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A Resource for Justice: South Africa's Legal Resources Centre East Africa

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A RESOURCE FOR JUSTICE: SOUTH AFRICA'S LEGAL RESOURCES CENTRE

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"An opportunity for excellence lies in doing ordinary things extraordinarily well." Wallace Mqoqi[1]

I. INTRODUCTION

Access to justice and in particular the right to legal representation has evolved to be regarded as integral to the attainment of legal equality, and a fundamental aspect of human rights law. The importance of a "fair go" in the legal system is reflected in a number of international legal instruments in which the right to legal representation is enshrined.[2] This article is a brief reflection on a successful exercise in lawyering for the voiceless and the disenfranchised in South Africa—an exercise in broadening access to justice in a society where justice has been a scarce commodity for decades. The Legal Resources Centre (LRC) provides a stellar example of an organization committed precisely to this ideal. Although the two "legal victories" recorded in this article are modest, they nonetheless highlight some of the possibilities of utilizing the legal system to pursue rights, despite government policy consciously predicated on racial inequality.[3]

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* Associate Professor of Law, City University, New York. This article was submitted prior to the April elections in which, for the first time in the history of South Africa, the black majority led by Nelson Mandela's African National Congress (ANC) assumed the reins of political power. (Ed.)

1. Attorney at Legal Resources Center, Cape Town. These words are an abridged testimony to the work of the Legal Resources Center (LRC), South Africa's largest public interest law firm. The term "public interest" is used in the generic sense to encompass civil rights and human rights law. It is derived from the American model of public interest law which includes legal battles on behalf of ethnic minorities, women, consumers, tenants and workers—groups of people viewed as requiring special legal protection because of their lack of economic or political power. Public interest litigation is designed to procure legal decisions which impact on and benefit whole classes or groups of people.

2. *See*, art. 14 of The International Covenant on Civil and Political Rights; art. 7 of The African Charter on Human and People's Rights; art. 6 of The European Convention on Human Rights, and art. 8 of The American Convention on Human Rights.

3. Civil rights or public interest lawyers in South Africa have always maintained the view that litigation was not a means of transforming the apartheid state. Rather the palliative effect of rights litigation has been its most positive aspect. *See e.g., Legal Ideology and Politics in South Africa: A Social Science Approach* (John Hund et al., 1986).

There is no doubt that apartheid in South Africa and its enforcement left little room for the vindication of fundamental human rights. Despite this overall context however, South African courts provided a limited avenue within which individuals and communities could pursue rights, fortified by a common law tradition based on principles of Roman Dutch and British law. A limited space thus existed for challenging the system, particularly where statutory law had not yet encroached. In addition, there is a body of statute law which provides consumer, worker and social security rights. These guaranteed rights, although racist in their implementation, are frequently non-racial in content.[4] The problem of enforcing these rights was acute because so many people were ill-educated about their existence, and often lacked the capacity and resources to enforce them. In essence, therefore, the combination of the common law tradition, coupled with the limited rights guaranteed by statute, has provided the legal space wherein rights can be pursued. This is the space that the LRC has utilized in its public interest endeavours.

II. A BRIEF HISTORY OF THE LRC

The LRC, a privately funded law centre, was established in 1979 with the specific aim of making legal assistance available to the poor, and to undertake public interest law cases.[5] The LRC provides free legal advice to people from disadvantaged communities and, where necessary, undertakes litigation without charge on their behalf. It also provides backup support and training to community advice centres. The organization has published several books and manuals on aspects of public interest law and in this regard has provided a blue print for numerous organisations with similar objectives in the region and beyond.[6]

The South African legal system (alongside the political system) is currently undergoing profound change and it will no doubt be transformed in the next few years. Many challenges await the architects of the new legal

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4. South Africa's major labour statutes have since 1979 provided substantial rights for workers and contain no racial distinctions, although until only a few months before the general election, domestic work and farm labour, a huge source of employment for black workers, were excluded from the ambit of their operation. Social security rights, until relatively recently, were provided on a racial basis (for example, pensions payable to whites are larger than those paid to blacks). But even on this racially disparate basis, the law guaranteed the right to pensions, unemployment benefits and other welfare benefits. The body of South African consumer laws contains significant rights and protections.

