Webber Wentzel

| **pro bono** report | 2008

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Reaching out to the people

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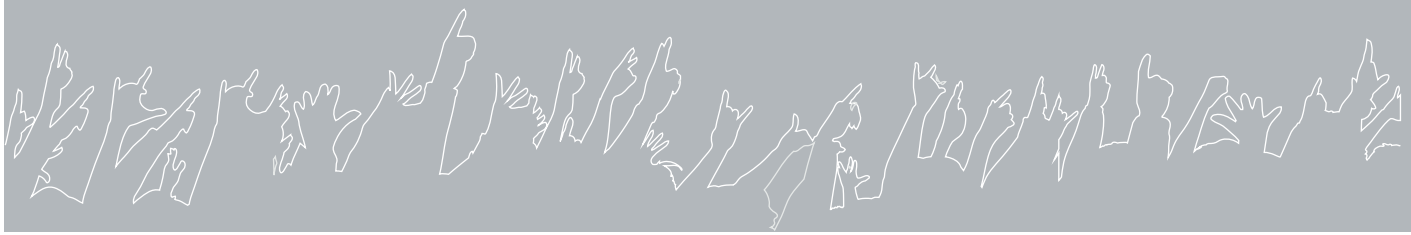


This report is intended for the general public, and summarises the unit's activities in the fields of housing, land reform, gender equality and gender-based violence, and social welfare

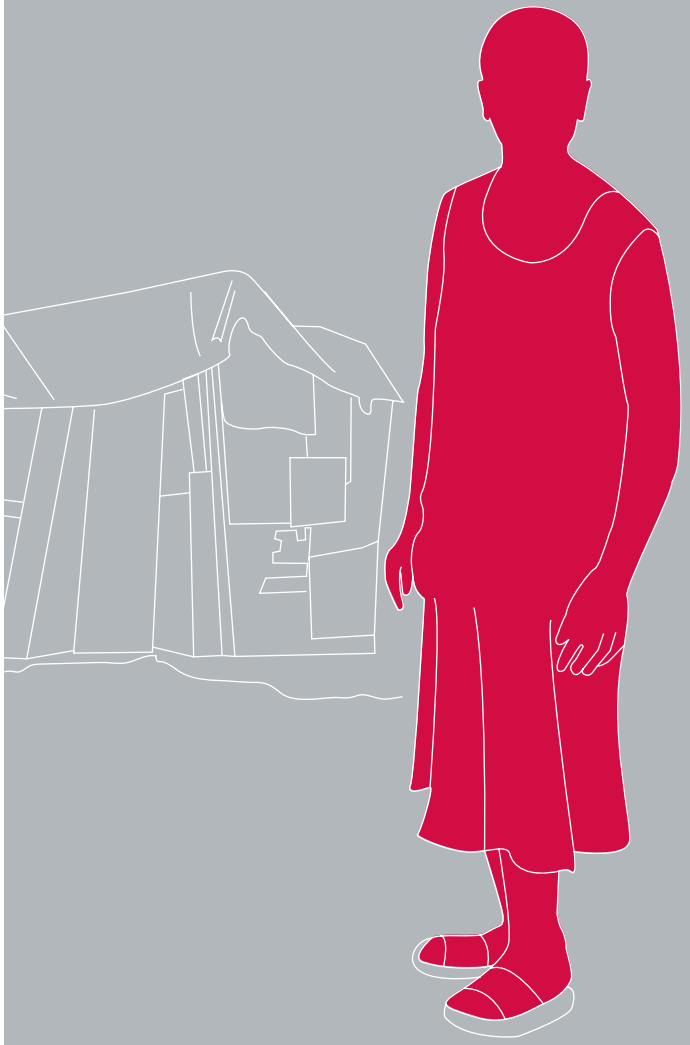
Introduction

The Pro Bono Unit of Webber Wentzel co-ordinates and conducts most of the firm's pro bono publico work – activities conducted in the interests of the public – although a significant amount of pro bono work is also conducted in other units and departments of the firm.

This report is intended for the general public, and summarises the unit's activities in the fields of housing, land reform, gender equality and gender-based violence, and social welfare. The full report, including legal references, is provided as a link for interested parties.

Between September 2006 and April 2008, the following people have worked in the Public Interest Law Unit: Moray Hathorn (partner), Hayley Galgut (senior associate), Umunyana Rugege, Nadeem Salie and Nerisee Maduray (candidate attorneys) and Liz Correia (secretary). Maria Campigotto and Kelly Giddens, interns from New York University, each spent three months with us during our 2007 winter months.

02



Housing – a fundamental policy shift in Johannesburg

The housing backlog in South Africa is estimated at well over 2 million units. Our bill of rights stipulates that South Africans have the right to live in a decent home. But this right seems to have been obscured by provincial and municipal preoccupation with long-term development plans that overlook immediate problems – such as a roof over one's head.

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Housing – a fundamental policy shift in Johannesburg

We continue to act for a number of informal settlements in their efforts to avoid eviction and relocation, and secure upgrading in situ – including the informal settlements of Thembelihle in Lenasia, Protea South in Soweto and Harry Gwala in Benoni. Each of these major settlements, now under threat of removal, have existed since the 1980s. Upgrading on the same site or in situ is recognised by chapter 13 of the Housing Code as the preferred mode of dealing with informal settlements since this protects the economic and social linkages and survival strategies of people living in these settlements. It also protects the substantial investments made by residents in their homes. The Protea South informal settlement is earmarked for relocation to Doornkop. Doornkop is occupied by small farmers in terms of the Gauteng Small Farmer Development Programme. Most are previously disadvantaged individuals. We have commented on a scoping report prepared for the intended development in terms of regulations to the National Environmental Management Act.

