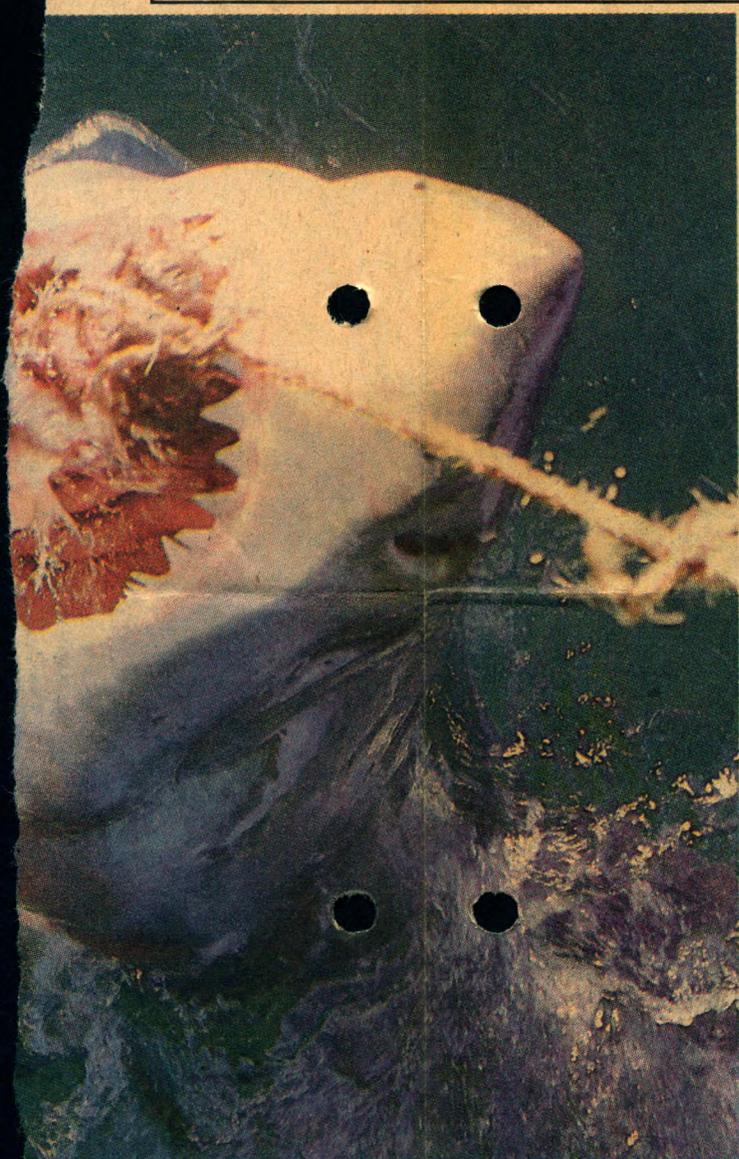


Cash crunch for SA human rights lawyers

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CASH-strapped South African human rights lawyers are considering legal action against the defunct London-based International Defence and Aid Fund for outstanding debts totalling millions of rands.

And some have called on the ANC to apply pressure on Idaf's trustees to pay up. The anti-apartheid organisation — the major source of income for many South African human rights lawyers over the past 30 years — closed in April last year, leaving hundreds of lawyers with unpaid accounts.

A new organisation, the South African Legal Defence Fund (Saldef), has been established in South Africa to replace Idaf, but is not liable for the old debts.

Attorneys, who asked not to be identified lest they lost all chance of recovering their money, said they had disbanded partnerships, cut down staff, refused new human rights cases and diversified into criminal and civil work. Some attorneys are owed as much as R600 000.

A well-known Johannesburg firm, Priscilla Jana and Associates, reportedly owes advocates R187 385 and is on the verge of closing.

Cape Town human rights attorneys Mallinick, Röss, Richman and Closenbergh closed their public affairs sector three months ago.

Tragedy

Other leading law firms such as Bell, Dewar and Hall have reduced staff in their public affairs department.

Advocates said they were demanding money up front before accepting certain briefs.

A Johannesburg advocate who expects to write off thousands of rands said he was now turning down human rights cases.