5. The LRC has offices in 6 major cities in South Africa and employs approximately 100 people consisting of 26 attorneys and advocates, 12 fellows (law graduates who have not yet completed professional requirements) and a large support staff.

6. Much of the LRC's funding comes from American and European foundations, churches and trusts, and to a lesser extent, South African companies.

order, but one fundamental challenge is imperative: How to inspire confidence and hope in the legal system in a society scarred and brutalized by decades of racial oppression, discrimination and dehumanization—a society inured by the ubiquity of justice. It is in this regard that the activities of the LRC throughout its brief history have provided a beacon for the future. The story of the LRC is a story of survival—how ordinary South Africans survived despite the impact of the laws of apartheid and its myriad subsidiary regulations. The story is not a grand saga, but a sober and often distressing reflection of the hardships and indignities endured by people whose rights were constantly violated. In contrast, for example, to the august victory in the United States of *Brown v. Broad of Education,*[7] the story of the LRC is one of myriad legal triumphs and legal battles fought against the greatest odds. For in South Africa there existed neither a constitution nor a bill of rights to provide redress against unconscionable acts of Parliament.[8] The doctrine of parliamentary supremacy, a prototype of British democracy, had the sardonic result of rendering the activities of the minority white parliament immune from challenge in the courts. In short, parliamentary supremacy translated into white supremacy.[9]

Within the plethora of apartheid laws, the LRC could make only a minor dent. The structural problems pertaining to the legal system were enormous, ranging across such fields as a hostile and rigid bureaucratic culture; the make-up of the actors in the legal system (the judiciary, magistracy and practitioners were, and continue to be overwhelmingly white); the lawyering process (for example, the official languages are English and Afrikaans, the second language of almost all black South Africans); and an expensive and cumbersome legal process.

The history of the LRC reflects the work of brave and courageous lawyers who have risen from the ranks of a legal profession steeped in self interest and greed, a profession largely indifferent to the plight of the majority of the country's citizens who are ravaged by poverty. For these citizens, law is experienced frequently as an oppressive system which arrests, imprisons, evicts or separates. For them law is seldom a force for enforcing rights and freedoms. The LRC story reflects the innovation and creativity of its lawyers in attempting to use the legal system to effect change, to provide

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7. Although this landmark decision in 1954 outlawed racial discrimination in schools, it provided the U.S. Supreme Court's imprimatur for desegration in other areas of America public life.

8. The major political groupings all accepted the inclusion of a Bill of Rights in the new South African Constitution which was promulgated shortly before the election.

9. The doctrine of parliamentary supremacy has resulted in the courts being precluded from undoing or mitigating the more egregious effects of the actions of parliament. *See* John Dugard, *Human Rights and the South African Legal Order* (1978).

some avenue of redress, and as a force for the realization of rights and freedoms. It is a story about lawyering under the most trying, inhuman and often dangerous conditions.[10]

III. THE LEGACY OF APARTHEID

Most analyses and commentaries of apartheid often refer to the lawlessness of the South African state. This characterization is appropriate but not entirely accurate, since the lawlessness of some officials, and in particular sections of the bureaucracy and the security establishment, account for only part of the oppression and abuse levelled at the black citizenry. A more accurate description of apartheid South Africa is a society underpinned by "excessive legality."[11] The apartheid system spawned a labyrinthine structure of laws and regulations, generating an inflexible bureaucratic system, and a stifling legalistic culture. For the majority black population the machinations of apartheid carried with it the need to engage with the legal system. Indeed one of the unique and peculiar aspects of the system was its ability to criminalise behaviour and actions which in democratic societies are regarded as the exercise of fundamental rights and simply taken for granted: the ability to travel, seek employment, live in a residential area of one's choice or to marry a partner of one's selection.[12] George Cooper, an American legal scholar, has commented quite eloquently on the abundance of laws and the absence of justice in the South African context.[13]

Over the years a number of individual lawyers made a contribution towards increasing the accessibility of the legal system and courts to poor people and raised their voices against injustice. However, the legal profession as a whole was rather reticent in highlighting or objecting to the inequities

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10. Apartheid restricted the right of the majority of the population (the black community) from full participation in the political process. It forbade the majority black population from owning and occupying property and moving freely around the country. It denied them the facilities for a proper education and the right to seek employment. Civil and political rights were sharply curtailed by a barrage of security laws which allowed, inter alia, for detention without trail for indefinite periods, and for the banning of organizations opposed to apartheid.