We argue that justification for this new development must be subjected to a high level of legal scrutiny, given:

- the similar dolomitic profiles of Protea South and Doornkop (the ostensible reason for relocation being the presence of dolomite at Protea South);
- the need to promote high-density urban development, contain urban sprawl and promote the optimal use of land (objectives set out in policy documents of the Department of Agriculture and the Housing Act); and
- the fact that the development will result in a project in terms of the Gauteng Small Farmer Development Programme (a project which promotes the objectives of sections 9 and 25 of the bill of rights) being discontinued.

Johannesburg evictions

The City of Johannesburg applied to the Witwatersrand Local Division of the High Court to evict the occupiers of 51 Olivia Road, Berea and 197 Main St, Johannesburg. This followed a determination made by the City in terms of section 12 of the National Building Regulations Standards and Building Standards Act that these buildings were unsafe and an order issued by the City in terms of sub-section 12(4) to the occupiers to vacate the buildings.

According to City records, these were two of 235 'bad' buildings in the Johannesburg inner city earmarked for such action by the City, to facilitate sales to property developers under the inner-city regeneration programme.

These building are occupied by some 20 000 households comprising 67 000 individuals. They are generally people with low incomes, unable to afford to commercial rentals. In the original Court, the occupiers opposed the application and sought to prevent the City from evicting them before it had formulated a programme to provide alternative interim emergency housing for both the occupiers and the class of people to which they belong (ie the occupiers of the 235 buildings) in terms of chapter 12 of the National Housing Code. (Chapter 12 was drafted and adopted by government after the Constitutional Court ruling that it was unconstitutional not to have accommodation programmes for those facing homelessness in emergency circumstances). The occupiers argued that such a plan should consider their economic and social linkages to the inner city. The City initially said it did not have an emergency plan to house the occupiers nor did it have a constitutional obligation to provide one.

The Witwatersrand Local Division found in favour of the occupiers.

But the judge dismissed the occupiers' request to declare the provisions of section 12 of the Building Standards Act unconstitutional. The occupiers argued that these provisions authorised the City to make administrative decisions that

It also has the obligation to fulfil the objectives mentioned in the preamble to the Constitution to 'improve the quality of life of all citizens and free the potential of each person'

people should be evicted, in the absence of a Court order. Section 26(3) of the Bill of Rights provides that only a Court may order the eviction of a person from his home (after consideration of all relevant circumstances). The occupiers also argued that because the City had failed to consult with the occupiers before declaring the buildings unsafe and ordering eviction, all decisions should be set aside.

The City of Johannesburg then took the matter to the Supreme Court of Appeal. The Supreme Court agreed that the buildings were unsafe, ordered the eviction of the occupiers and dismissed their argument that section 12 of the Building Standards Act was unconstitutional. It did rule, however, that the eviction would constitutionally oblige the City to house the occupiers anywhere within the City boundary.

The occupiers in turn took this decision on appeal to the Constitutional Court in August 2007. Although the Constitutional Court initially reserved judgement, it did order the parties to work together to resolve as many issues as possible. As a result, the occupiers will now be housed in buildings in the inner city being prepared to accommodate people with low incomes. The City council also presented to the Constitutional Court the first draft of phase 1 of its inner-city housing action plan. This plan envisages that by 2015 the City will create between 50 000 and 75 000 new units of accommodation in the inner city. Some 20 000 of these will be for the low-income group.

The impact of these cases has been to fundamentally shift housing policy for the inner city of Johannesburg.

In its judgement of 19 February 2008, the Constitutional Court set aside the orders of both the High Court and the Supreme Court of Appeal. It dismissed the applications for eviction with costs. The Court said the City had been wrong in not consulting with people facing eviction from their homes through municipal actions. '

Judge Yacoob, speaking for the Constitutional Court, said the City *"has constitutional obligations towards the occupants of Johannesburg. It must provide services to communities in a sustainable manner, promote social and economic development, and encourage the involvement of communities and community organisations in matters of local government. It also has the obligation to fulfil the objectives mentioned in the preamble to the Constitution to 'improve the quality of life of all citizens and free the potential of each person'. Most importantly it must respect, protect, promote and fulfil the rights in the Bill of Rights. The most important of these is the right to human dignity and the right to life. In the light of these constitutional provisions a municipality that ejects people from their homes without first meaningfully engaging with them acts in a manner that is broadly at odds with the spirit and purpose of the constitutional obligations set out in this paragraph taken together."*

He also stated that engagement should be a two-way process between the City and those facing eviction. He elaborated on the objectives of this engagement process, stating they should include:

a) what the consequences of the eviction might be
b) whether the city could help in alleviating those dire consequences
c) whether it was possible to render the buildings concerned relatively safe and conducive to health for an interim period
d) whether the city had any obligations to the occupiers under those specific circumstances
e) when and how the city could fulfil those obligations.

