

Achmed Mayet

LRC Oral History Project

Interview 1: 3rd December 2007

Interview 2: 6th August 2008

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Int This is Monday the 3rd of December (2007) and I have the pleasure of interviewing Achmed Mayet who's the Director of the Constitutional Litigation Unit at the Legal Resources Centre. Achmed, thank you very much for agreeing to be part of the LRC Oral History Project.

AM Ok, thank you for having me here. I'll start off with my school years. I schooled in a place called Standerton. It was a boarding school, and it had a high school as well. And that was where I was exposed firstly to what was happening around me politically. Because we had some good teachers who encouraged you to read beyond what was in the curriculum. And I was one of the top students in English and as a result of that my English teacher from Cape Town who was quite liberal minded encouraged me to read widely, and I would look at a lot of poetry, etc, reading all of that and then I realised that things weren't what they should be. My first brush with something political in content was when I had to write an essay about what's happening around me, and I picked up that whenever...Standerton is a small place, it's more like a farm town, but on Friday things happened because the farmers came into town to sell their produce and it was called Farmer's Day on Friday. They usually brought in the farm workers. And I always picked up that farm workers, especially the women, had to sit outside in the street. There was no place for them to go and sit, no place for them to use amenities like going to the bathroom or toilet that was not available to them. The lack of facilities for Blacks disturbed me and I wrote about that in an essay at the time and the teacher took my book and said that even though it was a good essay he was tearing out the pages. He warned me not to write essays containing political statements in my school book because we would both get into trouble if these writings came to the attention of school inspectors. He encouraged me to read a lot more. His name was Mr Hassen. So from there I started reading a lot more. And then one day by chance I found books which my father had bought, and I didn't realise it then, because my father was Gujarati speaking, he didn't speak much English at all, These books were in English and were from Mahatma Gandhi's time in South Africa. There was a magazine which he published informing people of what was happening in South Africa under colonial rule., when was the next protest march, and that's when I learned how people would gather in Newcastle in Natal and they would cross into Transvaal and come into Standerton. This was part of the defiance campaign against laws that made it illegal for indentured workers to move freely from Natal into the Transvaal. . In that way they would break unjust laws. They deliberately broke the law because in those days people who were classified as so-called Indian couldn't travel between provinces. And this campaign was to highlight the unjust and racist restriction imposed on people's movements. In his publication the Mahatma introduced me to other people who were fighting British colonialism, in other parts of the world. . In standard eight I was appointed a prefect and that's the

year that you could feel that things were happening because they were then moving us out into a separate education department; it was meant to be the Indian Affairs Department. I was one of the last group of students to fall under the TED, which was the then Transvaal Education Department. Everyone who lived in Transvaal, irrespective of race fell under the TED and all the pupils followed the same curriculum and wrote the same matric examinations. But of course so-called black people were left out. They fell under Bantu Affairs. We all knew this was an inferior education system designed to keep Blacks inferior to Whites. We had a school inspector come to us to tell us what a good thing separate education was, etc. (laughs) I organised a small protest to show my opposition to separate and unequal treatment. When I was asked to put up the flag, to hoist the South African flag, I refused to do it. And when I was forced again to...they forced me again to hoist the flag, and I did it but I hoisted the flag upside down. And as a result of that I was stripped off my prefectship.

Int That was ...defiance...

AM Defiance, yes. I got called up, there were three of us and I was stripped of my prefectship. But that's the year that I really got involved and I was arrested in standard nine, I was taken to the local police station and they made all sorts of threats against my person but the funny thing was that you could tell they understood what you were doing but, they still felt that they had to suppress you. They took me to the cell and then they gave you blankets which were wet with urine, etc., just to bring you down, and they put a little rope there and said, by the time we question you, you'll wish that you hung yourself and here's that opportunity. So that was my first brush with the law. I then got involved in sports administration I would write letters to the newspapers to complain about the lack of sports facilities in townships. In small towns there were no sports facilities available to people of colour. I ended up joining SACOS, which was the South African Council of Sports, and they invited me to their meetings in Johannesburg, which is a big thing for someone living in a small town (laughs). In Johannesburg, I met other activists, and most activists worked around sports. Because there was a less likelihood of them being arrested. At that time there was a teacher from Lens and a teacher from Bosmont who were in charge of SACOS, and they gave me a position. I represented the rural community in what was then Eastern Transvaal. Now of course it's Mpumalanga. It was in the earlier days of my schooling that I got involved in politics. And then of course I went to University of Durban Westville, for about 3 months. I realised then that things weren't right and a group of us staged some meetings in protest against the way people were dealt with at the University of Durban Westville, because they went one further, they tried to separate people in terms of religion. They didn't like Hindus, associating with Muslims, Muslims associating with Tamil. You know, it was very...how can I put it...it was very horrible. If you lived in the residence you had to be part of the hostel committee...so you were part of the hostel committee but the authorities made sure that Muslims were in one group in the hostel, and then the other groups were, you know the other religious groups. I realised that this wasn't right so I objected in one of the meetings, and one didn't realise then that they had spies on campus who would monitor you, but I found out too late. They did other things, but on the one day I came back from lectures and there were three police in plain clothes waiting for me in front of my room, and there were two cans of petrol on the floor, They accused me

of bringing the petrol into the hostel because my intention was to burn down the place

Int These were fellow students?

AM Yes they were enrolled as students but were actually members of the South African Police. They gave me 24 hours to pack up, and leave campus or face arrest. I still remember they gave me a note saying that I was an undesirable element and for that reason I was being expelled from university. So then I left. I was in the wilderness for about 3 years because I couldn't get into any university.

Int Gosh! What period was this, Achmed?

AM This was around about the seventies. Whenever I tried to get in, you know, the usual thing came up; they would find out that I was declared an undesirable element. So I didn't get in. And then someone then told me that I should try through Cas Saloojee, who's now a member of Parliament, I went to his house and he worked out something for me. I ended up applying to Wits, I got accepted, but then what happened was I lost my whole first year at Wits because when I was writing my exams they came to ask me if I had my permit. I didn't realise that black students had to have a permit to be at a white university then, and you obtained your permit through a department in Pretoria. You had to go through the channels, etc., and people would lie and say they were suffering from asthma, and you couldn't go to Durban. Something like that but what happened was that I didn't write my exam because they barred me from writing, because they said I didn't have the permit and so I lost that whole year. And that was quite traumatic for me because I was actually busy writing an exam and they pulled me out of the exam room. And the next year I went back and then I got the permit. I also got it through Cas Saloojee who organised the permit for me and then I started my tertiary education at Wits.

Int So you did a BA LLB?

AM I did a BA. I had no intention of doing law. I was doing Industrial Sociology, because in my spare time we would work for unions and that time it was FAWU. FAWU was organised by some academics from the university as well: Duncan Innes. And through them we were exposed to union work and union activity. So I would do that and then of course I got involved in the Black Students Society because black students had a separate student body, which was not affiliated to the white student body. The white student body was NUSAS and of course there was a right wing movement called, strangely enough, Moderate Student Alliance, but they were funded by government, and they were in opposition to NUSAS and to BSS. So I worked on BSS for quite a while, and then I worked in the community as well. In the community we joined an organisation called Anti-Presidents Council. And this one was organised by Professor Mohamed, he was the maths lecturer at Wits University and he lived in the community. Under his leadership we set up this organisation, and we drew members from the community to assist. And while I was doing all of that, I was hoping to do my honours in Industrial Sociology. There were three of us working in Central Block,

I still recall this. Central Block is where the Faculty of Law was, and we walked past this lady's office and she said: where are you guys going to? And we said: to Senate House. Senate House was where the main canteen was. And she said: why don't you guys come in, have you ever thought of doing Law. And I didn't realise that she was recruiting people to join the Law Faculty. We looked at each other and said: ok, take our names, we'll decide. When things went wrong with the Industrial Sociology, we decided to do law. So I ended up doing law.

Int By default?

AM By default, right. And then of course while I was doing law, I develop an interest in what was happening in law as well.

Int So you did an LLB?

AM I did an LLB, yes...

Int Ok. I'm just going to take you a little bit back...you've given me a wonderful trajectory...

AM Although I missed out a detail, I went overseas as well. What happened was that my uncle, who was a unionist, was working for the union at a factory, Nestle factory in Standerton, and when they discovered he was recruiting workers to join the union he had to leave. He skipped the country, and then someone said, why don't you just go to London, and maybe you can come right there. And somehow when I applied for the passport they didn't pick it up, so when I got the passport the next week I went. I went to London. But then while I was there, I was...I think I finished a year, and wrote exams and then my father became ill, My mother is a housewife, and this was too much for her and as the eldest son and she said: you've got to come home.. So I flew back and when I landed in Johannesburg the authorities confiscated my passport. So then I couldn't go back. And that's when I tried to get into Wits.

Int So you finished your LLB degree...when?

AM In '87, or '88, I'm not too sure when.

Int So prior to that you'd mentioned that your influence had really come from certain sources at school...teachers, etc., but it sounds to me as if, even though maybe your father was not politicised, he had books on Gandhi, and I'm wondering whether there was family politicisation that might have gone?

AM I think there was, but not overtly. You know, in those days people were very conservative but more out of fear than anything else. Because that was the time when you knew that Timol had been killed, there were other people like Dr Haffajee from

Pietermaritzburg that had also fallen out of some building to commit suicide according to the police version and people were really scared. With Ahmed Timol there's a real connection with Standerton because he's related to the Cajees. The son of Ebrahim Cajee and Timol's sister, Imtiaz joined the union, He's now based in Johannesburg, and about two years ago he wrote a book on Ahmed Timol, and in that book, he asks questions of the police to come forward and say who was responsible for Timol's death. The TRC was unable to tell us who actually killed him, because no policeman came forward to take responsibility for his death.

Int Because the rumour was that he had committed suicide, but that was a very common...

AM Yes, but the coroner's report was completely different. In fact there is a report here in the library. Because George was involved in the inquest and his cross-examination revealed that Timol had been severely tortured. There were no injuries on the body to support the state's contention that Timol had jumped to his death.

Int So you obviously had this very chequered trajectory, largely because of apartheid, and, it must be frustrating at some point where you said...I'm just going to give up this political activity and just concentrate on getting my studies done?

AM You know, at one stage it was...I was under a lot of pressure to do that.

Int Right. From the family?

AM From the family because my grandfather on my father's side also wanted someone to become a doctor. In those days you either became a teacher or a doctor, those were the main professions, and I mean, law didn't come in anywhere in it. And I thought at one point, maybe I should just give up all of this and just concentrate on studies and get on with it. I think my exposure to what was happening around me then changed that. I also met other people who said being a doctor is not the end all of it, there's other professions.

Int So by early eighties you'd completed your LLB, what happened thereafter?

AM I didn't really apply for articles then but the big law firms would come to Wits and they would have a law faculty day in which they would offer employment but you could see that they were only interested in offering employment to white students. And it was quite overt. I mean, in those days Wits may have been liberal but it was still functioning in an Apartheid environment and the law firms as well. . And I didn't bother to apply, more out of like a boycott stance, and I wouldn't even go to those law faculty days, because it's a waste of time, The law firms used the day to collect statistics that they'd interviewed five black students.. But then I realised I had to start working and by chance I got articles with an old man who was in his late seventies, Abe Sirtzky he did mainly road accident fund matters. But I started off there. He was

sharing offices with someone called Fiona McLachlan and she did Labour Law, so that got my interest, because of my work with unions. So I started doing cases for her as well, and I got exposed to labour law. I was there for about two years. But at the same time I was still involved with community work and the Anti-Presidents Council. I then got an offer from Priscilla Jana who was doing political work. She used to do only political work, represent the unions, she would represent people who were detained, and so she was known as the ANC lawyer. I was exposed to all of the work dealing with political activists, going to visit them in prison, you know, getting trade unions permission to march, etc., going to little towns in the Free State, which was very traumatic for us who had just come out of university, because you weren't allowed to be in the Free State. Free State prohibited-called Indians from living and settling in the province, and if you were there you had to be under a permit and you couldn't spend the night there. You had to be out of the Orange Free State before night fall. We we'd do a lot of appeals in the Supreme Court of Appeal in Bloemfontein and we would go with counsel from here, and sometimes I would go with Advocate Ismail Mohammed who became a judge under the new dispensation. Ismail Mohamed is now late. Priscilla Jana would brief him a lot in the appeals. And even he would complain that judges in the Appellate Division would at times keep us there until after 16h00 and Judge Ismail Mohamed was of the view they were doing it so that we'd be in the Free State after five, and run the risk of being arrested (laughs). I come from a small town. I speak isiZulu language and I can communicate, you know, with the clients, so that was quite nice. During my time at Priscilla the black schools were boycotting and police were shooting indiscriminately and they were killing school children. The three of us that were employed by Priscilla would assist the communities in identifying the corpses of their children. One colleague of mine actually gave up law as a result of that, because he found it too traumatic, .You know, you would go into these small towns and the communities couldn't get access to their children and you would get to the police station and ask where are these children? And many times you would be sent to the morgue where you would find the bodies of the school kids still in their school uniform, and they're dead. And then the guy would just come with the hosepipe and just wash the blood off into the drain. I saw a lot of that. I saw a lot of photographs of people being blown up with booby traps because the cops would pretend to be activists and give the activists grenades, which were rigged to go off when it was in their possession. I did a lot of that work with Priscilla Jana until she closed the firm in about 1994, when she was appointed to Parliament. I then joined an NGO in Pretoria called NIPILAR, National Institute for Public Interest Law because Priscilla knew them and she said maybe you should go there if you want to do similar work.