11. Martin Chanock, *Writing South Africa Legal History: A Prospectus* 30 J. AFR. HIST. 265 (1989).

12. South Africa's notorious system of migrant labour and influx control mandated by the Black Urban Areas Consolidation Act of 1945, rendered the right to move freely to obtain employment illusory for the majority African population. The Group Areas Act of 1952 effectively created racially segregated residential zones while the Mixed Marriages Act of 1957 prevented South Africans from marrying partners of their choice. APARTHEID: THE FACTS, (International Defence and Aid Fund, 1983).

13. *See* George Cooper, *Public Interest Law—South African Style* 11 COL. HUM. RTS. L. REV., 106 (1979-1980).

in the legal system, and particularly in making legal services available to the poor. Judge Johan Kriegler, a member of South Africa's highest court, in a much publicized speech, referred to the South African legal profession as "enclaves of privilege in a wasteland of misery." [14] It was within this environment—a rigidly racist and brutally repressive political, economic and social system—that practical steps in the direction of public interest or civil rights litigation began to be taken. During the politically turbulent 1970s a small group of concerned individuals, amongst them senior members of the legal establishment and community activists, began to address questions of access to the courts and the legal system. Many people could no longer t-olerate the ravages of racially discriminatory legislation and the exploitation to which they were daily subjected as consumers, tenants, or workers. This is the legal terrain in which the LRC attempted to carry out its public interest mission.[15]

IV. CHALLENGING APARTHEID IN THE COURTS

Formal adherence to the "rule of law" is embedded in South African legal authority.[16] The use of the legal system, particularly the courts, to pursue rights was not uncommon or odd at the time the LRC commenced its operation, despite the legal entrenchment of racial discrimination and the absence of a bill of rights. In fact the leaders of the broad based anti-apartheid movement always used the courts to pursue redress, as evidenced by the

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14. The legacy of apartheid leaves intact one unsurprising fact: that the perception of the legal system and the legal profession by the black population is that they are linked to the haves, and appear quite oblivious of the glaring injustices in South African society. The legal system consequently has little credibility with the majority of people who only experience the law in an oppressive manner.

15. The initial goals of the LRC were:

1. To undertake litigation, handle cases of importance to the community and provide legal services to those who might not otherwise have access to lawyers.
2. To supervise student law clinics and conduct seminars for law students working in the clinics.
3. To establish its own clinic directed towards the needs of the inhabitants of Soweto.
4. To raise the interest of the legal profession in the public interest and to encourage universities which had not yet done so to establish their own student law clinics whose services would mainly be directed to the needs of the black community. (Director's Report of Meeting Oct.-Nov. 1981).

16. *See* Stephen Ellman, *Legal Text and Lawyers' Culture in South Africa*, 17 REV. L. & SOC. CHANGE at 387 (For a thoughtful and interesting discussion on the rule of law, lawyers and legal culture in South Africa).

major political trials that have taken place in South Africa since the 1950s.[17] What was novel and unprecedented in 1979 was that ordinary people were beginning to use the courts.

Limited and under-resourced state legal aid had been in place in South Africa since 1969,[18] but 1979 marked the first time that a concerted attempt was made to channel all the resources of an organization into the provision of legal services for the poor. The LRC offered "small people" a legal method of obtaining relief which could balance the weight of oppressive and incomprehensible laws coupled with bureaucratic regulations which so encumbered their lives. To this end, networking with community advice offices was crucial. Inspired by some legal successes in the courts at the time, community leaders began to take seriously the notion of challenging official regulations and bureaucratic action. Particularly noteworthy in this regard was the burgeoning trade union movement, which endeavoured to use the newly created industrial court, equipped with an armoury of provisions in the amended labour legislation, to pursue the rights of workers.