The Court also found section 12(6) of the Building Standards Act unconstitutional, and ordered that a proviso be added to the end of that section: "This subsection applies only to people who, after service upon them of an order of Court for their eviction, continue to occupy the property concerned."
The City was ordered to pay the costs of the occupiers in the High Court, Supreme Court of Appeal and Constitutional Court, including the costs of two counsel.

In this matter, Webber Wentzel's Pro Bono Unit acted for the occupiers of 197 Main St and the Wits Law Clinic acted for the occupiers of 51 Olivia Road.

Reference: *The Constitutional Court judgement has now been reported as Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v the City of Johannesburg and others 2008(3) SA 208 (cc)*

Pretoria evictions

In case of the Halfway Garden occupiers (an informal settlement next to the Midrand section of the highway between Johannesburg and Pretoria), we acted for the occupiers in an eviction application. The Transvaal Provincial Division made two parallel orders – firstly an eviction order effective 1 April 2007, and secondly, it ordered the city to provide clients with emergency housing by 31 March 2007. The city made this housing available on serviced stands at Diepsloot (which is in the same region of the city). This is the first time a Court has actually ordered that alternative accommodation be provided to unlawful occupiers by a municipality.

Ekurhuleni Evictions

In November 2004, a group of people living in an informal settlement vacated portion 40 and moved onto portion 41 (a section of portion 15 of the Farm Rooikop) because of flooding in portion 40 during which three children drowned.

The people had been moved by the Ekurhuleni Metropolitan Municipality which wrongly believed it owned the land. The land in fact belonged to the Islamic Dullah Movement Trust (the trust).
In July 2006, the trustees of the Islamic Dullah Movement Trust applied to the High Court to evict the people occupying the trust's property. This action was brought against both the occupiers and municipality.

The occupiers responded by asking the Court to declare that the municipality had a constitutional and statutory obligation to have a policy or programme in place which provided emergency accommodation. The occupiers also sought to stop the trustees from evicted them until suitable alternative accommodation or land was provided. Their final request was that the municipality be ordered to report on steps it had taken to comply with its constitutional and statutory obligations and what future steps it would take, and when. The parties agreed that the judge only needed to determine the counter-application by the occupiers.

Since 2004, the occupiers had erected informal housing structures, becoming an established community. The Court noted the vulnerable position of the occupiers. Many were employed close to the property and, if evicted, would have no alternative accommodation. Children on the property were schooling nearby. No basic services, such as water, electricity, sewage and refuse removal had been provided by the municipality. A large percentage of the occupiers were unemployed women.

The trustees had offered to sell the property where the occupiers were situated to the municipality for R250 000. The municipality counter offered to lease the property from the trust for R1 800 per month for 12 months.

The Court accepted that the municipality had a constitutional and statutory obligation to provide housing for those who could not afford it. However, these steps had to be reasonable and within the state's resources.

The court accepted that the municipality had a constitutional and statutory obligation to provide housing for those who could not afford it

The Court found it unreasonable and unconstitutional that no concrete steps had been taken since 2004 to alleviate the plight of the occupiers while they lived in deplorable conditions

A policy document outlining the municipality's framework and development plan was presented to the Court as evidence. It outlined the broad objectives of the municipality's provision of low-cost housing which the municipality hoped to fulfil by 2025.

The Court's main focus was what was being done at present to address the issue of homeless people, specifically the occupiers on the property.

The municipality said specific environmental assessment reports had to be commissioned to determine whether the property was suitable for development. Several geotechnical studies also had to be completed to investigate the safety of the land for human habitation. Only then could township development plans be commissioned. However, none of these studies had yet been commissioned.

The Court noted the municipality owned the portion of land next to the property on which the Germiston Buhle Township was situated, and that this land was suitable for township development. The municipality also conceded that it had not provided basic services such as water, sewage and refuse removal and electricity to the occupiers in the three years they had occupied the property.