Int You'd been made a partner by this time?

AM No, no, I wasn't a partner, because Priscilla never made partners. Lots of people left because she never made partners (laughs). I went to NIPILAR and I worked there for a while and I became the Director of that organisation.

Int NIPILAR?

AM Yes. But they were dealing more with people's rights to vote, to housing, education etc., it was like near to '94. I had some difficulties with management and I approached Hanif Vally who was then the Director of the Pretoria office of the Legal Resources Centre. I consulted with him - he was much elder than me and I knew him from campus as well, because he was an activist. He helped me on my cases and then I got exposed to the other people at the Legal Resources Centre. I knew Jakes (Ellem) Francis, who is from my hometown. He is a judge. I then received a call from the LRC, they wanted to see me. And I went to see them at the Jo'burg office, the old office. And they offered me a job with the Legal Resources Centre.

Int So this was '95?

AM Yes, around about '94 . And then I joined the LRC.

Int Prior to this, Achmed, had you much knowledge...given that you were in the legal profession, what was your knowledge about the LRC and its work in terms of public interest law?

AM I knew about the LRC through Ellem Francis and through Hanif Vally. That they were doing work similar to what we were doing at Priscilla Jana, and also went one step further they were helping poor people, they would travel out to the rural areas to offer legal assistance. With Priscilla, it was a bit like the LRC in the sense that we also received funding from overseas donors and I think the government was aware of it, although the money came in clandestinely from the South African Legal Defence Aid Fund from London. And all the cases we took, the people we acted for had no money to pay for their cases.

Int Right. And what about people like Arthur and George Bizos and Geoff Budlender, had you come across them?

AM I'd come across them because at Priscilla Jana we also briefed George (Bizos) quite often. We did a lot of big cases while I was there, the Delmas Treason Trial started at Priscilla's (Jana) office. So we had Judge Mohamed working on it, (George) Bizos working on it, we had Arthur Chaskalson working on that matter as well. So you got to know the counsel who were...how can I describe them, as the liberal guys, who took on these kind of cases. Priscilla (Jana) briefed them all the time. Not every member of the Bar took on these cases.

Int And were you a member of the Johannesburg Lawyers Association about this time?

AM No, no, I wasn't. In those days, there was a new organisation formed, it was called NADEL, National Association for Democratic Lawyers. It was because we didn't want to be part of the status quo, which we saw as an apartheid formation. We didn't want to be part of that so they formed NADEL. It still exists.

Int So you got to the Legal Resources Centre and you started off in the Johannesburg office, but not as part of the Constitutional Litigation Unit...

AM That time there wasn't a Constitutional Litigation Unit, because what happened was that after we got our constitutional democracy, and people realised that someone had to give effect to the Constitution, the LRC did the certification of the Constitution and I was at the LRC then I did a little bit towards that, not that much, but I did work on it. It became the Interim Constitution, which was replaced by the final Constitution. And then I don't know how this came about, I don't know the inside story, but maybe Arthur and them would know, but we were approached by the CBA, the Canadian Bar Association, that they set up such a unit in the Legal Resources Centre. And they gave the funding, so then it became a specialised unit which would give effect to the Constitution, what the Constitution means, translate it into practice, to show people how they can protect their rights under the Bill of Rights. And one of the first cases it did was the Makwanyane case; it was for the abolition of the death penalty. That was argued by Judge (Mohamed) Navsa. He was then the Head of the Constitutional Litigation Unit. And under him we did another case as well, which was the Imprisonment for Debt case. In the old South Africa you could be imprisoned for debt and it affected mainly black people, disproportionately, and that was declared unconstitutional as well.

Int So at what point did you join the Constitutional Litigation Unit?

AM I think during Durkje's Gilfillan time.

Int So prior to joining the Constitutional Litigation Unit, what sort of cases did you take on?

AM I dealt with a lot of housing matters, of people being evicted, but a lot of them fell under the right to housing under the Constitution, we'd try and stop evictions. I did a lot of that jointly with an NGO, which was called ACTSTOP, it was to stop all evictions. And they were based in a Methodist Church in town. So they would get people who were being evicted and they would then pass the matter on to us and we would do the litigation. And then I did Access to Justice, which was another project that was created by Judge (Mohamed) Navsa. It was different...instead of waiting for clients to come we would travel out to rural communities and set up advice offices in those communities. And in those days it was much easier because in a lot of communities you had resistance to apartheid. . These were civic organisations who were doing that, and the people in the civic organisations then became part of the advice centre offices.

Int So what was this project called exactly?

AM It was called the Advice Centre Project, but the project was funded through the Access to Justice Project.

Int So...you obviously had this very strong public interest background...with political trials. Was coming to the LRC a different kettle of fish or did you find you blended in and integrated your work quite well?

AM I blended in quite easily and quite quickly, because I more or less, in Priscilla's office it was the same thing, and NIPILAR it was the same thing, we didn't charge money. We took on those cases which were important to the poor and the marginalised.

Int. ...You've joined the Constitutional Litigation Unit and at some point you've become the Director?

AM Yes.

Int Can you tell me a little bit about the kind of work you do and... cases you take on under the CLU?

AM Under the CLU we try and take on impact litigation cases and we take on cases, what we call, test cases as well, where we want to see how a particular piece of legislation will be interpreted, or we want it to be interpreted in a specific way, because we feel that the way it's been interpreted at the moment is incorrect. So we take on cases like that as well. And then we take on class action cases as well, you take it on, on behalf of one person, but it affects a whole class of people, you don't have to join in every person because you might have a person based in Johannesburg, another person say, based in Durban, another one based in Cape Town, which live the same experience in respect to maybe housing conditions or whatever. So you can bring a class action to the fact that people in those similar circumstances. And in that way you use your resources and you get maximum exposure from it, instead of doing it for one client. You're now doing it on behalf of a class of people, like the big first class action was not done by our office, it was done by the Grahamstown office; it was for social welfare pensions. What the government there did was that it realised that there were people who were setting themselves up as beneficiaries under the social welfare program which they're not entitled to do, and they were called phantom people, and this was drain on the resources of the social welfare department, because people who were getting money, shouldn't be getting the money. When they discovered this they decided that the best way to stop this practice was just to stop everybody's pension and then people had to come and say, I'm so and so and I meet the criteria, I'm alive and I should be given pension. They also found out that dead people were drawing state pensions. The action taken by the department resulted in pensioners who were living in very remote rural areas, suddenly losing their pension. It took months for them to apply to reinstate their pensions and to be paid the arrears because of a lack of facilities in rural areas. They had to travel to a major centre where they could start applying from scratch, but then it takes more than six months to do your application and during that time you do not receive any payout from the social welfare department. So it had huge implications because many communities survive on the pension payout of the granny or the grandfather. That was the first class action, with all of those people whose pension had somehow been stopped by the department.

- Int Were you involved in the TRC cases at all?
- AM Yes, I was involved, yes; we did a few, with George Bizos.
- Int You mentioned the Timol one, were you involved in that?
- AM No, the Timol one didn't come during that time, it came to the office at the time of the inquest. The Timol matter never came up really because nobody came forward to ask for amnesty. And till today we don't know exactly who was responsible for his death.
- Int Sure, sure. And the cases you did, the TRC cases?
- AM We did one against Eugene de Kock as well, the one who's now in prison. It was Ellem Francis, who's now a judge in the Labour Court. Kameshni Pillay who was my CA at the time but who has now become a member of the Bar. I played a small role. It was a matter in which Eugene de Kok and a group of his, I don't recall the policemen but there was this group operating outside of the law. What they would do is they would take a kombi, they would insure it, and they would insure the people's lives, like their members, and then they would allow these people to drive with this kombi, and the one case we actually did, they made these people drive to somewhere near Bushbuck Ridge in Nelspruit, then they ambushed it and then they shot the people saying that this kombi was being used by MK members. Eugene de Kock and his men received the publicity for stopping terrorism and whatever you called it in those days. But then they also claimed the money from the insurance for that kombi as well. We argued that this wasn't a political matter, this was to enrich themselves, and he didn't get amnesty for it.
- Int Gosh, that's a significant victory.
- AM A significant victory because as a result of that he's in prison now. Whereas for his other killings he did get amnesty. And we proved in this one that it wasn't for a political purpose, and that he was lying.
- Int So...when you joined the LRC around '95...?
- AM Yes, it was a bit earlier, I think it was '94, if I remember correctly.
- Int Okay...It was on the cusp...transition had started, the LRC was changing in a way because prior to that it had really had a much stronger...connection in a way with ANC related matters, and as an activist I'm sure you can relate to that. And so under transition it is now having to take on cases against the government, which is effectively the ANC. I'm wondering how you as an activist, with a strong activist background, how you managed to make that transition and the adaptation as a lawyer?

AM Look, when we were doing cases, we decided at a meeting, at the LRC whether the case in question fell within the ambit of our work which has always been to uphold the rule of law. I still remember that even though some people saw us as ANC attorneys or as a liberal group of lawyers, we would not refuse legal assistance to anyone from another political party who came through. There was a case where I acted for an IFP guy who was also unlawfully detained and tortured. We were not politically aligned to any party but we would act in the interest of the rule of law and on behalf of the poor the vulnerable and the marginalised. We still do, that is our mission statement as well. So we did that. And of course when the ANC came into power we realised then that our work will still continue. At that stage we hadn't realised how the ANC would conduct itself once it came into power, but we assumed that the government would no longer be the enemy, we'd work together with the government of the day. But soon after that we realised that things weren't working the way we thought they would. And then we still had our constituency, the same constituency consisting of the poor, the marginalised, who were still waiting for government to act in their best interest. And I remember that we did an eviction, one of the biggest eviction cases, it was in Alexandra on the east bank, and in that matter we believed that because there was a change in government, they wouldn't take this matter to court, We wouldn't have to go to court, we'd get an out of court settlement. However much to our surprise we then found that the Premier of Gauteng took the decision to evict and he was fighting it all the way. On our side we just had one advocate, George Bizos, on the other side they had something like six advocates. And I still remember that George was quite angry because he told them I'm seeing the same faces on the side of government which I saw in the apartheid years. You guys are still doing the same thing. And they were saying: no, no, but things have changed, but this is an instruction from the Premier .Eventually we ended up in court and we won. And I don't know if I should put this on the record like this...

Int Well, everything will be edited by you.

AM Because of what happened, I realised that the politicians have different principles...if you call them principles...to freedom fighters. When Geoff (Budlender) left the LRC I still remember we were quite shocked, we didn't expect him to leave, and he was joining the Department of Land Affairs as its DG. But in his speech to us he said that he would expect to be taken to court by the LRC if he did anything wrong as the DG.

Int Good for him.