“One would like to do the work, but one's fees would be at risk. The tragedy is that there remains a dire need for this kind of work.”

Because it focuses largely on labour matters, Cheadle Thompson and Haysom has not been as hard hit as the smaller human rights-oriented practices.

But it, too, has had to turn down human rights

By DAWN BARKHUIZEN

cases when clients could not pay for themselves, according to a partner, Mr Norman Manoim.

“Naturally we hope we can continue this sort of work, but much depends on how much money Saldef can raise and how much local business will contribute,” he said.

One of the few firms with a flourishing human rights department is Deneys Reitz. The department is funded by the partners themselves.

Mr John Smith, general secretary of the National Association of Democratic Lawyers, said: “It appears that Idaf's donors, due to certain ideas about South Africa, simply did not pay up at the end.”

“Idaf has offered some lawyers proportional settlements, others nothing. As a result hundreds of lawyers here have been left with bills totalling millions. Some may have to close.”

In the past Cheadle,

Thompson and Haysom has represented clients in some of South Africa's major treason trials, including the case against Moses Mayekiso and other Alexandra township leaders in 1987, and Eastern Cape district surgeon Wendy Orr, who brought an interdict to stop detainees from being assaulted.

Mallinick, Röss, Richman and Closenbergh has frequently represented the End Conscription Campaign.

Petition

Bell Dewar and Hall acted for certain accused in the Delmas treason trial and for Baragwanath doctors when the authorities refused to renew their contracts after they had signed a petition against conditions at the hospital.

Former Idaf trustees could not be reached for comment. Spokesmen for Saldef and the ANC were also unavailable.

Stompie attorney pulls out

By CATHY STAGG

AN attorney representing the “coach” of the Mandela United Football Club, Jerry Richardson, has withdrawn from the case because of a lack of funds.

Attorney Kathleen Satchwell confirmed she was no longer representing Richardson, 43, who has been on death row since August 1990. He was convicted for his part in the murder and kidnapping of Stompie Seipei.

Miss Satchwell said she had withdrawn as Richardson's attorney last Thursday after approaching several organisations and being told there were no funds.

She said she had intended to use the funds to brief an advocate to argue Richardson's appeal. The state will now appoint a *pro deo* advocate.

Miss Satchwell expects a lack of funds will also affect the representation of Xoliswa Falati and John Morgan, each sentenced to six years' jail for their part in Stompie case.

ANNE MARGARET GOWING

- Will MRS A M GOWING, the widow of the late MICHAEL ROBERT GOWING, formerly of Zimbabwe, who died on 4th April 1981, please contact David Knott of The Board of Executors without delay.
- The proceeds of certain life assurance policies have been received.
- THE BOARD OF EXECUTORS
PO Box 785442 — Telephone (011) 884-6360
Sandton 2146.

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alongside the boat from which Ron and Val Taylor made their dives

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Taylor: “The encountered a ny hair stood a primitive e. That's what en you come animal of this ter — awe in of something

superior to you in its own domain.

“The only dread one feels is also primitive: the fear of being eaten alive. All species fear being eaten and, in the water, you know that it can eat you if it wants to.”

South Africa is the only country in the world to protect the Great White and it is an offence to catch or hunt the animals in local waters.

Mr Ferreira's unit has been attempting to tag them with identification numbers for research purposes for the past few months with little success — but they finally struck paydirt when the Taylors joined the party.

Over four-and-a-half days they worked with a group of approximately 23 sharks off Dyer Island.

They logged 350 sightings and tagged 10 sharks.

evicting their black labour tenants from land they have occupied for generations.

The latest example of these evictions, which are taking place in Natal and the Transvaal, concerns about 80 people in Piet Retief, in south-eastern Transvaal.

The group recently approached the Legal Resources Centre (LRC) to oppose the "trekpasses" (eviction notices) which had been served on them. They will have to move by the end of the month unless someone intervenes.

The matter could be raised by the ANC at Codesa, says Derek Hanekom, head of the ANC's land commission. "Until interim measures are put in place, people with strong claims to the land — according to criteria we consider important — are still falling victim to apartheid."