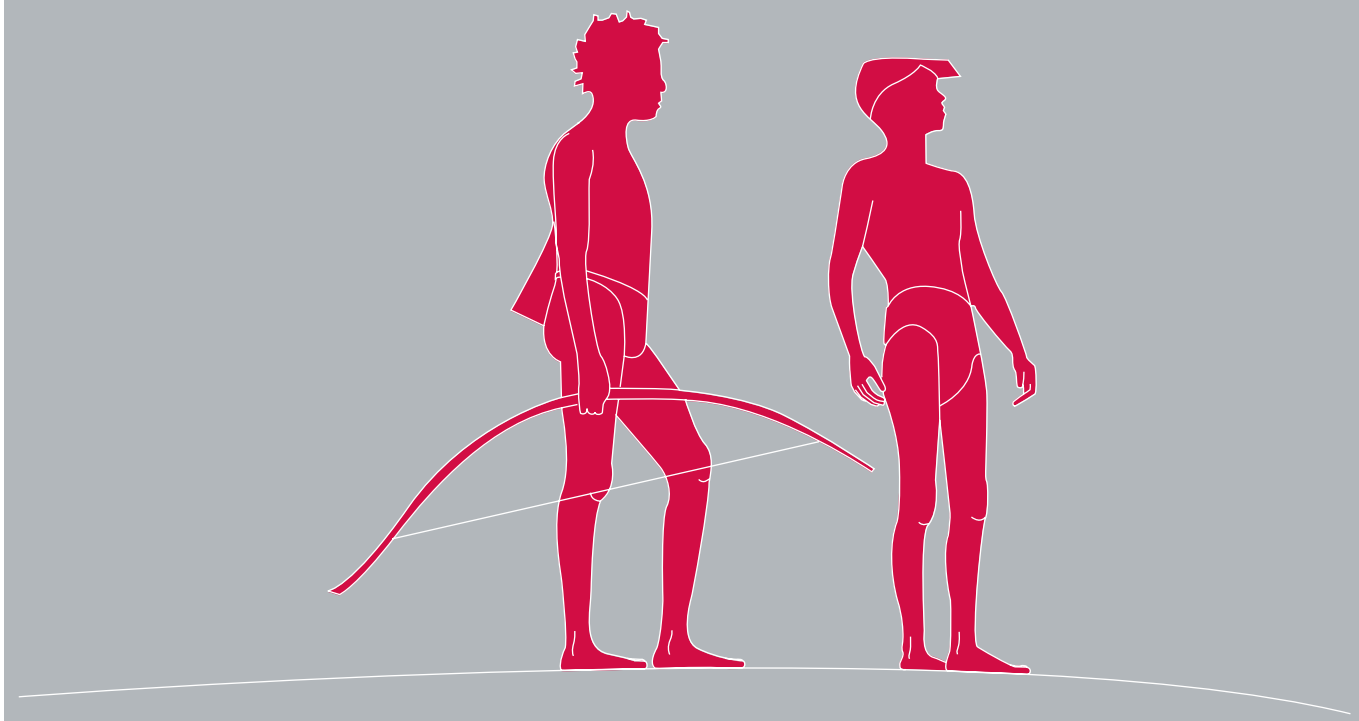
The Court found it unreasonable and unconstitutional that no concrete steps had been taken since 2004 to alleviate the plight of the occupiers while they lived in deplorable conditions.

The municipality was ordered to purchase the property from the Islamic Dullah Movement Trust within 30 days and to immediately provide basic services to the occupiers. Judgment was handed down in February 2008.

Using this experience

With this experience, Moray Hathorn, Webber Wentzel partner, instructed by the Centre on Housing Rights and Evictions (a leading Geneva-based NGO) prepared representations to parliament on proposed amendments to the Prevention of Illegal Eviction from and Occupation of Land Act.

The United Nations special rapporteur on adequate housing visited South Africa in April 2007. His report criticised aspects of the implementation of housing policy in South Africa. Moray Hathorn had opportunity to brief him fully on the cases in which we acted for people in need of housing.



03

Land reform

In a nation of 48 million people, almost half live on communal land – how are their rights to be secured and reconciled with the claims of traditional authorities? Land reform must encompass these and other aspects – equitably and rapidly.

This matter is of fundamental public importance, as it affects the future land rights of some 21 million people living on communal land in South Africa

Webber Wentzel acts for the small group of the Khomani San which has retained the traditions, indigenous knowledge and lifestyle of the San people

Land reform

Communal land

We reported last year on our work as attorneys to one of the applicants (the Makuleke community) in a challenge to the constitutionality of the Communal Land Rights Act. The Legal Resources Centre acts for the other three applicants and the case has been set down for hearing in the High Court, Pretoria from 14 to 17 October 2008.

This matter is of fundamental public importance, as it affects the future land rights of some 21 million people living on communal land in South Africa.

In addition we continue to work for the Makuleke Communal Property Association and the Makuleke Trust in their commercial activities, where two Webber Wentzel attorneys and senior partner David Lancaster provide ongoing and extensive legal services.

Protecting the rights of indigenous people

Webber Wentzel acts for the small group of the Khomani San which has retained the traditions, indigenous knowledge and lifestyle of the San people. Discussions are under way with the Department of Land Affairs to ensure the interests of this group are adequately protected in the Khomani San Communal Property Association (CPA) which owns a large tract of valuable land adjoining and within the Kgalagadi Transfrontier Park (previously the Kalahari Gemsbok National Park). The association was awarded this tract in a successful land claim.

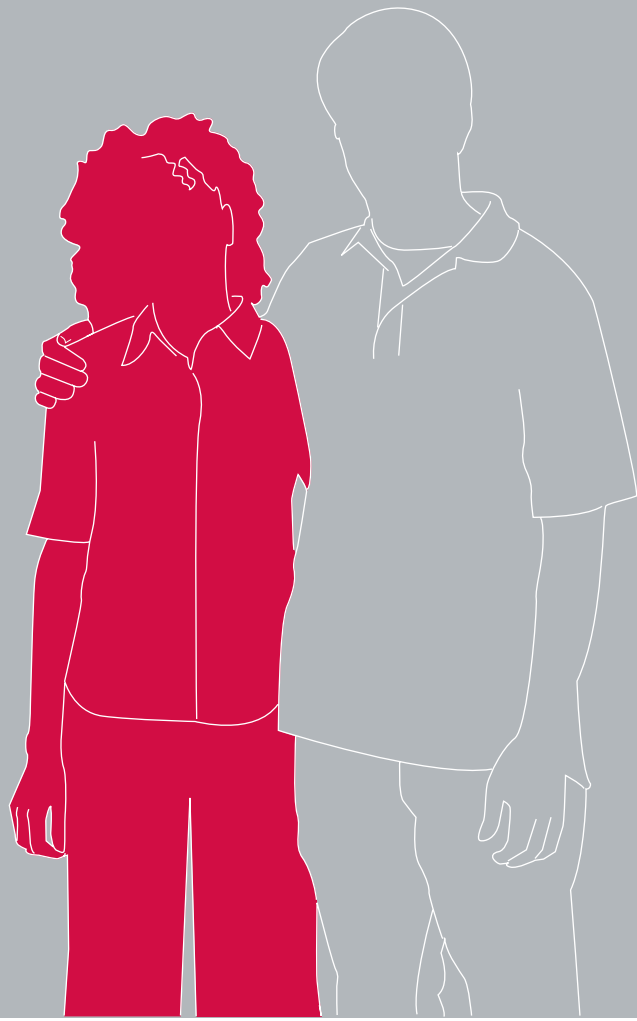
When Optel Rooi, a tracker in the San tradition and member of the traditional group, was shot dead by a policeman in January 2004, it caused a national outcry. The shooting starkly illustrated the marginalised and precarious position of the traditional San group in society. Only after vigorous intervention by the Human Rights Commission, which held hearings on the question of this marginalisation and issued a hard-hitting report, was the responsible policeman charged and convicted of the murder.