AM We realised then that we still had to fight for the rights of our client base. We still remained the same. And ok, there's no more torture, detention, and some people say it still happens when police misbehave, but now there's an organisation called the ICD, Independent Complaints Directorate, which is supposed to be a watchdog of the police. So we don't do any more of those damages claims but we still act for the poor and the marginalised communities.

Int I wonder, Achmed, you came from a strong activist background, you also had difficulties on the way to eventually become a lawyer; it was not an easy path for you.

I'm wondering...coming into an organisation like the LRC, there's been talk about the fact that it was predominantly a white organisation, and too many white lawyers, although the LRC, to be fair to it, it definitely had a fellowship program and people came through that, black lawyers. But...by the time you got in, did you still have the sense that race was an important dynamic and...that it was an issue within the organisation and how did they deal with it?

AM Ok. Look, for some people it remained on the radar for a long time, sometimes for different reasons. Not for the reasons which people would say that it wasn't representative of the demographics of the country. But then you slowly realised that after 1994, there were a lot more opportunities for black people in a sense, in this country. I mean the state attorney was changing. They were taking on black people to act as state attorneys. In the past, prosecutors were all white. Magistrates were all white. That was changing. You were now getting black prosecutors, getting black magistrates. So there were opportunities becoming available. And with the LRC salaries were never as high as in private practice, and not as high as in government as well. And then you began to realise that people were driven by different needs and you found that a lot of so-called African lawyers now saw this as an opportunity to get better paid jobs where they could be of assistance to their families and in African culture, it's a bit like the Indian communities, it's got extended families, and you've got to take responsibility. We found that we couldn't attract African attorneys to stay on at the LRC because there were so much more opportunities becoming available for them. Also in private practice, and private firms also then started opening up and offering black attorneys an opportunity to practise in corporate law. I've never done corporate law but it pays a lot of money. You would find people coming here and the first question they'd ask you is about the money: How much do you pay, what benefits? And they were telling me, this is far too little that you're paying me, I'm going to do Corporate Law. I'm not really interested. So it's a battle for us as an organisation to attract people to do this work. And the sad part of it is that we now find that there are a lot more so-called white attorneys who want to do this kind of work.

Int Right, ok. And is the LRC attracting them?

AM We are, but then at a certain time we've also got to apply employment equity, you know, and try and balance the kind of people we employ. So as you'll see in this office we have two white attorneys. Also they're females, they fall in within the category of people who were previously disadvantaged; white females are considered to be disadvantaged they should also be recipients of affirmative action.

Int Is that an issue for you as well, the fact that you work quite hard...and that you might not be rewarded in ways that your contemporaries, etc., might be, moving on and ...?

AM Sometimes you think about it...people I've seen who started with me, or some people who started under me, I trained them, and they're earning more than me. But than on the other hand, when you look at the kind of work I'm doing, you know, I know that the work I'm doing gives me enormous satisfaction...

- Int That's important...
- AM ...and I don't know whether I'll be happy doing this other kind of work. I may have the money, I may have the fancy car, but will I be happy? (Laughs)...that kind of work that I'm doing, will I be making a difference in society?
- Int There's also a sense that a lot of the corporate funds are having a section that deals with public interest law.
- AM They're starting that now, slowly. I just saw today, it came on Legalbrief, that they've now accepted that in Gauteng as well, if they would ask private law firms to give a percentage of their time to pro bono work. But I think that will only kick in maybe from next year onwards. So far this rule only applies to law firms practicing in the Western Cape.
- Int What are some of the stressors of working at the LRC? What are the stressful situations?
- AM The stressful situation is that, you know, you must understand that before '94 anybody who came through the LRC doors, whether it was for a consumer matter, whether it was unlawful arrest, torture, whatever, we took on every matter...whether it was a labour matter, where a farm worker had been ill treated, we took on every case and we took it on irrespective of whether the client was a member of a poor community who can't get any legal representation if the case would make for good law. We didn't do criminal matters. So we would take on all these cases and we felt happy taking them on because there was funding. But then after '94 the funding became less and less and less, and every year it's becoming less, because you now have the European Union and they're focusing more on Eastern Europe, trying to set up similar organisations in Eastern Europe, trying to promote the rule of law, democracy, in those countries. So they're not giving that much attention to South Africa in the mistaken belief, that because we now have a Constitution, everything is fine and people have access to whatever they want to do, you know, in terms of protecting their rights, and it's not like that, on the ground. And the Legal Aid is meant to do that but they don't have the resources to do it and they don't have the expertise to do that work. And we are one of the few organisations still left that can do this kind of work. There was Lawyers for Human Rights but they've now reduced from four offices to one office, and they focus mainly on refugee work.
- Int One of the things that the LRC seems to be struggling with is the issue of funding because during apartheid it had significant funding, and post-apartheid it seems to me, similar to what you've just said, there's this kind of misconception that South Africa can find its own funding. I'm wondering whether that's something you can talk about in terms of the dilemmas about funding?

AM I'll tell you what happened was that there's also been a lot of pressure from government side. Because for some reason, you know, with the AIDS debacle, government sees NGOs as the enemy. And NGOs are not really their enemy. I mean, they see what's happening on the ground and they're best placed to inform government that this is what is actually happening on the ground. This is the impact of your legislation or this is the impact of your omission to do something. But government doesn't see it as that way so they see the NGOs as a threat. The government encouraged foreign donors to give funding directly to a state entity called the NDA. The NGOs would apply to NDA who would then distribute the money. However the NDA is in a mess. It has not distributed money since its inception with the result that many NGOs have collapsed. The ones that do exist exist mainly in the cities. So out in the rural areas there's no-one. The justice centres only assist those in need of a criminal lawyer. Not everybody has a need to be representation in a criminal case, there's a lot of other bread and butter issues which affect them. I'll give you an example, there's a big organisation here called TRAC, The Rural Action Committee, they were well known. They don't exist because of this funding situation. And it's affected us very badly in the sense that many of these NGOs were sister organisations. You know they may have done work like doing the research, finding out what is the problem for the people, but when they couldn't solve it through negotiating or through lobbying they would approach the LRC to litigate. We still assist certain NGOs with *amicus curiae* applications to the constitutional court.

Int Amici?

AM Yes, it's called Friends of the Court. I'll give you an example, we did one last week where, you know in a rape trial, where the rape victim is a child, what would happen is that children are scared of the court environment, it can be very frightening for a young girl to sit in an open court and give evidence even though the court provides that evidence can be given in camera. But what happens is if you have a senior advocate acting for the perpetrator, he can harass you in the box, you know, the way he speaks to you, he can reduce you to tears. So it's not really a friendly environment for a young girl who's a victim of rape to give evidence. Which is why the Criminal Procedure Act allows young rape victims to give evidence in camera. So what would happen is that the victim would be in another room and you would have what they would call a conduit or a medium through whom this evidence would be then relayed onto the camera for people to see in the court. We had a matter in Durban where, although they had this facility, the magistrate said no, he hasn't got time to do it through that way. And he should have done it because this was a victim; she was a young girl. He forced this young girl to give evidence in court and she was subjected to all this harsh environment and being cross examined by a senior advocate, you know, and reduced to tears, etc. Her evidence didn't come across properly. And we then challenged this magistrate's decision and we challenged him on behalf of an NGO called Baby Care, where they look after rape victims and they use a teddy bear to sort of simulate what happened, during the rape incident. So we challenged that aspect of the Act and we said it's unconstitutional for a magistrate to do that and he should insist that the child gives evidence through an intermediary and not in open court. We acted for Baby Bear, not actually for the girl, but for Baby Bear as an *amicus* because we wanted to change the law. It would be good not only for this particular victim but for all other victims.

- Int Ok. So in a way it does...somehow promulgate the test case approach?
- AM Yes, that's right, that's where amicus comes in, so we do a lot of that with certain NGOs. And as I told you these NGOs now exist mainly in the city centres, and our advice centre project is at a stage where it's almost non-existent, because the funder has withdrawn. It was the ICJ from Sweden.
- Int International...
- AM International Community of Jurists. And they were funding us. Their funding would enable us to visit these advice centres, now we don't have that money to do these physical visits. Not only are we still trying to keep in touch, we still tell them if you have a case we are able to take on, call us, we'll assess the merits, and if we can take it on we'll take it. But it's not as easy as it was in the past. You can't do a physical visit. We would tell the advice centre we're coming on Monday, then all the people who wanted to see us, when you get there in the morning they'd all be waiting in line. Some people could be assisted with just a letter, some by making phone calls on their behalf, others we had to open up a file, bring it to Johannesburg and then prepare for litigation. It's actually cut down on our work or on our capacity to assist, especially in rural areas. And we're doing still a lot of work but you find like the NGOs we deal with are based mainly in Cape Town, Johannesburg, Pretoria, all the big centres.
- Int Ok. I wanted to ask you also...one of the criticisms about the LRC now is that it seems to have lost its focus and that it's not building up the strengths and it's not clear to other public interest law organisations whom to refer to the LRC. Do you have a sense that that might be the case?
- AM Look that might be the case Being in this organisation you know people in other organisations and we've been dealing with them for years, and I think the problem lies not so much only with us it's also with them. They fail to understand that we now have to operate under funding constraints. It's not like the good old days when you could simply take on an instruction on the telephone because it is a request from an organisation you have dealt with in the past. Because of the funding constraints the LRC has devised a procedure by which we can take on cases. We have the sniff test. The s is for skills – do we have the skills in-house. The N is for the need. The I is for the impact of the case and the F is for finances. Do we have sufficient funding? In addition, the case must be discussed at the litcom meeting where it is interrogated by all the attorneys and advocates. The Project Co-ordinator can also make an input if it falls within his project. Furthermore if the case will cost more than R10000 it must be passed by Exco as well.
- Int Does this work out in practice?
- AM I'll tell you like...we're still guilty of doing some of that; I'm also sometimes guilty of it. Someone calls you and your gut reaction is, I must help this person. I'll give you

an example, a lady calls you, she says, my husband beat me up to a pulp and the police don't want to help me and I'm scared he's going to kill me, so my first reaction will be, look, we'll get you a protection order immediate lay criminal charges against the guy. We try and get the victim to a place of safety with POWA. I can't do that anymore. Because in the Women's Rights Project I know there is no funding for this. When you ask a donor for money, you send in your first proposal, because I'm often also doing the proposals, and they would say we don't understand this part of your proposal, we don't understand that part. Then you would respond. Then they would say, no, we want clarity on this and that. Or they would tell you we can give you money but we can't give money on B and C. We want you to change your proposal to include what we think we can pay for and you've got to do that because in the end it's their money and they call the shots. So and I think the other people who say the LRC is not focused, it's not that we're not focused it's just that we have to jump through so many hoops before we can say yes, and in the old days it was, yes, I'll do it. That has changed, it's no longer, in inverted commas, the 'good old days' where I could take on a case immediately because the money's there. I'll give you an example: Canadian Bar Association used to give us five million. The Canadian Bar Association is giving us nought since there was a change in government. , I went with the previous National Director to the High Commission to speak to them, and it's not because we are doing something wrong, it's because the country has had a change in the government. The new government in Canada is conservative and they don't want to approve the funding. But now we don't have five million. It's just been stopped because of this political change in government, but it has ramifications for us at the LRC.

Int Looking back...you've had, quite apart from the LRC, you've had a significant public interest law experience, when you reflect on your time here, has it been worthwhile?

AM It has definitely been worthwhile and I still enjoy working at the LRC. Moray (Hathorn) and I worked with someone who used to represent the community in Piet Retief. Piet Retief is an area, which was very conservative and during the turbulent days of apartheid there was a strong Zulu presence in Piet Retief, and there was huge violence between IFP supporters and ANC supporters, and a lot of people were killed. And this particular person who was acting in the interest of the community was a courageous man who was actually banished from Piet Retief because of his activity on behalf of the poor. He was our contact person; he used to live in the forest, because he was sure he was going to be arrested. I just learned from Moray that he died about two months ago. Moray said he went to the funeral and tried to get hold of me, he didn't know where I was attended the funeral of Baba Zwane. I did so many cases through him. If a farmer beat you up, you went to Baba Zwane. Baba Zwane would call the LRC and say please come and take this statement and this is what has happened. And we acted for so many people. And a lot of the white farmers there are really very conservative. They would think nothing of beating up someone just because they had a bad day at home, you know, that sort of thing. And farm workers would bear the brunt of that violence. Many of the people I worked with are getting old... and they're dying.