Hanekom, who sees this development in the context of government's rejection of historical claims in its White Paper last year, believes the issue should be handled by a special land claims court. He describes government's newly appointed Advisory Commission on Land Allocation as a toothless body which moves very slowly.

He says the people who have been evicted still have a strong claim on the land; evicting them only compounds the "mess" that will have to be untangled — a reference to forced removals under years of apartheid.

Labour tenancy is an old system whereby people, by working for the landowner, secure occupancy of land and the right to farm it. The LRC says the contract is made between the farmer and the tenant family. They agree on a number of able-bodied people working for the farmer and, in return, the family gets occupancy rights.

Most of the contracts, made by simple agreements of indefinite duration and passed through generations, are valid under SA law, according to the LRC.

"But, for the labour tenants, it is much



Tenant labourers ... trekpasses on the increase

more than a contract," the LRC says. "It is a way of life — rural hardships notwithstanding. Labour tenants are farmers and they live close to the land. Evictions have devastating social consequences. The tenants face the loss of their family homes, their fields, security and their accumulated wealth."

The LRC, which has acted for 70 families in the 18 months from 1990 to last July, says the irony of the tenants using the courts is that certain legal requirements laid down in the process are now being used against them.

In particular, there is the required three-month notice period, which a number of judgments have held to be reasonable. As a result — and following advice put out by the SA Agricultural Union (SAAU) on how to legally evict tenants — most farmers are now issuing three-month trekpasses, "thereby taking away one of the few legal grounds on which the removal of labour tenants has been staved off." (The *FM* was unable to get comment from the SAAU before going to press).

While some battles will probably continue to be fought through the courts, the issue will ultimately have to be dealt with politically, says the LRC.

The current spate of attempted evictions is taking place against the backdrop of fundamental structural changes. The Land Act, the Group Areas Act and the Separate Amenities Act have already been repealed.

"These changes and rumours about the allocation of land under a new government appear to have created fears among present farm owners about their own futures. The result is a knee-jerk reaction on their part," says the LRC.

Perhaps, therefore, it is time the ANC spelled out more clearly the land redistribution policy it has in mind — going further than simply calling for a special land claims court to be established.

In any event, the LRC is probably correct in pointing out that farmers have to appreciate that evicting people is no guarantee against the land in question being acquired by the State for allocation to disadvantaged people — in particular to people who have lived on it for generations.

As the law now stands, the eviction of farm labour tenants does not prevent the land in question from being acquired. "Whatever political agreements are reached in the future and whatever regulations and mechanisms ensue, it cannot be imagined that eviction acts will exclude land claims."

However, the LRC maintains farmers can

rest assured that no political arrangement in future or acquisition of land now will take place without being linked to compensation. Future arrangements will have to carry the consent of most, if not all, political actors, it says, adding that the main political actors must realise that the land question is a powder keg that has to be tackled without delay. ■

THE LAW

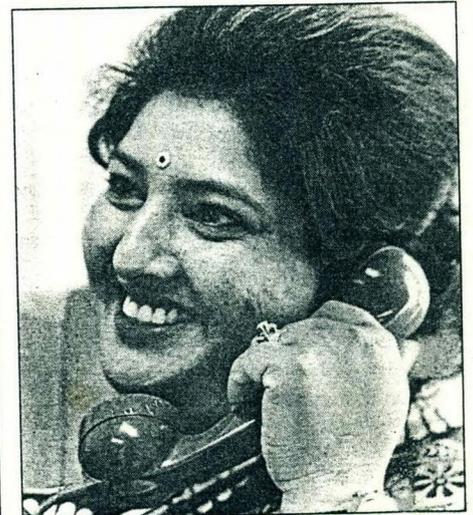
The costs of reform

A well-known Johannesburg firm of attorneys, which specialised in human rights matters, is on the verge of closing after government's decision to release political prisoners and unban various organisations. This coincides with the financial crisis facing a London-based anti-apartheid organisation, the International Defence & Aid Fund (IDAF), an erstwhile major financial backer in human rights trials in SA.

Johannesburg attorney Priscilla Jana & Associates owes R187 385 to advocates who had been briefed by the firm. The debt was to have been liquidated by a London law firm, Penningtons, on behalf of the IDAF, which is in the throes of a serious and deepening financial crisis.