Until the mid 1970s law was not viewed as a profession to which people on the political left and opponents of apartheid aspired. The legal profession was not seen as one that could make an impact on society, an attitude that began to change in the early 1980s.[19] South Africa has, in the past decade, witnessed a tremendous growth in the number of young lawyers who see themselves as "activists" and "change oriented."[20]

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17. Nelson Mandela and the leadership of the African National Congress, and the leaders of the Pan Africanist Congress were charged in the famous "treason trials" of the late 1950s. The 1950s and 1960s witnessed a host of political trials—successful attempts by the government to silence political opposition in the country. Although the government succeeded in its mission, the accused did not shun the rule of law; they rejected the laws and administration of justice in South Africa.

18. The following statistics illustrate the very limited impact that the Legal Aid Board has had in providing legal services to the poor: a) Approximately 1 million accused persons a year are undefended in the magistrate's courts, and about 180,000 persons are sentenced to imprisonment each year without being legally represented. *See* STEYTLER NICO, THE UNDEFENDED ACCUSED (1988); b) In the period 1979-1980,the total number of civil legal aid referrals to attorneys was 5736, of which less than a quarter (1427) were given to black applicants. *See* MASON MCQUOID, AN OUTLINE OF LEGAL AID IN SOUTH AFRICA, (1982).

19. Many reasons can be ascribed to this, but a partial reason was the existence of a host of human rights legal organizations like the LRC, the Black Lawyers' Association Legal Education Centre, Centre for Applied Legal Studies and Lawyers for Human Rights.

20. In effect, the early success of the LRC with the *Komani* and *Rikhoto* cases changed popular perceptions regarding the possibilities of the use of the law as an instrument of change. Both cases successfully challenged the notorious "pass law" system. The *Komani* case established the right of a wife to live with her husband in the city while the *Rikhoto* judgement provided security of residence for an African man who had worked continuously

The LRC's choice of cases was motivated largely by the desire to provide a service to a people who had for so long been denied access to the legal system, and to conduct cases designed to have an impact on a large number of people. The purpose of the choices of issues for litigation by the LRC was to explore mechanisms whereby the law could be fashioned to serve the poor and the powerless. In the early days of the organization, because of a clearly expressed need, influx control was the major focus of its work. In addition, the LRC engaged in a tremendous amount of labour work as evidenced by the organization statistics especially after the amendments to the labour legislation.[21]

Although the LRC was founded at a time when the system of apartheid was no longer at its zenith, it was still robust and had only marginally been tampered with. The effects of the 1976 student riots in Soweto had left a yearning for change in the country, and the amended labour legislation which provided significant organisational space for black workers gave some impetus to this desire. But the guardians of the apartheid state, and in particular the security apparatus, were still wary of any organization or individual they regarded as subversive and therefore undermining of the racial status quo. The LRC was thus regarded in a rather skeptical light: on the one hand, the organization was a perfectly respectable legal institution and represented the "fine Western legal tradition" in which South Africa's legal system took pride. On the other, the nature of the litigation that the organization was undertaking had the potential of subjecting the system to some embarrassment or inconvenience if not outright subversion. This resulted in the uneven and insidious harassment of individuals within the organization. Consequently, sporadic invectives were levelled against it by various government officials.

V. COMMUNITY ADVICE CENTRES

One of the most significant quasi-legal developments in South Africa in recent years has been the establishment of local advice centers within black communities which are staffed by paralegal workers drawn from within those communities. These advice centres are located in both remote rural areas as well as in urban centers such as Soweto outside of Johannesburg. They emerged slowly after the tumultuous political events of 1976, but the early part of the 1980s saw the burgeoning of these centers throughout the black communities. About a year after it began operations, the LRC was ap-

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for one employer for 10 years.

21. Changes were made to the major labour statutes in South Africa which provided black workers with substantial rights in relation to trade union activity and job security. *See* THE NEW LABOUR LAW (M. Brassey et al., 1987).

proached by some members of community organizations who expressed a need for the training of paralegals, for instruction in the management of advice offices, general support and backup. The LRC in Johannesburg responded by establishing an advice office programme and other offices of the LRC around the country followed suit. Many of the individuals attached to the advice offices had already been involved in various activities in their communities: protesting socioeconomic and political conditions, conducting literacy classes, administering self help schemes, organising bursaries and other related activities.