Int Sure, it's sad...

AM And that's why in a way, what you're doing is important because otherwise you're going to lose everything. When George (Bizos) was ill, George also carries a lot of the history of the LRC with him, if he disappears there's a whole chunk of history, the way George remembers it, it will be lost. The new people who come in are new recruits; they have no idea of where this organisation comes from. Maybe they can read about it but to really have an experience of what it was like working in those years and under those conditions, you know, and having to understand where we come from and how important our work still is. There's still a lot of unemployment, there's still a lot of poverty, poor people's rights especially in the rural areas are still ignored, even though you have now a democratic government. The changes are so slow in coming.

Int I think the one thing that, you know, when I interviewed people at the SALS Board in the USA, they consistently say that the LRC is the greatest public interest law organisation in the world. I'm sure you'll be proud to be associated with that. Do you think that in South Africa the LRC has been given the same level of recognition within the legal fraternity and also within the greater society?

AM Yes and no. There are some people who from the apartheid years realised that what was happening was wrong. There were some judges, even during the apartheid years. Judges like Judge (Johan) Kriegler, Judge (John) Didcott, whom I would call, activist judges who realised that even though there was a law which said a black person couldn't live in Hillbrow under the Group Areas Act, they realised it was wrong, and they would give judgements exposing this and saying that this is wrong. These judges realised the important work we were doing and when a matter came up in court before them and where the people were unrepresented, would tell the people: I want you to go to the LRC so that they can represent your case properly, you do have a case. There are some older people who know what the LRC stood for and who recognise what we did. And there are those people also from the past who saw us as a thorn in the side of the old government, who still see us as busybodies, interfering, and will not appreciate what we do. So, you know, it depends who you ask.

Int Achmed, you have worked with some luminaries...Arthur Chaskalson being one of them, Geoff Budlender, as well as George Bizos in particular. I wonder whether...you have some fond memories you could share about cases you took or...anecdotes about working with people like this, what it's been like for you?

AM I worked quite a bit with George and George always reminds me that the two of us have never lost a case we worked on together.

Int Right. So you work very well together.

AM Yes, we work well together. We seemed to have an understanding on how it should be done. And I tell you one example: we acted for a group of people who eked out a living by collecting material for recycling from refuse dump sites administered by the state. When Pikitup took over, they brought an application to prohibit our clients from entering the dumpsite. Instead they gave a contract to one of their former employees

to remove all material that could be recycled. The contractor then offered our clients access to the dumpsite provided they gave the material to him in exchange for R30 per day. Now when these people were doing it on their own, they collected fifty rand a day. .We felt this was wrong. And what they did was they then told these people you can no longer come onto this site to remove material for recycling. So we challenged that in court. And I was with George and I still remember (laughs) that in one of their pleadings they referred to our people as scavengers. And George brought this to the court's attention and said, that it showed that Pickitup had no understanding of what our clients did to earn a living. Their humanity was called into question, by saying they're scavengers. These are people, these are women and children who work under terrible conditions, go to a dumpsite, full of rubbish and...

Int And dangerous...

AM ...and dangerous. Work on it day in and day out on it, to make a measly fifty rand a day. Now you want to take away that means of livelihood from them. . And I still remember the counsel for other side was kicking the table because he was upset with George (Bizos), when George (Bizos) said, we can see from the way you refer to people, that you refer to them as scavengers, that it really tells the court that you're not seeing these people as human beings who have been doing this for years. And we won that matter. George (Bizos) picks up these kind of things and he knows how to present it to court in such a way that we get the sympathy of the judges. In fact the judge also in his judgement said: the people whom, the applicants referred to as scavengers, are actually women and children who are eking out a living here. George (Bizos) knows how to present things. And then at the same time George (Bizos) has got this memory of cases which happened years ago, which I'm not even aware of, but he would remember them, and say, let's look at this case because it sets this legal precedent and can help us in this case. And ten to one you would find that maybe George (Bizos) might have the party's name slightly wrong, and you have Catrin (Verloren van Themaat)here in the library, she does all the research for us, and then she finds these things because she knows how George (Bizos) may not get the correct name and she'll figure it out somehow and find that case, and on the base of that case we would win. And yes, George (Bizos) is a real pleasure to work with.

Int That's great, it sounds like he's almost like a mentor, as well in some ways...

AM He is, yes.

Int ...even though...

AM And the thing with George (Bizos), is it's not like other counsel, I don't know if you know the system here in South Africa? Counsel is supposed to be up there and then attorneys down here. And some counsel actually see themselves as superior to attorneys, and they talk down to attorneys. . The advocates at the LRC are different. The advocates in the LRC firstly have the interest of your clients at heart, they're on the same level as you, and they wouldn't find it an offence if they had to speak to your client. . You feel comfortable. You know, the kind of advocates who work with

the LRC are also people who either paid their dues at the LRC or have developed a liking for the work that we do. Many work on LRC briefs at a very reduced tariff.

Int I'm wondering, and I've asked you a few question... I'm wondering whether there is anything that I have neglected to ask and whether you'd like it to be included in the LRC Oral History interview?

AM What I can tell you is that the old people who have been at the LRC, many of them could have just gone on and just done their own thing and then forgotten about the LRC, and I think that what maybe we don't say it quite often, I don't know whether they know that we appreciate their involvement in the LRC even though there's no need for them to be involved in the LRC. They've got their own families, some of them have retired., Arthur Chaskalson, the Chief Justice, he still comes to the LRC on a Monday, he's still the same Arthur I knew then, he's still humble, he doesn't say , I'm the Chief Justice. so I need you to address me in a formal manner You know I had an intern here from Canada and the one day I introduced him to Arthur and I introduced him as Arthur, I said, Arthur this is so and so, he's from Canada, he's with us for a few months. So Arthur spoke to him, you know, like the normal way, where are you from, asked about his family, what did you do, etc.? And it was only when this guy was leaving, he said, you know when, you introduced me to the Chief Justice and you didn't say he's the Chief Justice. He was amazed, that the Chief Justice spoke to him and was so friendly to him, and the Chief Justice was wearing Nikes. That's what Arthur wears. This was a remarkable experience for him.

Int To meet someone at this level?

AM Yes. And Arthur (Chaskalson) does not put himself above everybody and say I'm the Chief Justice, you know, you are mere mortals, don't come up to my level, stay where you are (laughs). And that's the way Arthur deals with all of us. He's a hard taskmaster, in that he works very hard. I mean, they all do. And if he picks up that you haven't done something right he'll tell you. It's good thing, because sometimes even you as an attorney, can forget something. And no matter how many years of experience you have Arthur (Chaskalson) will pick it up, George (Bizos) will pick it up. And it's always good to have them as a sounding board because, you know, you get so involved in your case, and you don't see outside of your case. That there's other issues which you have failed to take into account. And someone like Arthur, someone like Geoff can pick it up. Someone like George can pick it up. I mean, Geoff is no longer here, he is now counsel at the Cape Bar, but you can still call him and say Geoff, if I send this to you, can you spend five minutes to look over it and tell me if I'm on the right track, or give advice on whether we should take on this case, what do you think? You know, and he'll be able to tell you. If you have that kind of involvement still from people who are no longer at the LRC, it tells you a lot about their commitment to the organisation and its work. The same spirit with which they started the LRC is still there and it's still burning bright for many people. The difficulty we have is trying to imbue that spirit into new people who come to the LRC, and when I look at it, you know, from my point of view, I can appreciate why some people don't want to come here because they have financial commitments. Some of them have got loans to pay and they need the income, so I can understand

that. But at the same time, you know, some of them are good and I would like to keep them here, but it's hard for me to tell them, stay here, when I know they can get much more money if they go elsewhere. So it's a tension between what their immediate needs are now and what I would like them to do (laughs), stay at the LRC and do this work. So it is difficult.

Int Anything else, Achmed?

AM I think that's about it. I don't know, you must speak to Catrin (Verloren van Themaat) as well, and she'll tell you a lot more, she was here longer than me from the research point of view, from the camaraderie, which develops in the LRC.

Int Sure. Achmed, thank you very much for a most enjoyable interview and also, you know, for your candour and also telling us a lot about your trajectory, which is most fascinating, thank you.

AM I hope it helps you and it's been a pleasure speaking to you.

(End of first interview)

Interview 2:**6th August 2008**

Int This is the second interview with Achmed Mayet, and it's the 6th of August (2008). Achmed, thank you so much once again. I interviewed you last year and thank you on behalf of SALS for agreeing to participate in the LRC Oral History Project again. In the last interview we spoke about your personal background and how you came to the Legal Resources Centre and some of the earlier sort of challenges at the LRC. I wondered, this time...I know that you've taken on some very high profile, fascinating cases, and I wondered whether you could talk about some of the cases and give us a sense of the broad range of work that the LRC does?

AM I think I'll start with before the Constitution came into being. Before that we did a lot of habeus corpus applications because people disappeared without a trace when they were detained. And when people were detained they were moved from the area where they were detained to another area so that people couldn't trace where these people had been taken to. And the only way to find out where these people were was to bring a habeus corpus application to the High Court, in which you ask the State to produce the body or to say where the person is or to bring them to court. So we did a lot of those applications to find out when people were arrested. Because in many instances people who were arrested were young scholars, the different schools where there was uprisings and things that were happening, the schooling system with Afrikaans being imposed as a mandatory language, which had to be taken by every student in the township. So we dealt with those kinds of matters. And then with the habeus corpus applications we also dealt with a lot of matters where people had been killed. And those ones were mainly inquests and the inquest in South Africa didn't take place in the High Court, it took place in the Magistrates Court. And the Magistrates Court was a different creature to the High Court. In the High Court at least we had judges and some judges understood that what was happening was wrong and were sympathetic to what was going on, and would try and assist attorneys in trying to protect the rights of clients in trying to help families find out what had happened to their loved ones. So in the Mag(istrate) Courts it was a huge challenge, because I used to go down there for the inquest hearings and there were two magistrates who were involved in the inquest hearings and they would always, without fail, give a decision that would say that nobody could be held responsible for the deaths of people who were killed in detention or during torture. And sometimes they would also say that these people were not even tortured even though we would bring evidence to rebut that, even get doctors to come and say that people were burnt with cigarettes, or they had things put under their fingernails, and etc. So that was very hard work to do and I remember instances when we just came to the court and they would speak out aloud in Afrikaans, 'the Communists are here again', referring to the LRC, that we're Communists and you're coming to interfere in saying the people have been killed by the State. And then in many instances we didn't get the kind of decision we wanted because the way it worked, if you could get the inquest court to give a ruling that the police were somehow responsible for the person's death, then it opened the door for you to bring a civil claim for damages for the family. Then the family could get some kind of compensation, if the person was a bread winner. We finally did a case in which you could then claim not only for loss of damages but for trauma and shock.

Int But this is now within the Constitution?

AM That came just before the Constitution. And that was something new but I'm thinking it started off like that, habeus corpus applications, inquest to find out who was responsible for killing, and also then trying to bring a damages claim. So we did a lot of damages claims. And we did damages claims for everybody across the board, whether you were ANC, or whether you were UDF, or whether you were IFP. I took on someone who was with Inkatha who was also incarcerated unlawfully and tortured, etc. And in many instances you acted for people who weren't even politically involved, but they happened to be at the wrong place at the wrong time and they got arrested. In many instances there were people like that who had no idea what was going on but because they live next to a house where police suspected there were ANC people or PAC people, they would arrest everybody there and then beat them up. And if you were unlucky you were the one who got tortured, and that's it. So we did those kinds of cases. Those cases highlighted the fact that there was no respect for the rule of law in South Africa and we used that very well to publicise to the world what was happening in terms of police brutality. And people not having the right of recourse, people not having the right to remain silent. We didn't have that. Now with the new Constitution, you have the right to remain silent, you have the right to an attorney, you have the right to make a phone call. You didn't have that during the apartheid years. We acted in a lot of rural areas, as the only attorneys, because all other attorneys in those areas would be scared to take on such cases. Because if you go to a small town, you would find the traditional four or five Afrikaner law firms, maybe one English law firm, and very seldom might find one so-called Indian or African lawyer. But that person would be so scared to take on these kinds of cases because he would then be seen as a troublemaker in that area. So many of these people would then refer those matters to us. They would refer matters to us from Piet Retief, Ermelo, from the Free State, from Natal, and Pietersburg. The other sections would be handled by the Durban office. And we worked a lot in the homelands as well. Venda, Bophuthatswana, all those areas. And the bad thing was, some of those areas you needed to get right of appearance. **Dawn** and I would just appear in their courts. So you had to apply for that. And in areas like Piet Retief, Ermelo, in those days was very repressive, because you had a system which was referred to as the Boer Commando. It's farmers...not only farmers, magistrates also sometimes rode with the Boer Commandoes and they would go around, trying to do what they claimed was keeping the peace, but they would persecute the farm-workers. And if you as a farm-worker challenged the owner for better pay or better conditions you were singled out as a troublemaker and then you were either removed by being charged for something, put in jail, or just chased out of the area. Baba Zwane was banished from Piet Retief.