Webber Wentzel instituted a dependant's claim on behalf of the widow and children of Optel Rooi. This trial would have started in the High Court, Kimberley on 21 April 2008. Four days before the trial, the state agreed to pay Mrs Rooi the capital amount of the claim – R186 590 and her legal costs – ending the litigation. While this compensates Mrs Rooi to some extent, it is also a milestone for the traditionalists among the Khomani San to regain their position of dignity.

04

Gender equality including gender-based violence

A fair and just society cannot be one in which a significant proportion of its citizens are deprived of their constitutional rights – in the home, in the workplace and in society – based on gender or lifestyle.



"Apart from making an interesting contribution to the development of the South African law on private defence, this judgment also provides a rational basis for the introduction of evidence of abuse in a manner that contributes to the international jurisprudence on the subject."

Gender equality including gender-based violence

Parole granted

We reported previously on our work on behalf of five women sentenced to very lengthy prison terms for murdering their abusive partners in their applications for parole. Four of these women have now been released on parole. The fifth woman had originally been sentenced to death.

We successfully acted for her in applying for the substitution of her death sentence, which was changed to 25 years' imprisonment. In February 2008, she was also granted parole and will be released in February 2009.

We were asked to prepare and argue these cases by the Justice for Women Alliance in 2003. The alliance had identified these cases as particularly worthy of legal intervention, using international legal precedents and those more recently set in South African law *(Ferreira and Others v The State 2004 (2) SACR 454 (SCA))*.

We were assisted by the Centre for the Study of Violence and Reconciliation and the Tshwaranang Legal Advocacy Centre.

The lives of these five women form the sub-text of the book by Lisa Vetten and Hallie Ludsin: *Spiral of Entrapment: Abused Women in Conflict with the Law*. This book deals with the psychological, social and legal factors affecting women who kill abusive partners.

In the course of this work, we were independently instructed to represent a sixth woman in her parole application. We did so and she was released in November 2007.

Murder or private defence?

During this period we also acted in the murder trial of a woman who killed her abusive partner *(S v Engelbrecht 2005 (2) SACR 41 (W))*. *Commenting on the case in the South African Law Journal, Managay Reddi wrote: "Apart from making an interesting contribution to the development of the South African law on private defence, this judgment also provides a rational basis for the introduction of evidence of abuse in a manner that contributes to the international jurisprudence on the subject."*

The right to health care

We advised OUT LGBT Well-being (OUT) on submissions to the South African Human Rights Commission, particularly the right of access to health care services. This submission highlighted the particular difficulties faced by gay and lesbian people when accessing health care services in South Africa and the constitutional arguments to improve access to health care services for this group.

In addition, OUT has been requested to participate in a round-table discussion on hate crimes. The commission has implemented an initiative to introduce specific legislation

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The Sexual Harassment and Education Project (SHEP) and Tshwaranang have referred a number of sexual harassment cases to our public interest law unit

dealing with hate crimes. Webber Wentzel attorneys prepared an extensive briefing document for OUT on the way in which hate crimes are currently prosecuted in South Africa. Research assistance on US and UK hate-crime law was provided by Maria Campigotto and Kelly Giddens.

The firm has advised People Opposing Women Abuse (POWA) on possible legal strategies as part of a campaign to combat crimes motivated by hatred for gays and lesbians. Further, we continue to advise OUT on a specific hate crime where a gay man seriously assaulted because of his sexual orientation.

Sexual harassment

The Sexual Harassment and Education Project (SHEP) and Tshwaranang have referred a number of sexual harassment cases to our public interest law unit. In two we have negotiated settlements acceptable to the clients. In another, action has begun in the labour court for compensation under the labour relations and employment equity acts.

At SHEP's request, Claire Gaul and Moray Hathorn served as panel members in the internal campaign in May 2007 for staff and management of the SABC to combat sexual harassment in the workplace. Subsequently, Moray Hathorn spoke on the subject to the staff of Deneys Reitz (attorneys in Sandton) and the Department of Home Affairs in Pretoria.