The relationship of the LRC with advice centres varies throughout the country.[22] The advice centres operate autonomously of the LRC and are self-financing and independent although often attached to community groups and church bodies. The LRC provides assistance with the establishment of advice offices and the training and education of paralegal workers. In its early years, the LRC provided a forum for, and facilitated liaison between different advice centres. In the past few years the advice offices have constituted themselves into formal associations. The LRC also provides written materials and resources to advice offices, and a crucial backup service. Lawyers from the LRC visit about 25 advice centres around Johannesburg and Transvaal regularly, to intervene and often litigate in matters referred to it by the advice centres. As part of this backup service, the LRC always attempts to have a Lawyer available to respond to telephone calls from advice centres.[23]

Following the establishment and growth of advice offices, the LRC set up an Advice Centre Training Program consisting of seminars on the administration of advice offices and in relevant areas of the law. The training programmes have the benefit of making advice offices more operationally independent and self reliant, and lessening the burden of dependence on LRC lawyers. The training results in paralegal workers processing certain claims and dealing with matters that are more administrative than legal. To assist paralegal workers in their tasks, the LRC publishes a paralegal manual, which provides a handy reference point to legal and administrative issues.

As a corollary to the increased access to legal services, the advice centres provide numerous benefits. First of all, for people in the local communities, the existence of advice centres results in their being afforded

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22. The advice centres programme in the Johannesburg and Transvaal region is particularly successful because it is tied in with the LRC's Advice Centre Programme.

23. The other LRC offices similarly provide a back up service for advice offices. In its early years, the Durban LRC office ran a mobile legal aid clinic travelling around remote areas of Natal. That facility no longer exists, but the office still maintains a solid working relationship with advice centres in Durban and the region. The Cape Town office of the LRC runs a programme similar to the Johannesburg one, regularly visiting advice centres in the rural areas.

an opportunity to communicate their problems in their own language in an environment that is less intimidating than the traditional law office. Secondly, advice centres provide an ideal means of screening and identifying patterns of abuse and exploitation and of simplifying the process of problem identification and priority determination. Thirdly, advice centres play both an educative and preventive role by raising the awareness of local communities about their rights. The existence of the advice centres essentially translates into the expansion of legal services at little expense to the communities in which they operate. The co-operation between the community advice centres and the LRC makes it possible to connect political movements with legal challenges. For example, local level organization around rent increases could be complemented by legal action challenging such increases. This collaboration provides communities with vital legal support and expertise.

The existence of the advice centres has not always been secure and stable. At the time when the South African government declared a State of Emergency in 1986, advice offices were interrupted and their workers were taken into police detention, some for inordinately long periods of time. Many who were not arrested were forced into hiding. These offices soon faced a problem of staffing because there were not enough volunteers to run the affected offices. The advice offices that remained open put up a courageous fight against continued harassment and intimidation. The disruption continued until 1989 when advice centres were once again allowed to function normally after the release of their staff from detention.

But how exactly did the LRC and the Advice Centres contribute to the eventual demise of the apartheid system, and the transformation of the lives of the poor and dispossessed minority of South Africa?

VI. THE BEAUTY DUMA CASE AND THE DRIEFONTEIN LAND STRUGGLE

The following two cases illustrate the kind of work that LRC lawyers engaged in. Both cases involved the use of traditional legal methods, that is, a lawyer representing a client and in the case of Duma, adjudication before a judge in the Supreme Court. In this case standard methods of statutory interpretation were employed, and there was no derivation from the usual rules of procedure and evidence.[24] In the second case, which involved a struggle for land, the lawyer representing the threatened community devised

24. The fact that the subject matter of the dispute arose out of an inhuman government policy which inevitably led to a great personal tragedy, gave the proceedings a particularly Kafkaesque tone. This state of affairs, however, was typical of the apartheid legal order which encapsulated all the trappings of legality without the substantive requirements of justice.

alternative methods of lawyering. There was no court drama here but a series of negotiations involving the community at every stage. The white lawyer, from a privileged background and educated at one of South Africa's premier English universities, represented and engaged with an economically deprived community, largely formally uneducated and whose first language was not English. The Driefontein case symbolized the growing recognition of the need for an alternative approach[25] to lawyering within certain sectors of the legal community. The perpetuation of this approach is crucial in the provision of legal services to the poor.