Int This was in Driefontein?

AM Yes, near Driefontein. He was a very nice person because he would take care of the whole community. But then they passed a law, which I'd never heard of, they banished him from the area. But then what he did was, in that area they have a lot of forests run by SAPPI, for planting trees and he lived in those forests trying to hide away from authorities. But he always kept a link with the LRC if something went

wrong. We'd get a message that Baba Zwane wants to see us and we would drive out to Driefontein to the advice centre and there was a guy there...I've lost touch with him...Cajee.

Int Yes, Yunus Cajee...

AM He had a shop there, a farm shop, and he would allow people to use the phone or he would phone on their behalf, for the LRC to come out and assist in those matters. So we became a thorn in the flesh of the authorities. It became so bad is that they tried to wear us down. If you were in a matter, say we're suing say, the sheriff, or a policeman, for assaulting the people there. They would set the matter for hearing on a Friday, then you had to leave here at four in the morning, because the court starts at nine. You had to be there on time. You're not there on time, they proceed in your absence, they find the guy guilty and they sentence him. Or if it was a civil claim for damages they would just dismiss the claim. So what we would do is we'd try and leave very early, get there by nine, but then they devised a new method, you got there at nine, they would tell you that we only have three courts and all courts are full, so you must wait. So you're there from nine, and you wait till one, and then they tell you, no, it's now too late, it's a Friday afternoon, this matter can't go ahead today, we'll have to come back again. And they set it down two months down the line for another date. And then the same thing would play itself out again. So you'd go six, seven times for the same matter. And the minute you are late, they would dismiss your case.

Int Did you work with Beauty Mkhize at all?

AM Yes, I did; I went to Piet Retief with Fayeeza once.

Int Fayeeza Kathree?

AM Yes, she took over the case because she was going to argue a certain part of it. I don't know if you've been to Piet Retief, it's like a one horse town. If you drive too fast then you're out of it.

Int I am about to leave for Driefontein next week.

AM And you'll see it's very, very, very rural. Fayeeza caused quite a stir because she was the first black woman to appear in that court against a white male prosecutor..

Int For the court?

AM Yes, for the court, it was like a huge upheaval, people were running around and scattered (laughs), and Fayeeza didn't speak a word of Afrikaans. And I was there telling her, Fayeeza this is what they're saying, this is what's happening (laughs). So

in a way it was funny, but also, you know, it showed you what you were up against. I did lots of matters there but towards the end, I don't know if you interviewed a guy called Trevor?

Int Bailey?

AM Bailey.

Int Yes, I'm about to interview him again today.

AM (Trevor) Bailey went in my place in the one matter. He'd taken it over from me. And (Trevor) Bailey is...I won't say he's very prim and proper, but he's one of those guys, you know, if something is wrong he speaks his mind. And if he doesn't get it, he'll try and follow it up somewhere else. So they did the same thing to him. He was there in time, for the matter to be heard, even though there was a court. They tried to use this tactic of delaying the matter. So when he came back he wrote an article on it, on what had happened to him. Very scathing of one of the magistrates. And somehow the magistrate got hold of it, he then reported the LRC, and wrote to the authorities, the Department of Justice, saying this is what the LRC is doing, they're putting our names into...

Int Disrepute...?

AM Disrepute and all of that. Arthur (Chaskalson) told Trevor (Bailey) to write a letter of apology. He didn't want to but he was finally persuaded to do it. That's the kind of thing that we were up against in those areas. We then decided that we won't be doing anymore damages claims. Because we then thought, you know, like, but I think it was the wrong decision that we took then, we didn't realise it but at that stage we thought that the Legal Aid Board will then take over these damages claims and we also thought that private law firms in the interest of transformation, would take on these matters and help poor people. A visiting lecturer who'd been here to Wits came to the office inquiring for me that he'd seen statistics, which show that there are more people now dying in detention.

Int As refugees?

AM Ordinary people and refugees, than in the apartheid years.

Int Really?

AM And it's quite a shock and I checked it up and it's true. I even went to discuss it with George (Bizos). And George (Bizos) said it's because there's nobody taking on these cases. There is an organisation called the Independent Complaints Directorate. It's supposed to work like the Internal Affairs for the police in New York. It's based on

that model. But unfortunately here in South Africa the Minister of Police controls the ICD as well.

Int So it's not independent really.

AM It's called independent but it's not really independent. And they haven't been following up all these complaints. And with the result is that people aren't getting assisted, where police have brutalised people, they're not being charged, they're not being investigated. So we've come back to those levels in the apartheid years. And we always thought it was like a black white issue, but it's just that police in this country behave in a certain way. And they continue to behave like in the past, they deny people rights, they only help people who have money, that sort of thing, and there's lots of corruption and bribery. And so in a way we've regressed back to that situation as far as police are concerned. And then in Driefontein I acted for this guy, I forget his name now, but he was a member of the ANC in his village, and because it's close to Natal, Piet Retief is close to Natal, there's a huge Inkatha presence. Because Piet Retief is like on the border, of Swaziland and Natal. And there they attacked him and his family for being ANC supporters and they burned down their homesteads. And in that fight, I think some people got killed as well, and after that there was some feud between these two families. And an Inkatha member died. And then this client of ours who was framed for the murder of that person, and I was acting for him, and because it was in Natal, and it was after '94 and we were not doing these matters anymore, then we handed it over to another attorney, I think it was Richard Spoor, I'm not too sure who took on the matter, but then they lost in the Pietermaritzburg High Court and this guy got sentenced for the murder, 20 years. Then his family then came back to us to assist him and tried to get him transferred from the prison in Pietermaritzburg to Piet Retief so that his family in Driefontein could visit him. And I tried to do it. First Moray (Hathorn) tried then I took over. And what happened was that they didn't give the transfer and last year he died in prison. And Moray (Hathorn) told me, which was quite sad because he was considered a model prisoner. You know, in prison they try and train you for when you leave you'll have some skills to find a job. So he trained as a welder and he got a certificate, trained in woodwork, he got a certificate, painting he got a certificate. Because I used all of that to try get him out on parole. And then it turned out that the guy at the prison was taking bribes and he prevented our client from getting released on parole. So it was really sad and he's now dead.

Int Do you know how he died?

AM I don't know. Moray (Hathorn) just told me he died in prison but maybe it was of illness. He wasn't like killed or something, but he died in prison. It was sad because I mean, he served his sentence for something he didn't commit. And one of the reasons like we couldn't persuade the board to give him parole immediately, he kept saying, I didn't do it. And according to the parole board he hadn't showed remorse, because he wouldn't accept the sentence on him that he was responsible for the murder of this person, within his mind, because he didn't do it. He felt there was no need for him to express remorse. So people in that area are still living, you know, with what happened in apartheid. It's not something they can just say, after '94, close this chapter. People are still affected by it.

- Int I'm curious, the professor who spoke to you, was he from abroad?
- AM Yes, from New York University, I can't remember his name.
- Int And why is it that he had to contact the LRC? Is this something that...people weren't aware of it internally?
- AM Here we didn't follow it, because we're no longer doing those matters. But I think he was interested when he came here, we spoke to him of these matters and I think for some reason, I don't know how he came across it, but maybe he was just trawling on the internet or something, but he got these statistics and he read it up, and he once sent me a message to find out, why is this happening and how? There's a democratic State and you have a Constitution, why is this still happening that there are people dying in police custody? Even though they have not been charged for specific crimes.
- Int And is the LRC going to take this case up....this type of litigation?
- AM I've been trying to do it but at the moment we have no funding and the Legal Aid Board should be actually doing these kind of cases.
- Int Is the Legal Aid Board doing the case?
- AM They're not, they're trying to, they're only doing criminal cases and offering legal representation for accused. And in the past the way they worked was that they would farm out these civil cases to attorneys and attorneys would be paid by the Legal Aid Board to do this work. Now they've hired their own staff, Legal Aid Board has got a number of attorneys working for them, but they still are not taking on civil cases. They're not even taking on divorce matters. They're still doing, strictly speaking, criminal cases.
- Int Achmed, you've also...you've pointed out a very important issue around *habeas corpus*, how that influence of apartheid still impacts on people's lives now. In terms of the Constitutional Litigation Unit, when did you formally join that? Did you join at the same time with Wim Trengove?
- AM No, when Wim (Trengove) was here, I was still an attorney in the Johannesburg office, they were just one floor above us. But then I did one or two cases through the Constitutional Litigation Unit, and the first one I did was called August. The client's name was August, he was a person awaiting trial in prison here in Johannesburg, and there was a lady as well, there were two of them, we chose a man and a woman, deliberately because we wanted to be sure that it affected both men and women prisoners. And they were denied the right to vote even though they'd still not been formally charged, or been found guilty of anything. And we took that matter to court because we approached the IEC to find out from them why awaiting trial prisoners

cannot vote. They said they can't roll it out to every prison and find out how many awaiting trial prisoners there are and then make provisions for them to vote. But we said that the Constitution says they have a right to vote, Just a week before the elections the matter went to work and the Constitutional Court gave us special privilege to hear the matter first and they ruled in our favour. And then all awaiting trial prisoners were allowed to vote. That was the August matter. Keith August is the client's name. So that's the first matter I did in the Constitutional Court. I did work on the certification, that was with George (Bizos) and then we did certain aspects of the case.

Int Could you talk a bit about the certification cases?

AM What had happened was the Constitution was drawn up and then the court had to accept the Constitution as it was or to question certain aspects of it. There were quite a number of questions on the initial draft of the Constitution, because they felt that certain aspects were not clarified and others were not actually constitutional in nature. So then it was sent back and then we were appointed as the attorneys, the Legal Resources Centre. It was George (Bizos), it was Wim (Tregrove), and then we had a very bright intern from Canada...I'm trying to think of his name, very bright. Because lots of the Constitution is moored in the Canadian one and he was an LLM student in Canada who had studied the Constitution, he could assist and direct us on what we should look at. So we worked on those aspects which needed clarity and those which didn't fit into the Constitution were removed until such time that the Constitutional Court said ok, this Constitution is now ready for certification by the President. So I worked on that one. And then a very interesting case I did was that, you know, South Africa held the World Sustainable Development Program here in South Africa, and during apartheid years people were not allowed to march, and towards the end allowed trade unions to march but under very strict conditions. They would choose the route where you would march so they could choose the route in such a way that nobody's aware that the unions are protesting because it's not in the public eye. And at that stage the unions wanted to protest about something and because the South African government then, the new government, felt it would be embarrassing to other countries who were part of the World Sustainable Development Program in South Africa, they also didn't want these protestors to march in Sandton, because that's where everything was being held in Sandton. So we assisted the union and, not only the union, and the other civic organisations, to bring an application that would allow them to march because the Constitution allows freedom of expression and in terms of freedom of expression you should be allowed the right to march and to air your grievances. So that was a case I worked with. I think it was me and Ellem Francis and I think it was Fayeeza (Kathree) . And then during that time there was a gentleman who came from Italy, who was a Chilean professor, (Jaime Yavanovic) Prieto and he came to South Africa to participate at this summit. But when he got to Johannesburg airport he got arrested. Because what had happened was the Chilean authorities had asked Interpol to arrest certain people who had fought against the old Chilean government of Augustino Pinochet. (Jaime Yavanovic) Prieto was arrested. And then I got a call from Italy, these guys had heard of the LRC I don't know from where, and they said I must take on this case. So then I went to interview him at the prison, which was very difficult for me because...I mean, I spoke English but he spoke Spanish. His English was poor. By some strange luck we got in contact with a lady from Chile and

she's married to a South African. I forget his name but he works for DTI. I don't know how I got that contact but somehow managed to get hold of the...