Other activities

- We conducted legal rights seminars for executives, employment equity forums, trade union representatives and factory workers at a food manufacturing company about the workplace implications of sexual harassment and domestic violence.
- We applied in the High Court to stop the unlawful and systematic harassment and arrest of sex workers by the SAPS in Cape Town. We also prepared submissions to parliament on behalf of SWEAT on the sexual offences amendment bill, which has introduced a provision to criminalise the clients of sex workers.
- We acted in a matter in which the High Court found in favour of our client, who had sought an urgent interim interdict to prevent her husband from selling the matrimonial home and evicting her and her children, as he had threatened to do, pending the finalisation of divorce proceedings. The judge was persuaded by our argument that our client should not be evicted by her husband pending the outcome of her divorce action against him, despite the fact that they are not married in community of property and that the property is registered in his name alone.

This was the first part of a strategy to ensure the protection of vulnerable women in customary marriages who find themselves without any assets and without recourse at the dissolution of the marriage, and who may find themselves homeless, often along with their children, as a result.

We have instituted divorce proceedings on our client's behalf, in which we argue for an equitable redistribution of assets, primarily the matrimonial home, in terms of section 7(3) of the divorce act (which provides for equitable redistribution for people married out of community of property other than in terms of customary law). We will argue that the section applies to customary law marriages and, if not, that this exclusion is unconstitutional.

05

Social welfare and health care

In a society with such a massive divide between income groups, the state's efficiency in providing the safety net of social welfare and health care can be assumed to mirror the attitude of the nation to those less privileged. In South Africa, what does that mirror reflect? Caring or care-less?

This ... raises
important issues
about equality and
social security issues
in the bill of rights

Social welfare

Old-age grants

We successfully acted (on behalf of the Centre for Applied Legal Studies at Wits and the Community Law Centre at University of the Western Cape) in an application for leave to intervene as impartial advisor in a case in the Transvaal Provincial Division. This challenged the constitutionality of the different ages at which men and women become eligible for the old-age state social grant (65 for men, 60 for women). The main application was heard in September 2007.

This case raises important issues about equality and social security issues in the bill of rights. Treasury and the Department of Social Welfare defend the differentiation on the basis that it is an affirmative action measure for women. We argued that a statistically significant segment of the male population between age 60 and 65 live in absolute poverty without any meaningful prospect of finding employment. This places an unfair burden on their female partners. We also argued that any declaration of constitutional invalidity should not remove the right of access of women at age 60 to the grant. Judgment was reserved and is still awaited.

In his budget speech in February 2008, the Minister of Finance announced the three-year phasing in of 60 as the age at which men will now become eligible for the old-age grant.

Identity documents

We completed the project initiated in collaboration with the Daveyton Advice Office, Thuso ya Sechaba, to help some 50 children and adults without birth certificates and identity documents process their applications at the Department of Home Affairs, Benoni. Without this documentation, people cannot benefit from the social welfare system.
HIV/Aids

SANAC

"It has been agreed that SANAC will be a high-level multisectoral partnership body. Its aim is to play a leadership role, ensuring consensus is built and maintained on issues of policy and strategy, as well as overseeing overall implementation and review of the National Strategic Plan (2007-2011) on HIV and AIDS and STIs (NSP) as well as the National Comprehensive Plan for Management, Treatment and Care for South Africa. The aim of SANAC is to build commitment and to foster relationships that help to improve health outcomes for all South Africans. SANAC will also encourage sectors to organize themselves and provide progress reports to SANAC in respect of the implementation of the National Strategic Plan. The Deputy President of South Africa will chair SANAC. The Deputy Chair will be elected from the leaders represented in the civil society sectors of SANAC, and will be elected by the sectors themselves".

We argued that a statistically significant segment of the male population between age 60 and 65 live in absolute poverty without any meaningful prospect of finding employment

This statement was issued by the office of the president of South Africa on the central role SANAC will play in implementing the National Strategic Plan (2007-2011) (NSP) on Aids. Mark Heywood was elected to represent the legal and human rights sector on SANAC and Moray Hathorn was elected to a committee of the Human Rights and Justice sector of SANAC to support Mark Heywood in his duties. Mark Heywood was elected vice-chair of SANAC in May 2007. In March 2007, all sectors of SANAC made final input into the draft NSP (including civil society, business, labour, UN representatives, MECs for health, the ministers of education, public services, the deputy and acting ministers of health, and the deputy-president of South Africa). The NSP was adopted by cabinet in April 2007.

The NSP has four main objectives – prevention, treatment, care and support, research, monitoring and surveillance and the promotion of human rights and access to justice.
The legal profession is specifically tasked with obligations under the fourth leg of the NSP – the promotion of human rights and access to justice. A most gratifying development has been the establishment of a legal clinic by ProBono.Org (reported below) which will operate every Tuesday morning and be staffed by attorneys from the private profession, for those requiring pro bono legal services for HIV-Aids related matters. Within a week of ProBono.Org setting up this clinic, there were sufficient volunteer attorneys from private firms to fill every Tuesday slot for the rest of this year.

We have helped frame draft rules under which SANAC will operate.

The NSP has four main objectives – prevention, treatment, care and support, research, monitoring and surveillance and the promotion of human rights and access to justice

06

Building capacity in the justice sector

A fair and independent judiciary is a cornerstone of any democracy. But the very traits that ensure both fairness and independence are terminally compromised by inadequate resources.

"You and your co-facilitators did a wonderful job in informing us of the practical problems of HIV/AIDS related cases and its adjudication..."