The Beauty Duma case was heard in 1983, at a time when the South African government's policy of restricting the movement of African people through the influx control and migrant labour system was coming under increasing pressure. The system had become unworkable because economic and social desperation forced people to the urban areas, and they simply disobeyed the law. In addition, influx control became more and more of an embarrassment to the South African government as anti-apartheid activists inside the country and abroad showed the system for what it was: an unwieldy and inhuman policy which denied African people the most fundamental rights to a decent family, shelter and work. Because that system was being continuously challenged in the courts, it became too expensive and too difficult for the government to enforce. It can therefore be argued that litigation, combined with enforcement difficulties and persistent protests, caused the ultimate demise of the system of influx control and migrant labour.

Mrs. Beauty Duma, a 32 year old widow with two young children, had no known relatives and no one in the rural areas from which her family had come or in the tribe to which they belonged willing to take care of her.[26] With little education and no skills, she worked as a domestic servant usually with tourists visiting the South Coast of Natal on holiday.[27] Such

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25. I use the term alternative in a modest sense, recognizing that the legal process is extremely difficult to transform. *See Transformative Potential of Alternative Legal Services*, 1 BEYOND LAW, Nov., 1991 (for an interesting series of discussions on "grassroots lawyering").

26. Under the system of perpetual tutelage which so epitomised the status of women in South Africa, black women always had to be under the guardianship of a male relative—husband, father, brother or uncle—unless they applied for legal emancipation. *See* Penny Andrews, *The Legal Underpinnings of Gender Oppression in Apartheid South Africa*, AUSTRALIAN J.L. & SOC., 92 (1986).

27. The Natal Coast has historically been one of South Africa's favourite tourist destinations. Natal is endowed with year round good weather, lush vegetation and an infrastructure that caters for tourists. The local African population, however, has not benefitted much from this holiday location. They have provided the cheap labour to keep this industry viable and attractive to outsider. As is the case in other parts of South Africa, African people

employment was temporary and intermittent; it was unregistered and therefore illegal. Visitors seldom took the trouble of registering an employee for only a few weeks. Although accommodation was sometimes available for Mrs. Duma at her place of employment, she and her children lived mostly in a shanty house in the bush. Mrs. Duma's situation was typical of many single African women who came to the city from the "homelands." They were desperate and hungry, and the urban areas were the only places where the opportunity of employment was possible, however remotely. Their homes were wooden and scrap metal shacks haphazardly constructed in the bush because police raids ensured that their humble home shelters were only tenuous homes.

During one of their frequent and enthusiastic raids on "idle and undesirable" persons in the area, the police arrested Mrs. Duma and brought her before a commissioner who concluded that "section 29" left him with no choice in the matter, but to declare her an "idle" person. Section 29 of the Black (Urban Areas) Consolidation Act enabled the police to arrest without warrant any African suspected of being "idle and undesirable." The arrested person was taken before a Commissioner's Court and, if the Commissioner agreed that he or she was "idle and undesirable," such a person could be sent to a prison farm for up to two years and stripped of his or her permanent city rights.

Section 29 outlined several criteria to be used by the arresting officer when deciding whether he was of the opinion that an African was "idle and undesirable," the key criteria being that the person had to be unemployed and had spent less than 122 days of the previous year in lawful employment. In successive hearings the South African Supreme Court had held that these were the criteria which the Commissioners' courts had to take into account. The court record stated that the commissioner was extremely uncomfortable about convicting Mrs. Duma—her dire circumstances were so obvious—but he believed that a reading of Section 29 virtually tied his hands. He had no alternative but to find her guilty.

The purpose of the Black Urban Areas Consolidation Act, and in particular section 10 thereof, was to ensure that African people did not move to the cities without official authorisation in search of employment. Section 29 bolstered section 10 by penalising people who had urban residence rights but were unemployed. The combination of the two sections resulted in a draconian violation of rights, and the imposition of a vicious catch 22 situation for African people—the availability of unskilled labour did not match the demand for it. The victims of this imbalance were then punished

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were subjected to the strictures of the influx control system, whose tentacles reached everywhere.

in the most inhuman manner, with thousands of people being sent to prison farms.[28] Mrs. Duma was more fortunate in that her case came up for review before a full bench of the Natal Supreme Court, a court on which a number of liberal judges sat. The court requested the Durban LRC to intervene in the matter and represent her.[29]