Int DTI is?

AM The Department of Trade and Industry. And she's a Chilean national but she became South African. And I got in touch with her and she was very helpful, she came here, she went with me to prison and she started interpreting. And then I found out what was the real story. And then we found out that there was a general called the Butcher of Santiago who was a General responsible for killing of students, I don't know how many students. The liberation movement there assassinated the general and Prieto was charged with others for killing the General. (Jaime Yavanovic) Prieto denied killing the general. Catrin (Verloren van Themaat) checked up on the Internet and she got hold of someone in Chile as well, we got a whole lot of information. We then found out that four people were arrested for the general's murder and out of the four, three escaped and went to the, Roman Catholic Church, and took refuge there, and then the pope intervened. And then they allowed them to leave Chile and to go to Italy. This is how he ended up in Italy. And while he was in Italy another activist who escaped from Chile then took responsibility for the killing of the General.

Int Sounds like a thriller...

AM A thriller. The police here, because of what Interpol told them, insisted on handing (Jaime Yavanovic) Prieto over to Chile. In Chile they have a military court which is separate from the civil court and the military was asking for him, not the civil courts. And in the military court they still have the death penalty. So had he gone there they would have hung him. In our Constitution the death penalty is outlawed. So we used that aspect of the Constitution as well as all the other information we got and we stopped his extradition to Chile.

Int Didn't it set a precedent for the Guantanamo case, for example, where someone from Pakistan was extradited to the US?

AM Yes. That's why when anybody is extradited now, lawyers will ask the US or whoever to give an undertaking that they will not impose the death penalty on this person.

.Int It's an interesting case. I'm wondering subsequently, what are some of the major cases you've taken?

AM Alright. When the ICD came into being, people then said another way of dealing with this is to take the ICD to court if they are seen to be failing in their work. And then I got the...

Int The ICD is?

AM This Independent Complaints Directorate. So I got this father who came to me through his employment, he was working for some insurance company...I'm trying to get the person's name, it happened a while ago. But what happened there was, his son was arrested, his son was studying engineering at Wits, his son was taken to Kliptown police station, the father then got a call about a week later to say, come and collect your son's body, he's dead and his body's here at the mortuary. So the father went to the mortuary and then he saw it was his son's body and he also saw that the flesh was going green so it meant he'd been there for a while.. The employer asked me to take on this matter, and I think Geoff (Budlender) was still here, and he said I must follow up and see what I can find out. I then found out that the son was held in prison at Kliptown and he'd been killed there at Kliptown and he was just kept there, I don't know for what reason, but that came out afterwards. It turned out that the policeman had shot him and then the policemen to cover up they gave a statement that the deceased had stolen a car and there was no such thing. He hadn't stolen anything. I then found out that when he was shot, because some other policeman had come forward to tell me that he had been handcuffed with his hands at the back, and their claim was that in the prison he had attacked one of the cops and he'd taken their gun, and when he took the gun they had to shoot him. So if a person is handcuffed how is he going to disarm a policeman, especially when his hands are cuffed at the back. So we had all the information and we took them to court but unfortunately I didn't get my day in court. The state settled before court. And they paid out. The state undertook to prosecute the policemen responsible for the shooting.

Int And was he?

AM He was but I don't know what happened because the case got thrown out of court, not actually thrown out, postponed a number of times, because the police were not cooperating with the prosecutor. But then the father was very upset and in the damages claim I got money paid out to him for treatment for ten sessions at a psychiatrist. He had those ten sessions but I think he was a beaten man .The matter was reported in the Mail & Guardian, it got a lot of publicity, and as a result of that the ICD also took an undertaking that they would follow up on the case..

Int And that was 199...?

AM It was about '95/'96. .

Int Apparently the person from Grootboom, the woman who took the case, died two days ago, and...LRC really took that case on against government, but what really has been the subsequent outcome from the judgement?

AM It has set a huge precedent and that precedent has followed other cases across the country. Wallacedene is in the Cape and I think it's more a reflection of the dysfunction in the Western Cape because you have, it's either the mayor was ANC and the province was under the DA, or other way around, and the DA and the ANC have always been at loggerheads, they've never worked together in the interest of the people of the Western Cape. And I think as a result of that bickering we've now seen

that this person, Grootboom, should have been given housing. But she didn't get it because these people were fighting each other, and it was so...you know, you could wake up after a month and find that the mayor is now an ANC guy. And after two months you'd wake and say, he's now been replaced by a DA mayor. Or people have crossed over from this party to the next and now the provincial authority is no longer in the hands of the DA but is now in the hands of the ANC or, you know, vice versa. And as a result of all of that, they didn't give service delivery because they were too busy trying to wrestle power from each other and they ignored the fact that there are people out there who needed housing. And you know the other person to blame, unfortunately, is the Human Rights Commissioner. Because the Human Rights Commissioner is given a monitoring role in the court case and that. The court said that you guys must monitor this situation and must prepare a report and then get back to us, the court, to tell us what steps the City of Cape Town and the municipality of Cape Town has taken to provide housing for Wallacedene. It looks like nobody there did anything. And that matter did come back to me. At one stage we wanted to take the matter back to court. We did have discussion with Geoff (Budlender) and Geoff felt it was too early to take it back to court because he felt that we might reverse the gains we've made. Because it was a watershed judgement from a court, which was a new court in a sense, made up of people who are not dented by the old apartheid. Because I mean, also the judges there, there were one or two who came from the old system, but it was (Johann) Kriegler and (John) Didcott, but Kriegler and Didcott were seen as renegades in the old apartheid system because they made rulings all the time against government and then they made rulings in favour of the rule of law. So Geoff (Budlender) then said, no, don't take this matter back to court. And then about three years ago I got approached by someone from the African Union...you know like there's a Special Rapporteur for each country, and that's what the UN does but the African Union has also incorporated that system, and what they wanted was that someone should hold the South African government accountable, you know, on its delivery of socio-economic rights to the people of South Africa. And then we thought a really good test case would be Grootboom. Because until three years ago nothing had happened. No housing had been given to any of those people. And we thought we could take that matter back, but not to the Constitutional Court but to the African Court. But then as you know, the African Court, it's still in the process of being set up. We don't where it's going to be, if it's going to be in, what's that place? ...Estate or where I don't know. But they're still in the process of setting it up. So where would you serve the papers and where would you file? So that held us back. And now with the result in which she's now died, she didn't get her housing. That had been a good case to hold government accountable because if Western Cape government didn't deliver as the judgement said it should, the national government would have intervened and said: come guys, there's a court judgement here. And that had implications for the rule of law. Here is a judgement, abide by it. So neither the municipality nor the Western Cape provincial government abided by the decision of the court. So earlier you were talking about the rule of law, here you had now award of the court and it's not heeded. Or they say they heeded it but they're doing so little in the concrete, it's more than eight/ten years, still didn't get any what the court said they would get. No housing.

Int I also understand that, for example, in terms of socio-economic rights, that there have been problems with the Department of Social Welfare and Development, and there

have been a slew of contempt orders and these have all been ignored basically. Could you talk a bit about that and how that complicates your work at the LRC?

AM Look, in a sense....lucky but I'll explain to you why. What's happened is that the first test case done by the LRC was done in Grahamstown with the Social Welfare pensions.

Int You mean the test case for the Constitutional Court?

AM No, for that court, we thought it would go to the Constitutional Court but it didn't because the court really just passed an order saying that...reinstating everybody's pension. What had happened in the Eastern Cape that they just decided one day that we're paying out too much money in terms of pensions, so we'll stop paying today and anyone who was getting pension must now come forward and prove that he's a pensioner and he's still alive and he's entitled to a pension. So the stroke of a pen they denied all the pensioner's pension. And the proviso was that if you wanted your pension you had to come from wherever you were, come to the seat where the government is and tell them, I'm so and so, I used to receive a pension, here I am, I'm still alive, reinstate me, and grant me my pension. And we felt that this couldn't have been right, you can't just make a decision like that, an administrative decision, but it's wrong. It's not a just administrative decision. So the number of people who came to the office there in Grahamstown and because they saw the fact that everybody in the whole province, instead of doing one or two cases, they decided to do a class case, and that was the first one and it went to court and they were successful and the court held that they couldn't have done that and they told them to reinstate everybody.

Int Did Sarah (Sephton) take that case on?

AM No, that wasn't Sarah (Sephton), it was then...he's now a judge. Clive Plasket. They did the matter. But I mean, that case was a first test case, but what had happened is in all the other provinces there were similar matters, but not as bad as in Eastern Cape where they just wrote off. Here people are applying, they were not getting responses. Or their application was just being ignored. Or sometimes a person would apply ten years ago, he's now seventy, he still wasn't getting pension, you get a pension when you're sixty. So those kind of matters kept coming up and then we took them to court. And what happened here is we had something like 20/30 case per week, in court and getting these orders, with the result that the judges said, look this is not acceptable, you can't come and bring 30 cases here, because in all these cases the Social Welfare Department has no defence and they called them and they gave them a talking to and said you are just filling up the court roll. The judges could be busy dealing with cases which really need attention. In other provinces it's still bad. I know in Durban recently the judge there stopped the court proceedings and he asked for the Minister, the MEC, for Social Welfare Department in Durban, to come to the court and explain why there were so many cases and why they were not paying out pensions.

Int Who was the judge there?

AM It's an English judge, I forget his name. We appeared before him with George (Bizos). If I get it I'll tell you. But he stopped that and he told them it's unacceptable.

Int And did they come forward?

AM They did. The MEC also in the Eastern Cape...this thing had continued again (laughs) after a while and they also recalled the MEC and that MEC in the Eastern Cape they were even harsher. They said he must pay out of his own pocket, all the pension money that was due to people.

Int Has that been done?

AM He now tried to challenge it, so I don't know what's happened. Because the judges said they're tired of this and they want to send out a strong message that MECs are responsible.

Int I also understand that the Constitutional Court has now changed...if government doesn't comply with the contempt order, then they can attach property of government. Can you talk a bit about that and how that came about?

AM Tell you what happened is that in damages claims you would get cost orders which the state had to pay. And not only cost orders but also the money due to the successful litigant in the case. What they would do is they would take their time to pay or they would not pay at all. And you, who had won recourse, you could write back to them, and say if you don't pay I will take you back to court for contempt proceedings.. But the contempt was that you would take them to court and the judge would hold you in contempt of this judgement, and give a further cost order against you. But he could not say that you as a citizen could attach State property. Because normally if it was between two individuals or between a company, between two companies, you can attach if the person doesn't pay, you can send out the sheriff to attach property. The state has both immovable and removable property. But the law was such that you couldn't attach anything belonging to the State in settlement of the debt. And because it's been happening for so many years where they just ignore judgements in which the state has to pay, the attorneys were complaining as well and they then decided through CALS, they told everybody who has similar cases to join in with them, and they took the matter to the Constitutional Court. And they took it in the case of a plaintiff who was disabled and when the judgement came, I think he died, after the judgement came, so I don't know whether he got any payment. But that's where the court ruled that this is unacceptable and it then said that it's unconstitutional for the State to say that you can't attach their property. So now you can attach State property. If the State can't abide by the judgement of the court, how would you expect citizens to abide by judgements. I mean, the State must set the example.

Int This brings me to an important point, recently the Constitutional Court has been under attack so Constitutional Court judges are called counter-revolutionaries. And from

certain quarters, like the ANC, Youth League, etc, there have been arguments and use of intemperate language, as George (Bizos) puts it. So much so, that George Bizos and Arthur Chaskalson have then had to issue a statement saying that the judiciary is independent and that should never be questioned... I wondered whether you could talk about this crisis as much as you can?