The IDAF is having great difficulty in honouring its financial commitments. Jana went so far as to criticise the former patron: "The IDAF is in tremendous financial difficulty and not in a position to honour its debts. As a result of this it has made offers of settlement, on a proportionate basis to various attorneys, which are under consideration. Most of us consider this as a great letdown by the IDAF because it was work we did under its instructions and the situation has caused tremendous difficulties to attorneys who do human rights work."

The IDAF has apparently made an offer of an immediate settlement of about a third of the total amount owing to Priscilla Jana & Associates. But such is the crisis in the anti-



Priscilla Jana ... let down by overseas backers

WELFARE GOAL

Equality in State welfare payments is the goal of the Social Assistance Bill published in Cape Town last week.

It provides for the consolidation of various laws relating to social aid schemes and has no reference to race. However, the Health Minister may make regulations in terms of the Bill, which "differentiate between different categories of persons" for payments.

Director-General of Health Coen Slabber says government's goal is to have parity in all welfare payments and in theory that is what the Bill advocates.

However, immediate parity in social pensions cannot be achieved due to lack of funds. As an interim arrangement payments will remain different between race groups but the gap will be eliminated as soon as possible.

apartheid fund that its severely limited resources are continuously being eroded — with the real possibility that funds may shortly be totally depleted. The IDAF has in fact formally closed.

After consultations with various IDAF officials, Priscilla Jana has decided to accept the proportionate offer. The firm was almost entirely dependent on the IDAF and its termination dealt a crippling blow to its operations. The firm has apparently also incurred various other costs on behalf of the IDAF.

An offer of one-third of the total amount due to the attorneys — as full and final settlement of all claims counsel may have against Priscilla Jana — would have to be accepted by the Johannesburg Bar Council. The *FM* understands that this matter is

THUNDERING HEARD

Former *Cape Times* editor Tony Heard believes that the *FM* treated him less than delicately last week (*Leaders* January 17) over his views on media ownership. We described him as retired and, therefore, lacking the insights of a working journalist.

We apologise for this mistaken impression, which we acknowledge is wrong, and regret any distress it may have caused him. He left his editorship for reasons other than retirement and writes now for other publications.

being considered.

Priscilla Jana has always enjoyed a sound relationship with the various advocates it has briefed on human rights matters and is believed to have paid counsel millions for these services, particularly during the P W Botha era. In the reform era it has been reduced to a skeleton staff and may be forced to shut.

Other law firms which specialised exclusively in human rights matters also face financial ruin. Some of the bigger law firms have either closed their public affairs sections or reduced staff in them.

□ Bar Council vice-chairman Wim Tren-gove SC said only: "I understand from her (Jana) that it is a confidential matter and, unless I have her permission, I cannot comment."

Eddie Botha

THE ANC

FEATURE

No cheer for democracy

There will be no freedom of speech under an ANC government if its draft media charter is any guide.

The ANC has said repeatedly that it supports the concept of freedom of speech but does not appear to understand that civil liberties are impossible without freedom of the media, which is the least interesting freedom but the most important. And, though the ANC's draft media charter pays rather grand lip service to media freedom, the details suggest that the ANC has something else in mind — or that it is naive.

The preamble of the charter, like most preambles, is full of apple pie: "At the core of democracy lies the recognition of the right of all citizens to take part in society's decision-making process ... Democracy cannot emerge and flourish without a democratic media." And so on.

It is when we get to the "basic rights and freedoms" part that the problems really begin. For instance: "All the people shall have the right to freely publish, broadcast and otherwise disseminate information and opinion, and shall have the right of free access to information and opinion."

Does this mean that anyone should have the right to walk into a TV studio and make an announcement? Does free access imply that newspapers and radios should not have a price but simply be handed out to the masses? Obviously not: the idea is absurd. On the other hand, "all the people" may just be ANC-speak for the democratically elected representatives of the masses — that is, the ANC.

Slightly more encouraging is the intention that "all institutional and legislative measures which restrict the free flow of information, or which impose censorship over the media and other information agencies, shall be prohibited." If the rejection of censorship means that we shall be flooded with hard porn, perhaps it will be a small price to pay for the fresh air of political freedom. But

who will decide whether the free flow is being restricted?

