' aspects here. Mr Venter was struggling with a non-existent water supply and Mr Shilubani braves broken buildings. Their dedication is admirable.

The visit to Phalaborwa, Namakhale and Lulekani Courts left me cross-eyed at the great distances magistrates travel. It also appeared that small efforts at establishing the human touch in the courts in these awful buildings were slowly delivering a sense of humanity. The establishment of a staff run tuck-shop in a rural court gives a sense of empowerment to the persons running it

and a sense of succour to the persons who have to visit these places and wait seemingly endlessly for their turn. The funds accumulated from these efforts were to be used in the event of loss of loved ones.

The former Black homeland courts look adequate to cope with the needs of the community they serve. However, these are the targets of refurbishment. Odd, isn't it?

District. I am told that there is resistance from some court staff as the Court is located in a black township.

The next stop was Temba Court in the Moretele District in former Bophuthatswana. Externally the building is impressive. It is inside that a sense of decay hits one. Inside it is dusty and sandy yet airless. The corridors are unlit and dark. Electrical fittings are either non-existent or vandalised. Courts and galleries are dark. Magistrates' seats are lit but there are no tape machines or other 'normal' court finery. In the corridors, people sit on wooden benches in semi-light. The stench in the building is due to a blocked ladies' toilet, which has been a problem for



Three Courts – above: the impressive facade of Temba; right: queue at Ritavi for maintenance; below: new addition to destitute Naphuno



At Potties (Potgietersrus, now Mokopane) Mr Mervyn Dayalan Dorasamy introduced me to Mr Mhlari, the office head. The current location of the Court is a quaint, old, cool building, which was a blessed relief from the heat. There is a plan to move to the larger Mokoreng Court in the Mawareleng

quite a while. I was lucky I could leave, but the persons who had to be at court, the staff, visitors and magistrates, had to live with this revolting, nauseating situation and with the knowledge that it would not be fixed soon.

The people who work under these conditions amaze me. From the prosecutors who make the place buzz with activity, to the volunteers who process dockets under the supervision of clerks, to the magistrates who still maintain the dignity that the 'office' demands and who try to be unaffected by the misery around.

There can be no comparison to the impressive court in the urban setting of Pretoria but each court in each setting has its own unique flavour – but only just so. I only wish it felt so positive at the time.

## EDITORIAL

The Department of Justice and Pragma from LRG ventured out on separate visits to various courts around the country, including those less resourced or less transformed. (See articles on pages 6 & 7). One of the most difficult discoveries was the haunting presence of 'whites only' signs which may be physically absent but linger, no less offensively, in practice and spirit.

One cannot underestimate the importance of a user-friendly environment. What standard of justice may one hope to receive in a court building with untransformed toilets? Toilets symbolise basic activities, common to all. Which makes one wonder, is it hostility to differences or to sameness that represents the greatest challenge to transformation?

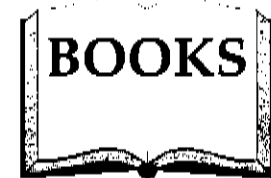


### What would you do? (from page 3) **The answer!**

The appeal court found that the accused's rights had been infringed and that his testimony was inadmissible. The finding on the facts was that the accused's attorney had not explained his rights to him and that he could not remember whether he had advised the accused appropriately and that the circumstances appeared to corroborate the accused's version. The court held that, under s 60(11B)(c) of the Criminal Procedure Act there was a duty on the magistrate to explain to the accused that evidence given 'during bail proceedings may subsequently be used against him in any proceedings'. The state's argument that the testimony at the bail proceedings should be admitted because the accused was represented by an experienced attorney was rejected. The duty to ensure that the accused's rights are explained rests with the court, irrespective of the level of experience of the attorney in the case. The failure of the magistrate to comply with this duty infringed the accused's rights to remain silent and not to incriminate himself under s35 of the Constitution.

From *S v Nzima and Another* 2001(2) SACR 354 (C)

## BOOKS



Unfinished Business: South Africa, Apartheid and Truth: Terry Bell in collaboration with Dumisa Buhle Ntsebenza (RedWorks, PO Box 41, Observatory)

Facilitating at LRG's weekend workshops robs me of a full night's sleep on Friday and Saturday nights and reading the book given to me as a token of their appreciation keeps

me from sleeping on the Sunday night. The latest book intrigued me immediately. With the controversy regarding the TRC and the emotions it conquered still fresh in my mind I immediately started reading and just couldn't put it down.

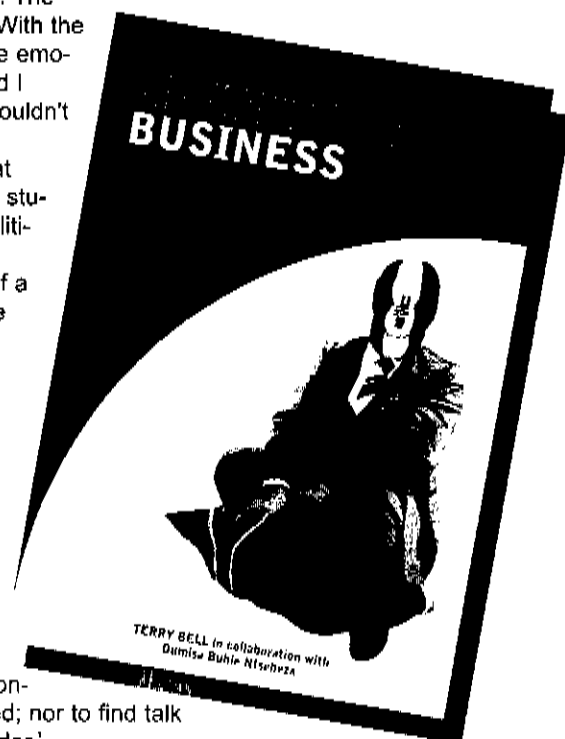
What can be said about a book that tells the story of Dumisa Ntsebenza, a student, teacher, human rights lawyer, political prisoner, torture victim and anti-apartheid activist? What can be said of a book that exposes some secrets of the security police, talks about the hit squads and the role of politicians, the Broederbond and the military in attempting to keep the system of apartheid intact? What can be said about a book that tells us about a system that used detention without trial, banishments and even killings to maintain power?

I share the philosophy of Francis Bacon, the English philosopher and statesman, about the purpose of reading: 'Read not to contradict and confute; nor to believe and take for granted; nor to find talk and discourse; but to weigh and consider.'

Unfinished Business is a book that every person in this country ought to read. It is a source of information that may come as a surprise and even a shock to certain sections of society but at the same time was the reality of so many other people in this country. It may open up old wounds in some of its readers, but it will certainly bring understanding to a lot of other readers. We need to understand and learn from our past. The author Russel Hogan said: 'If the past cannot teach the present and the father cannot teach the son, then history need not have bothered to go on, and the world has wasted a great deal of time.'

In her inscription of my copy, Christina Murray wrote: 'In a shared wish that the business will be finished in some way.' That is also my wish to each and every person.

— Corrie Voischenk, Regional Court Magistrate, Polokwane



### Desperately seeking Paddy Groenewald

We have tried to contact Commissioner of Child Welfare Paddy Groenewald a number of times with no luck. Please could Paddy or anyone who knows her, contact LRG and leave us another number/cell which will ensure that we can get hold of her.