After considering the facts, the court ruled that the Commissioner's court was incorrect in holding Mrs. Duma an "idle" person and overturned the decision that she be sent to a prison farm for one year. The judges held that the criteria laid down in section 29 of the Act to be applied by the arresting officer was not the criteria that the commissioners' court was bound to adopt. They stated that the commissioners' court was obliged to take into account the ordinary definition of the word "idle" when deciding whether an African person had contravened section 29. They therefore concluded that Mrs. Duma was not an "idle" person in the ordinary and true sense of the word. Her involuntary unemployment or the unlawfulness of the employment she had acquired later were neither her choice nor desire. She had done the best that could be expected of her in the circumstances.[30]

VII. AN ALTERNATIVE APPROACH TO LAWYERING: THE VIEWS OF AN LRC LAWYER

In the early 1960s the South African government designated Driefontein a "black spot"[31] and proposed the removal of the entire community, ostensibly to build a dam in the area. The prospective removal was particularly unfair, because the community had lived there since the early part

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28. *See* C.R. Nicholson, *Idle and Undesirable: Section 29 of the Black (Urban Areas) Consolidated Act 25 of 1945*, Department of Adjectival and Clinical Law, University of Natal (unspecified date). *See also* INFLUX CONTROL: THE PASS LAWS (A. Chaskalson & S. Duncan, 1984.)

29. *In Re Duma* (4) 469 (1983).

30. Judge Didcott, one of the sitting judges and a prominent advocate of human rights, had the following to say in delivering of the judgement:

> A number of judgements delivered by the Supreme Court over the years have called section 29 drastic in its general effect. That seems the least that can be said of it. One has only to read it to feel this. Its harshness is foreign to the idea, cherished by lawyers everywhere, that the law's business is first and foremost to protect the liberties of the individual, that the safety of the public rests largely on the law's success in doing so. No counterpart, nothing at all similar, can be found in any system of jurisprudence with which we would like ours to be compared.

31. In terms of the Black Land Act of 1913 and the Development Trust and Land Act of 1936 (now repealed) African people had access to property rights only in the homelands or in certain "black spots" (black owned land within the area designated as "White" South Africa).

of the century, built its own school and health clinic and was largely self-sufficient. The proposed removal was also unnecessary, because as later became abundantly clear, only about a quarter of Driefontein land would be required for the dam.[32] The Community successfully resisted a tenacious and vicious campaign by the authorities to remove them from their land. During the campaign, residents were persistently harassed and intimidated by the South African authorities particularly the security police. A prominent community leader who was extremely vocal in opposing the removal was shot and killed by a policeman before a meeting of the community.

The lawyer representing the Driefontein community had commenced his professional career as an attorney with an involvement in the early political trials. While he was of the opinion that political trial work was satisfying and that there was a need for lawyers to engage in work of this nature, he also believed that the lawyering endeavour of defending political prisoners did not result in anything new or ground breaking. It was vital defensive work with the principle objective of preventing political leaders and activists from being sent to jail as its overall goal. He therefore considered the exigent need for dealing with the day to day legal problems of ordinary South Africans—the problems of housing, pass laws, consumer matters etc. He and other LRC lawyers profoundly believed that the law could be used for a beneficial impact on people's lives, and not just as an instrument of repression. The LRC lawyer was essentially interested in the use of law to attack injustice, and its effect "on the ground."

In an interview with the author of this article, the Driefontein lawyer spoke passionately about his involvement with Driefontein and communities similarly situated.[33]

Whereas in previous situations involving forced removals the government's bullying tactics inevitably resulted in a "condemned" community being removed. However, the Driefontein community and their lawyer worked closely at devising innovative strategies to encourage negotiations between the parties. The steps they mutually agreed upon included the use of a variety of tools, legal and non-legal. The success of their struggle resulted from many factors, particularly the constant interaction between the lawyer and the community about appropriate strategies and tactics. The Driefontein lawyer tells of the way interacting with such communities changed his perceptions of the work of a lawyer. He found his involvement with rural communities especially poignant because the legal system denied individuals in those communities the most basic human rights. While at law school, and

32. LRC NEWS REPORT, Sept. 5, 1985.

33. *See* Lucie White, *To Learn and to Teach: Lessons from Driefontein on Lawyering and Power* at 699, WISCONSIN L. REV. (1988) (For an interesting and informative discussion on this lawyer's work with the Driefontein community).

during his articles of clerkship, he embraced the traditional view of the lawyer/client relationship. He largely perceived of lawyers as sitting in an office, where clients would come to consult. He saw the lawyer as a professional, distinct from the client and in some ways dominating the client.