Building Capacity in the justice sector

Training on adjudicating of sexual offences

We collaborated with the University of Cape Town's gender, health and justice unit and law, race and gender unit in a project aimed at building capacity in the justice sector. This involved training magistrates in four provinces (KwaZulu-Natal, Gauteng North West and Free State) on adjudicating sexual offences cases in the context of the HIV/Aids epidemic and the provisions of the draft sexual offences bill. In KwaZulu-Natal, North West and Gauteng provinces, magistrates attended from: Durban, Pinetown, Newcastle, Verulam, Richard's Bay, Pietermaritzburg, Umlazi, Port Shepstone, New Hanover, Ixopo, Scottbourgh, Johannesburg, Pretoria, Klerksdorp, Krugersdorp, Potchefstroom, Mmbatho, Temba, Bafokeng, Odi, Molopo, Randburg, Roodeport; Kempton Park, Germiston, Brakpan, and Heidelberg. In the Free State, magistrates attended from: Bloemfontein, Welkom, Thaba N'chu, Phutahditjhaba, Sasolburg, Upington, De Aar, Kimberley, Petrusburg and Heilbron.

Magistrates praised the seminars, reflected in a letter of appreciation from PJ Johnson, regional magistrate, Pretoria to Hayley Galgut.

"Just a short note of appreciation for the very informative workshop that you presented during March 9 – 11, 2007. This was my first direct encounter with the Law, Race and Gender Research Unit of the University of Cape Town and I must commend you and the University of Cape Town and I must commend you and the University on the presentation. The fact that the University is prepared to make funding and its staff available to cater for presiding officers who by the nature of their work and time constraints do not have much time to research an important issue such as the adjudication of sexual offences and HIV/Aids, is held in the highest regard. The time and effort that you and the University are prepared to contribute to further the expertise and skills of judicial officers is truly in the interests of justice in South Africa.

You and your co-facilitators did a wonderful job in informing us of the practical problems of HIV/AIDS related cases and its adjudication. Thank you for the professional way in which you presented the workshop and treatment of all the regional magistrates present. It was indeed well my worth to sacrifice my weekend to attend a workshop of such importance as this one. I sincerely wish to thank you, the University and its donors."

Prevention of Organised Crime Act

The Constitutional Court handed down judgement in a matter in which we represented the Law Review Project (admitted as impartial adviser) about the asset-forfeiture provisions of the this act. Although the court did not accept

our argument that the asset-forfeiture provisions of the act applied only to the instrumentalities of offences which form part of the substratum of organised crime, it did accept that the proximity of an offence to organised crime is a factor in determining whether forfeiture meets the proportionality test. Moseneke J stated: *"Is it a crime that has some rational link, however tenuous, with racketeering, money laundering and criminal gang activities? If the answer to these questions was in the negative, this may be an important indication that the forfeiture may be disproportionate." (Mohunram & Another v National Directorate of Public Prosecutions & Others* (Law Review Project intervening as amicus curiae) 2007 (4) SA 222 (CC)).

The Electrical Precinct, Newtown

To the south of the Market Theatre and Mary Fitzgerald Square is the electrical precinct of the Newton Heritage site. It includes Turbine Hall, now partly occupied by Anglo Gold Ashanti. It comprises eight acres set aside in 1888 for the "making and delivery of gas and lighting". The original workers' compound for the complex lies next to Mary Fitzgerald Square on its southern edge. South of this compound is a park on which permission was sought to build a hotel. In past decades this park was an important meeting place in the history of the trade union movement. We were instructed by the Workers Library and Museum, part of Khanya College (an NGO which provides education for disadvantaged persons and attempts to preserve the historical and cultural heritage of the working class, and which then occupied the workers' compound), to provide guidance in their opposition to the application to build the hotel. The workers' compound is a compact illustration of the racially segregated nature of the South African working class and the distinctive nature of the migrant labour system.

In November 2006 the South African Heritage Resources Agency refused permission to build the hotel.

The new public interest law clearing house

The new public interest law clearing house, ProBono.Org, was officially opened at a reception at Constitution Hill. Moray Hathorn, along with representatives of other Johannesburg law firms, is a founding director.

It has been incorporated as an association not for gain under section 21 of the Companies Act. It is staffed by three attorneys, a paralegal and support administrative staff, and will be funded by Atlantic Philanthropies on a reducing basis over three years. The aim is to turn it into a membership-based organisation, with members being the law firms that will use its services.

ProBono.Org is headed by Odette Geldenhuys, a noted film-maker and formerly an attorney and deputy national director of the Legal Resources Centre. When the Legal Aid Board was revamped under the chairmanship of Judge Mohamed Navsa in the mid-1990s, Odette played the premier role in managing the establishment of the Justice Centre network, now with some 80 offices employing about 900 lawyers countrywide.

Contact ProBono.Org:
Offices 9th Floor, Schreiner Chambers, 94 Pritchard Street, Johannesburg.
Telephone +27 (0)11 336 9510.
Website is www.probono-org.org.