AM I think that if you look at the history, it didn't start from an organisation like the ANC or the Youth League or the Communist Party. I think the person you have to hold responsible, I think is the Minister of Justice, because the Minister of Justice...

Int Who was at the time?

AM What's her name now...Bridget...I think it was her...who was before? I can see his face now...

Int Penuell.

AM Penuell Maduna. , I don't know from where it comes from...there were these claims that judges live in ivory towers and they're above the law, and they seem to be leading these wonderful lives, getting huge payments and they're not accountable, which is very far from the truth. I don't think that anybody took the time off to see under what pressure judges work. And that a judge can listen to maybe, in motion court, he can listen to seventy matters in one day. You can't expect that judge to give you seventy judgements in that following week. I'm talking of court judgement, a well thought out and written judgement based on precedent and the law. You know what I mean? And there was this...from certain sectors, in like the government, when I say sector I mean in government, that the judges are taking too long in giving judgements and the judges are doing this and the judges decide to hear only ten cases and not twenty cases. And there was this...they created this atmosphere where, you know, people are saying, no, these judges are not working hard, so we need something in place that we can crack the whip and hold judges accountable. And I think that's where everything started going downhill from there, because it created this misconception in people's minds. Look, I don't know...look, there was a judge, but this was an acting judge, but it's a different story, she was owing the courts something like ten judgements. And she was from Pretoria...

Int And who hadn't done the work...

AM And she hadn't done the judgements. But then she had an argument, I can't remember...I think her argument was she hadn't been paid or something, so that was why she was withholding the judgements. And the other judges said, no, but as a judge, you shouldn't withhold work even if they don't pay you. You should be above all that and you should give the judgements. I think you'll know her if I give you the name. She's from Laudium. I tell you I'm bad with names. But she's the one who did that nonsense (laughs) as an acting judge. So I think that also added a bit of fuel to this whole fire about judges not being held accountable. And then you had Johnny de

Lange who's now in the Justice Department, I don't know what position he holds, a fairly high position, and the argument goes, in the apartheid years some judges were apartheid judges and treated attorneys and advocates who appeared for, you know, people against the state very badly. That is true. And the rumour has it that de Lange was treated very badly when he was an advocate by the apartheid judges who gave him a very hard time. And so people are arguing that it's his way of getting back. I don't know if there's any truth in it. That he took up this fight now that judges must be held responsible and we have to change the way things work. And one of the ways he started to change things because he drafted this 14th Amendment Bill, in which, you know, like the Minister of Justice becomes responsible for managing the courts. So in fact what you'll be having is the Minister of Justice interfering in the way courts are run, in the way cases are allocated, in the way judgements are done, and in the administration of the courts. And previously administration has been by the judges, and they've done it well. So all this was seen then as a way of attacking the independence of the judiciary. That's how, it started with that. So that's how it's continued.

Int And when did that start?

AM It started about four or five years ago. And when the 14th Amendment Bill came out it was done so surreptitiously. It was published in December around about the 14th when the courts close on the 15th, and everybody goes off, even more so the law firms close and you have skeletal staff, because you know in South Africa, December, everybody goes away. And by some chance Catrin (Verloren van Themaat) picked it up on the Internet and she distributed it to the CLU, then immediately then George (Bizos) said we can't let this lie. We must give a response to this now. And he prepared a response challenging it and saying that it is unacceptable that they do this. And as a result of that the Bar Council got involved, and the Bar Council called like a conference where all interested parties on the Bar Council attorneys, came to discuss this amendment. And everybody without fail, including academics from Wits, UCT, all said that this was an erosion of the independence of the judiciary. The way this new amendment would come into effect. It would curtail the power of judges. It would allow the minister to interfere unnecessarily in the running of courts. And they also talked of appointing a Court Manager in that, you know, you have Registrars, but this was a new thing called a Court Manager, but this Court Manager was also given powers way above what a Registrar has. It was even more than what a judge has, and all of that pointed to the State interfering with the independence of the judiciary. So that was a huge conference. The whole thing was printed, I think something like 50/60 pages, I've got it somewhere, and that was then distributed. Distributed not only here but everywhere else, abroad as well. Government then said it was backing down on the 14th Amendment Bill. And they just kept quiet. But what has happened is the damage had already been done because that was aired in the newspapers, about judges being lazy, judges not doing this and that. And I think that's what, like the ANC Youth League, the Communism...they've picked up on that and they've taken it to an extreme. To say these judges are counter revolutionary, these judges are doing this, and what they're not realising is that you are actually destroying the integrity of the judiciary. Because a lot of careful thought was taken into preserving the integrity of the judiciary. The judges were exempted from the TRC hearings; they were not taken to the TRC to explain, you know, bad judgements. It was said that they were acting

within a system, so let's forget about that, and have a clean slate. Not like the Nuremberg trials. And that actually helped to preserve the integrity of the judiciary, and as years have gone by also the conservatives, have taken early retirement or served their time till pension, and we're having now a more transformed judiciary, you know, with people interested enough or in the rule of law, etc. and who regard the Constitution as the most important. And that everybody is subjected to the constitution. I still remember when the Constitution came out, when you would raise a constitutional issue, judges would ask you: what is this Constitution? The conservative ones. Why must I listen to the Constitution? You know, that kind of attitude. You could understand it because they had been schooled under this, where whatever Parliament passed was correct and you couldn't challenge it. And you couldn't challenge it, because Parliament was supreme. You could challenge the procedure followed but you couldn't challenge the content. With the Constitution you can challenge the content of any law passed by Parliament because it must pass constitutional scrutiny. You can challenge the content, and that was something very new to many of the judges. The rantings and ravings of political factions against the judiciary is a cause for concern. It reminds me of student politics. Political slogans. Sloganeering. However there is a lot more at stake here than student politics. I think it's just rantings and ravings of people who don't understand what it means to have an independent judiciary and where there's a rule of law. Everyone is presumed innocent until proved guilty. And that you must have your day in court, and that the charges against you must be tested. But what is happening now is people are saying that if you try and bring me to court it's because you've already decided I'm guilty.

Int These deal with the impacts on erosion of human rights and also the impact on public interest law organisations, like the LRC, being able to litigate effectively...

AM Ok. And now women's cases it impacted a lot in the sense that, you know, with rape in this country, has taken on endemic proportions in this country, with rape of children, there's rape of married women, there's date rape, there's rape at schools, which is really bad. There's this whole total lack of respect for women, for a person's bodily integrity and of privacy and all of that. It's all reached a level of...I want to say decadence but it's reached that low level, there's no respect. And it makes it very hard for organisations like us who know that this Constitution protects the rights, especially the rights of women and children. Because we realise that women suffered double oppression in the apartheid years because they were black and because of their gender, because of patriarchy – you had patriarchy whether you belonged to a white society, whether you belonged to a indigenous black society, but patriarchy was pervasive to all. And then you had religion as well, also supporting this patriarchal notion that women are subservient, and within customary law, all of it. So we've been trying to bring people in line with the thinking of the Constitution. Even religions, even the way people think at work, the way people, like how you appoint people. That you don't just appoint a woman and say she must be the char lady. And then you must appoint a woman, if she's good enough she must be the Director, you know what I mean, on those basis. So it affects our work a lot because we've been fighting rape matters a lot and when you had the rape matter of Zuma you had lots of people, and especially women, you know, who came in traditional outfits to the courts here, the whole court was surrounded by these people, and all these people were making statements like, burn the bitch, you know. She was wearing the tanga, the 'tanga

woman', you know, but it's done in this insulting way. 'She was wearing a tanga so she asked to be raped'. They were attacking this woman's character, not really her but by implication they were attacking all women. And I don't think those women realised they were attacking themselves as well, that were making these generalised statements about women. And all these nasty things, that she asked for it the way she was dressed, the way she behaves, you know, all those things which had nothing to do with the rape case. And prior to that there was a case that came to court and which it was a marked move away from the old style. Because in the old style of defending rape you are entitled to go into the history of the woman. So if she had ten boyfriends, that would have, in the old system, it would be taken into account as a factor to show that this woman was a loose character. So even if she was raped she probably asked for it. You know, that kind of mentality. And we were trying to move away from the...if she was raped we must look at the facts surrounding the rape, don't bring in the history of how many boyfriends she had. Because you don't bring in the history of how many girlfriends the man has. So we did have a case where a judge actually said, no, you can't bring in the history of people, that's not allowed. Let's deal with the rape to that specific day and the events of that day. But with this case at some point during the trial, Kemp (J Kemp) who was representing Zuma, persuaded the court that he should be allowed to lead evidence of this woman's sexual history. And I don't know how it happened but the judge in that matter allowed it. And that really...so that gain we made was reversed because that judge, it was the last judgement on a rape, I don't know, on a big rape matter which he now said, you can bring in the history of the rape victim to show that she's the kind of person who deserves to be raped, or asked to be raped, or...

Int So has that set a precedent then?

AM It has in a way set a precedent because until today we don't understand why did that judge allow it.

Int Has that been challenged?

AM It hasn't yet, although it's the decision of the High Court. You should follow the High Court and I should be allowed to bring into evidence this woman's past behaviour. So it's now a huge step back for us, who want to try and put a stop to this rape thing. If you really hear the stories about rape, it is frightening, very, very frightening. There are women who are raped because they've come forward and said they're lesbian. One woman was raped and then killed because she said she was lesbian. In the Cape a woman was raped and killed because she went on TV to say that I'm HIV Positive. And because there was this whole movement to say that everyone must be tested and we shouldn't be shy of saying that we're HIV Positive.

Int So she was raped because she was HIV Positive...?

AM Yes. And then they stabbed her and they killed her. Rape has become a reality for women and children in South Africa.. It's like a plague, I mean, it's sick.

Int From what I can understand the LRC has struggled to get funding for the Women's Rights Project?

AM Mmm. I think that comes from a misconception. People think that because the Constitution says women should not be discriminated against, so now it's has stopped. It doesn't work like that. Because the Constitution says that you will not discriminate against people on the basis of gender, sexual orientation, it doesn't mean that it's not happening because the Constitution is a document. It only becomes meaningful and alive in people's lives if they interact with it and they see it working. And the only way you can make, give content to that right, is in a court case. It comes into court, the judge says, no, this is like this, you can't do this kind of thing, you know what I mean? And until you don't have these cases to take to court or you don't have the funds to take these kinds of matters to court then you're not going to set the right precedent, because the judgement will influence the way people think. You know people...if someone succeeds in that case, it sends out a message to others that I'm in similar situation, if I come forward, I will get relief like this person could. But if there's no chance of you ever getting that relief you're going to sit back and say well, this is my lot, I'm a woman, this is what I must go through in life, and there's nothing I can do to change it. So then what you're doing is, you're not giving women any opportunity to realise the right which is accorded to them in the Constitution. But then the Constitution becomes meaningless.

Int The other thing is that...you've been here a long time and you've seen many changes in the organisation, one of the things is that there's this very senior coterie of lawyers, there's you, there's George (Bizos), etc., but there isn't a middle intermediate level, and there's the junior attorneys. And in terms of training...the LRC has to do training of candidate attorneys, how pressurised does it become for someone like you who's in the Constitutional Litigation Unit, you're a Regional Director and you're having to train?

AM It's become very difficult because human rights are not the flavour of the month in South Africa, because what has happened is that, I mean, maybe rightly so because in the past candidates of colour, were not given opportunities at the big law firms and the big law firms do all, what is regarded as, the cases that bring in the money. All the corporate, commercial work. Now suddenly doors have opened because there's an Equity Act which says that you have to look at the numbers of people within your office and your organisation, you've got to have a certain amount of women, you've got to take measures to address if there are very few women, if there are very few people of colour, you've got to try and give a reflection of the demographics of the area in which you are. So people then set up these ratios and they try and fill them up. And private law firms can do it very easily because people want to go there, they pay a lot more. And they're doing, as you said, this corporate work and the trappings which go with corporate work. The fancy place in Sandton, the fancy cars, fancy buildings, etc. and you don't deal with the poor. Many African graduates go there they're pressurised as well, because varsity fees over the years have sky rocketed, because the government has reduced subsidies for students at universities. And many of these students after eight years of studies have huge loans to pay back, and once

you start work you've got to start paying back. Work at the LRC, we don't pay the same rates that you would get paid at a private law firm, so then they would go there. And Arthur (Chaskalson) calls them black diamonds because they're in such demand. And so they make use of it while they can and try and pay off all the loans.