Working with communities like Driefontein made LRC lawyers recognize that there was another way of practicing law. They realised that a lawyer under these circumstances has to relate to a client in a different way. Clients who are under threat in the way the Driefontein community was, are not experienced in dealing with lawyers and are ill educated in relation to the lawyer. The lawyer normally has tremendous power over clients, particularly clients with little formal education. For rural black people particularly, lawyers are a symbol of authority.

The involvement of L.R.C lawyers with forced removal work in general, and with the Driefontein community in particular, guided them in exploring a different way of relating to clients. They devised mechanisms of working *with* the clients, rather than *for* them. This brand of lawyering altered their notion of law practice and led to a growing belief in the "democratisation of law practice."[34] This meant an ongoing negotiation with client communities about the lawyer's role. The "client-centred" way of practicing law slowly began to influence the communities' expectations of lawyers and how they engaged with them. Since they were the "experts," LRC lawyers had to develop the necessary skills to listen much more closely and patiently to their clients. The need for this approach is particularly acute with clients over whom the lawyer can potentially exercise significant power, and for whom the lawyer might be the only legal resource.[35]

VIII. CONCLUSION

The foregoing comments were intended to highlight some of the possibilities of lawyering on behalf of individuals and communities who are often economically or politically powerless. These possibilities are admittedly limited, particularly in societies such as South Africa where the discrepancies between the wealthy and poor, literate and illiterate are enormous, and where

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34. The Driefontein lawyer speaks about the difficult road it has been—this transformation of law practice as it were—because it is directly contrary to what one learns in law school and what one absorbs in law practice, namely, the lawyer as a distant figure. It had been difficult for him also because a line has been drawn somewhere between being a lawyer and being a community worker; and lawyers are not community workers.

35. LRC lawyers that the writer interviewed acknowledged how trying it is to practice law in a non-traditional manner. This lawyering style has to be a conscious process because lawyers are the products of their environment and training, which do not prepare them for this.

available resources for any kind of involvement in the legal process is severely circumscribed. But this public interest project is vital not only in South Africa, but in many countries on the African continent similarly situated.

The economic, political and social realities of many African societies are slowly beginning to impact on the professional status of the lawyer as well as the lawyering process itself. The need for greater respect for human rights increasingly being expressed in those societies by the citizenry at large, often with lawyers at the forefront, has contributed to a reconstructed role for the lawyer. As many societies witness an invigorated sense of entitlement by ordinary citizens, and a concomitant demand for accountability on the part of government officials and bureaucrats, lawyers are forced to become active agents of this new order.[36]

The work of the Legal Resources Centre in South Africa did not transform the South African society, or the legal profession. Although its impact was limited, it made a contribution in a number of significant ways. First, it made government bureaucrats, who wield enormous power over people's lives, more accountable for their actions which were often illegal or unauthorised. Secondly, it challenged the perceived invincibility of certain organs of the state, particularly the executive branch, in the manner in which it chose to govern. Thirdly, it gave members of the legal profession an occasion to pause about their professional role and status, and their collective contribution towards justice and equality. Fourthly, it provided the space wherein public interest lawyers could develop appropriate approaches and tactics in their interaction with, and service of, disadvantaged individuals and communities. It also forced employers and providers of services and goods to treat consumers, tenants and workers with the respect to which they were entitled. Lastly, it sent an unequivocal message to ordinary citizens that the law could be shaped to serve their needs and interests but not merely to punish or oppress them. These may be modest contributions, but they made a significant and continuing difference to the lives of ordinary people in South Africa and serve as an inspiration for all people who still take seriously the ideal of law in the service of human needs.[37]

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36. I do not wish to suggest a groundswell of human rights demands by ordinary citizens in many African societies. There is, however, a general consensus, as evidenced by different pro-democracy movements on the continent, about the need on the part of government to respect the rights of individual and communities.

37. *See supra* note 30.