The occasion also marked the fifth anniversary of the South African Visiting Lawyer Program of the New York City Bar

We were instructed by an NGO which provides education for disadvantaged persons and attempts to preserve the historical and cultural heritage of the working class to provide guidance in their opposition to the application to build the hotel

Unless the poor obtained legal redress through the courts, ultimately they would resort to the streets

and the Cyrus R Vance Center for International Justice. At the reception in the old Women's Jail on Constitution Hill, deputy chief justice Moseneke welcomed its establishment and noted that the divide between rich and poor in this country was a threat, in the medium to long term, to the stability of South Africa. Unless the poor obtained legal redress through the courts, ultimately they would resort to the streets. ProBono.Org could play an important role in giving the poor access to the courts, including the Constitutional Court, to enforce their socio- economic rights as enshrined in the bill of rights by linking needy people with deserving cases and unable to afford legal representation to attorneys willing to provide pro bono services. He noted that only three socio-economic rights cases had come before the Constitutional Court. He urged that the debate continue about whether litigants should be afforded direct access to the Constitutional Court on the enforcement of socio-economic rights.

Talks were given Evan A Davis (a senior partner of Cleary Gottlieb Steen & Hamilton in New York) and Edward Turner (counsel in Shearman & Sterling's Hong Kong office) about how pro bono legal services are organised in their firms. Evan Davis made an interesting point: while in civil litigation the financial interests of the client will be the primary value to be pursued and in politics party interests and the interests of party funders will often muddy the public interest, it is in public interest litigation that the purest expressions of the public interest (albeit contending versions) will be expressed for decision by an independent judge. He made the point that the standing and independence of the judiciary itself is based in good measure on its role as arbiter of the public interest and on fulfilling that role properly.

Elizabeth Mallard, former managing director in the legal and compliance department of Credit Suisse, discussed the role in-house legal departments in corporates can play in providing pro bono services.

Joan Vermeulen, executive director of the Cyrus R Vance Center for International Justice and former executive director of New York Lawyers for the Public Interest, one of the principal clearing houses for pro bono legal work in New York, spoke of the role of the clearing house: first, that of outreach to NGOs and community-based organisations to find pro bono legal work; second that of screening cases; third referring cases to attorneys; fourth monitoring the conduct of cases. She also highlighted the success of the South African Visiting Lawyer Program. She spoke of the need to deepen its reach to previously disadvantaged people of ability in smaller law firms who do not have the initial depth of exposure to corporate work which would justify bringing these young practitioners into the programme. With the help of bigger South Africa firms, she hoped this gap could be redressed.

Seminars and briefings

We hosted a national seminar of prominent role players in the gender rights sector concerning current gender rights issues. We also hosted the launch of the International Bar Association's Human Rights Institute Report on police conduct in Zimbabwe. The report is entitled: *'Partisan policing: An obstacle to human rights and democracy in Zimbabwe'*.

Moray Hathorn presented a talk to guests of the Free Market Foundation and the Law Review Project on the decision of the Constitutional Court in *Mohunram & Another v National Directorate of Public Prosecutions & Others (Law Review Project intervening as amicus curiae) 2007 (4) SA 222 (CC)*.

Business Place

Our candidate attorneys continued their dedicated service at Investec's Business Place in the Johannesburg CBD. There they give advice weekly to budding entrepreneurs needing

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an introduction to aspects of business law.
There are now seven such operations in Johannesburg, Kliptown, Kingwilliamstown, Cape Town, Philippi and Gaborone and they all operate with the support of a strong network team funded by Investec. The Johannesburg Information Centre sees over 2 200 entrepreneurs each month and increasingly they are over the age of 35, demonstrating that the centres are not only servicing the youth. In addition, nearly 3 000 clients have used the internet and typing facilities on offer for research and document generation.

Small Claims Court

Partners in our dispute resolution department, David Scholtz, Gert van der Linde and Bernard Matheson continue to serve as commissioners of the Small Claims Court. The importance of this service cannot be underestimated. The Small Claims Court gives litigants an inexpensive, quick and efficient procedure to resolve a range of common disputes in matters where the value of the claim is under R7 000.

Acknowledgements

We are most grateful to the Foundation for Human Rights and the Anglo American Chairman's Fund for grants to cover the fees of counsel and expert witnesses in our litigation. Advocates we brief generally spend time on these matters well above their annual pro bono obligations as laid down by the Bar Council. Yet, in all cases, advocates charge at reduced rates and, in some cases, not at all. We are most grateful to members of the Johannesburg Bar who invariably respond energetically and generously to requests for pro bono work.

Our thanks also go to the NGOs and community-based organisations who refer much of our work. These co-operative relationships are of great benefit to our unit.

In the Johannesburg inner-city housing case *(Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v the City of Johannesburg and others 2008(3) SA 208 (cc))* we acted jointly as attorneys to the occupiers with the Wits Law Clinic and the litigation unit of the Centre for Applied Legal Studies. In the challenge to the constitutionality of the Communal Land Rights Act, we act jointly as attorneys with the Legal Resources Centre, as we do in negotiations with the Department of Land Affairs in the Khomani San matter. This co-operation with these public interest lawyers in these major cases has been invaluable to us and our clients.

Conclusion

At the annual general meeting of the Law Society of Northern Province in November 2007, it was resolved that a compulsory scheme for the provision of pro bono work by attorneys be implemented. Details will now be formulated by the law society after consultation with members. The Legal Services Charter has been adopted which also allocates points to firms for providing pro bono legal services. Clearly these developments will have important consequences for the delivery of pro bono legal services in future.

"Clearly these developments will have important consequences for the delivery of pro bono legal services in future."

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