Int But how do you then explain this...is the LRC then unable to attract the bright young things and instead is attracting people who might not be very interested in public interest law?

AM You see, it's not as simple as, what happens is that there are a lot of people who are bright, who would fit in here quite easily, but we're also under pressure to meet the ratio of people working here, there's got to be so many women, so many blacks, so many Africans, so many so-called Indians. We're playing this numbers game. And what happens is that we have good candidates who want to come here, where they happen to be Indian, or they happen to be white, they are women, they meet that criteria, but they're not African women. And if you look around here we don't have any African women attorneys, so we're very hard pressed to get a female African attorney. So that is number one on the list. We had a good female candidate who won an international moot but she rejected our offer because the salary was too low.

Int Competition?

AM ...she won it. And she wanted to come here. And when I told her the salary, she said I'm living with my mother, my father is late, my mother is looking to me, and now that my studies are completed I take over the role of breadwinner, pay off my debts, help my mother. And she was recommended by (Mohamed) Navsa.

Int And she's a white student?

AM No, she's an Indian student. And she's got all the right credentials. We couldn't pay the money.

Int Gosh, it's really unfortunate.

AM So that is...in those respects we are losing out. And the fact that we're now...we are consciously seeking black African people to come work here. .

Int In all of this, Achmed, in the last interview you said even if you got paid more elsewhere...you still enjoy the kind of work you do. What are some of your concerns for the future of the organisation?

AM The biggest concern is that when money doesn't come in as it should at the levels at which we want it, we then have to narrow our vision and that has an impact on the kind of work we take on, because we then have to discipline ourselves. Because

Arthur (Chaskalson) was saying here the other day, you have to learn to say no, and we come from an organisation where we said yes all the time to anybody who came in through the doors and was in need of assistance. Now we have to consciously tell people, you are arrested by the police, it's an unlawful arrest, this is what your rights are, but we don't take on this case. I believe you, you were tortured and you were detained and the policeman beat you up. And this brings to mind, you know, when was it, two weeks ago, we did an urgent...we were here on Friday till eight o'clock at night, you know, with these Glenanda refugees, the women were separated from their children, and the women were kept here at Johannesburg prison and they didn't know where their children were and they were going out of their mind, because these were women refugees on their own, they don't have husbands. Their husbands have been killed in Somalia, or wherever they fled from. There were seven such women and the children's ages ranged from two months, four months, one year, two years, seven and eight. So the matter came to us and we took it on. We drafted papers to reunite the children with their parents. We approached the police station to find out what had happened to the children? The police were not helpful and I decided to get the women out on bail so that they could help find their children. When you ask for bail application you have to deal with the investigating officer, those are the rules. The investigating officer gave me his cell phone. He didn't tell me that he's going off duty. When I called him his voice mail was full and I could not leave a message for him. I then phoned the courts to find out the name of the prosecutor on duty, so that we could arrange an after hours court and bail application. It took an hour to find out who was on duty, because the person kept cutting me off, I think deliberately. Eventually we get hold of the prosecutor, who agreed to grant bail on condition that the investigating officer is present with the docket, because the rule is the investigating officer must be there with the docket and he must sign the docket. I then phoned someone senior at the police station. His name was Superintendent Suneer Bajai. I spoke to him, I explained the whole story to him, his attitude was, I will oppose bail, I don't care what you do. So then...

Int Why was that?

AM It was an attitude. . The last option was to go for an urgent in the High Courts. So we phoned the judge on duty in the High Court .The Judge had already gone home, I called the judge's clerk who after speaking to the judge advised me to approach the superintendent again. The superintendent advised me that he had found the children at Walter Sisulu home and he undertook to reunite them with the mothers. We informed the mothers.

Int Have you checked that out?

AM We recorded our conversation with the superintendent in a letter and sent it to him by fax. He confirmed telephonically that the children were united with the mothers However we found out a week late that he had lied.

Int And where were the children?

AM Nobody knew where the children were. We asked the UN to look, there's a lady at the UN and Red Cross, they couldn't find the children.

Int So they weren't at the Walter Sisulu home?

AM No. But police lied to us. I'm saying now, if you work under those conditions, you work as a policeman, supposed to be a Superintendent you should be able to rely on his word if he gives you an undertaking.

Int And can anything be done about this?

AM No. When you speak of the rule of law (laughs), for people to respect the rule of law you've got to have the police who are supposed to implement the laws of the land to be above board. This man is a superintendent.

Int And so nothing has been done, he hasn't been...?

AM We managed to get the children reunited but I mean, it was...what those women went through, unbeknownst to us, for those three, four days, without knowing where their children were...the one woman said, I'm going mad. We only found out because the UN followed up with the mothers. The mothers said this policeman never came there. He didn't speak to them at all, you see now, it's your word against his. In certain aspects of your work you do need to deal with the police. I mean, this is what's happening. So I was telling someone that, you know, after the xenophobic violence, there were adverts in all the newspapers, huge one page adverts, from the government saying, we are one people, xenophobia is wrong, South Africans are not xenophobic. We shouldn't allow the criminal elements to take over. They blamed everything on the criminal element. There were adverts on the radio, placed by government, adverts on the TV, everybody, you know, making this huge cry against the xenophobic violence and the loss of life. And that South Africans are not xenophobic. But what this tells me, that the police are definitely xenophobic. Because if this man is a superintendent, he's not a youngster, surely he must realise what it is to have children separated from their mother. And the mothers not knowing where the children are, the children not knowing where the mothers are. Even if he was not a policeman, compassion should have told him. Irrespective of whether these people are refugees or not. But this is the attitude. And the police have been known, before this xenophobic violence incident, for beating up people whom they regard as foreigners, for not paying them bribery money.

Int Sounds like a human rights course is needed for the police...

AM It shows that South Africans are lying. You're lying to yourselves. They're saying there's no xenophobia. There is xenophobia. There's xenophobia in your police force. Why is it that South African police are arresting people from Limpopo simply on the basis that they are dark skinned, they are darker than the other Africans who are from

Johannesburg, Cape Town, area. Because Limpopo is far north, it's much hotter out there, and they're darker skinned, they're regarded as being foreigners. So there is racism.

Int Achmed, this has been so useful and your cases are so fascinating and illustrate the work that the LRC does, the important work. I was wondering, George (Bizos) is...someone with his stature people really respect him, I wonder for you what has it been like working for him, do you have any sort of stories to share about working with George Bizos?

AM When I worked with George (Bizos)...George has got a fantastic memory. He's getting old but he remembers cases. Cases that can either help to make or break your case. He may not remember the exact citation but he'll get it eight-five to ninety percent right. And when you find that case, in every instance that is the case, which wins the day. And George has got this uncanny way of finding it. Apart from his understanding of the law, passion for the law, he's a humane person. He cares about people and that makes him so great. And also that compassion for people makes it difficult at the same time, under these conditions, for me to work with George. Because there are matters which we don't take anymore, like I told you, the damages claims. But if someone sees George and tells George, no but that attorney of yours says you don't do this matter, George will call me and say, we must take it on. And then if I take it on, EXCO wants to discipline me: why did you take on this case, we told you guys not to take it on because we don't have money for these cases.

Int George is actually right, isn't he? Because that's what public interest law is about.

AM He's right. But then the reality of the situation is, we're not getting the kind of funding we should get. And many people believe that South Africa is now a democracy, it's got a Constitution, it's this beacon for Africa, and things are wonderful here. But things are not. And I mean, you can have a Constitution but it only becomes effective if people start believing in it. And you see it working for you.

Int Do you have....Access to Justice that Mohammed Navsa started?

AM It was Navsa's brainchild. He wanted Access to Justice, he realised the need for Access to Justice, because he realised then that our outreach was mainly Johannesburg and it would be trade union leader from Jo'burg who has a friend in Bethal, or it would be a trade union who has a friend in Newcastle, who's picked up this instance of abuse and that matter would come to us. But Navsa had a vision, he realised that in every little township there was civic organisations, and he realised that those civic organisations could be empowered by teaching them about the law. We used to have workshops twice a year and then they came four times a year just to have workshops, to train people. And then the Black Sash took over training but then they would create a venue for paralegals and you would train the paralegals at the Black Sash as well. So that way we had a whole lot of advice centres springing up everywhere. Once a month I used to travel one thousand kilometres I would go from here to Wolmaransstad, Wolmaransstad - Schweizer Reneke, Schweizer Reneke, I

would go to Ganyesa which was then a homeland in Bophuthatswana, Ganyesa - Pampierstad, also a part of the homeland, Hartswater, it fell in the Northern Cape. I would go there. And then from there I would go to a place that's outside Kimberley. So it would take three days. But we would set it up, it was almost like, you know, a doctor going out to meet his clients, you would go there, the clients would be waiting. But a day before I went, say, two weeks before that I would send a letter to these people and say, we want to make a visit on these days, can you get clients to be there, the clients who you think need assistance, send me the statements you have about that before that, and we would come. And then they would take down the statements, start developing the case, and then bring it, and if the case was important enough to go to the High Court, I would bring the file back here to the office. So it would be me and a clerk who would go three days. Sleep out on two nights. But that you had to do, every attorney had to do it, in the office.

Int In terms of... who else have you really enjoyed working with in the Legal Resources Centre?

AM It was very nice working with Moray (Hathorn) and I learned a lot from Moray as well. And other good people I worked with was Ellem Francis, he worked very hard on the Access to Justice when (Mohamed) Navsa left, he made sure a very good team would run it. Because a lot of people were against it, because it meant not driving out to the rural areas and trying to get cases, bringing them here. But he kept it running for a very long time. And Ellem he also cared about clients and he brought a sort of a moral sense to it and he was very religious. But it was not a kind of religiousness which affected his cases. It was more like a positive thing, you know what I mean? If people were sick, you know, we went to a client, he would give a prayer, he was like that kind of a person. And I learned from him, in doing the cases. I mean, with Navsa we learned a lot in the sense that he would tell you, you don't know everything, go to the law books, sit in the library, use the library, read the book, do a summary on it, come back and deal with it. And then there was Arthur (Chaskalson), very quiet, didn't say much when he was here, but he had this thing of...you know, you would leave your office, come back in the morning, you'd remember, but I had these three files here, but there's one gone. What would happen is Arthur (Chaskalson) would come in, go through your files to see what was going on, but not in an intrusive way, and then if he was unhappy with the file he would take it and you would get a call later, saying, what's going on here, why didn't you take this matter to court? Why is it taking so long? But if you gave an explanation to as to why there was a delay. He would listen to you, hear your side of the story, and if you were stuck, give you advice and help you go forward. And then we had a little thing called tea-time, where we actually stopped work and we would sit in a room called the tea-room and you would chat to each other. And I miss that camaraderie. If you had a matter you were doing, I would hear of it at teatime, hey, Roxsana is doing these wonderful things. And if you got stuck then we all would sit there and then give our viewpoints. And if I felt, you know what, your case is so good I want to get involved and ask you, can I help? And you would probably say, ok, yes, come, then I get an opportunity to work on that case and learn something new. So there was that kind of thing, but we don't have it anymore. It's gone. And we used to have every month a lunch, it was introduced by George (Bizos), it was a wonderful thing because it developed for the office spirit of

working together. And George (Bizos) would bring a salad, . But we would cook at the office So on that particular Friday there would be the smells and everything (laughs). But you know you knew that today we're having the lunch and everybody would be excited. And I don't think it was about the food, it was about sitting together, talking about a case or socialising.

Int And that stopped at some point?

AM Completely.

Int The teas and the lunches...?

AM The lunch they said there's no money for lunch We don't meet for tea any more. .I've tried to re-introduce tea and lunches but the staff do not share my views on the matter .It holds no meaning for them. Many of the staff are new to the LRC... People are becoming more for themselves, you know...individualistic.

(Portions of this interview have been removed during editing by interviewee)

Int Achmed, as usual, thank you very much for a great interview and I really enjoyed listening to your cases, there's some incredible work that you're doing at the LRC.

AM I'm glad you liked that.

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