The media must also be democratised in certain ways, which is ANC-speak for restricted. "Diversity of ownership of media production and distribution facilities shall be ensured," says the draft charter firmly. To emphasise that there will be a Big Brother doing the ensuring (instead of letting the market take its course) the charter offers what it calls promotional mechanisms.

This is where the real menace appears: "In order to promote and monitor the realisation of these freedoms, independent structures shall be set up for defined sectors of the media." If freedom of the press has to be promoted and monitored, instead of being declared and protected by law, then it does not exist except by fiat and exception.

These monitoring structures, says the draft charter, "shall be representative of media-owners, workers, political parties, civil society, relevant experts and others." But these are precisely the interest groups which are directly involved or interested in broadcasting anyway — why form them into a so-called structure?

The ANC believes that an all-party congress (perhaps Codesa) should appoint an interim broadcasting consultative committee immediately. This is a sensible suggestion: the SABC was so biased and restricted in favour of the National Party before 1990 that doubts about impartiality are understandable.

But the ANC wants this committee to "review current staffing and management of the SABC," which will sound especially ominous in the corridors of Auckland Park. The ANC also undermines the credibility of the earlier proposal when it argues for "setting down procedures to remove racist, sexist and ethnically divisive practices from the broadcasting environment."

Here we have the puritanical side of socialist totalitarianism. Presumably *Women's*

World will be the first to go, along with Radio Lotus, which broadcasts exclusively for Indians. Attractive continuity girls will be told to display less cleavage; M-Net will be forbidden to broadcast the Miss World competition. Female rugby commentators will be become compulsory; John Berks will have to stop telling jokes.

Sound silly? This is the logical conclusion of allowing any media restriction that goes beyond the technical allocation of frequencies.

Freedom then ceases to be an absolute — in the sense that professional journalists and broadcasters are responsible and accountable — and becomes a matter of interpretation by outside committees and commissars.

The commercial aspects of TV do not escape. The draft charter resolves that "public broadcasting services must be obliged to broadcast a substantial number of existing drama and documentary programmes on SA which have never been widely distributed" and that these services "should commission and broadcast drama and documentary programmes, including documentaries on the interim period, to be made by independent producers."

This is simply a marvellous recipe for a new gravy train for politically correct (and not necessarily competent) producers.

Throughout its muddled document the ANC ignores the needs of the market. It does not consider whether the measures it recommends will be acceptable to the consumers of print, radio and TV — and therefore whether these media can be paid for.

And in ignoring the market, the ANC is ignoring the very constituency which it claims to represent but whose members will not be allowed to decide for themselves: the people.

We can only hope that the ANC has worked a little harder on its long-awaited economic policy, due to be released soon. ■

OPINION

Rot in the army

THE rot in the SA Defence Force has now spread so deeply, is so pervasive, that not even the most dedicated efforts at cover-up are succeeding.

The breakthrough came this week at the Webster inquest with the admission by General Eddie Webb, a permanent-force officer and former head of special forces, that he had known of assassination plots by the Civil Cooperation Bureau, the army's semi-privatised Tontons Macoutes.

The army can now be directly linked to the monstrous actions the CCB undertook during the "dirty war" against opponents to the PW Botha regime in the late 1980s. The only question remaining is to what level in the defence force and government does complicity extend.

What is revealed at the inquest and previous hearings is a truly appalling picture of deceit, perjury, treachery and even blackmail under the aegis of officers of the SADF.

The SADF argument, as best as can be established, is that it created a clandestine group to "disrupt" enemies of the state, almost immediately lost control of it and was informed of, but was unable to halt, the murderous activities of its proxies. In other words, the country's most senior generals, the heroes of Cassinga, Cuito Cuanavale and a score of raids against Angolan peasants and Cuban conscripts were quite unable to discipline their own creation.

The freelance militia was

eventually disbanded but the government was unable to recover from the agents missing state documents or repossess state property. Finally, it now appears, the government was blackmailed into paying the rebel CCB agents hush money. During this whole sordid business army officers engaged in a massive cover-up, perjured themselves before a judicial commission of inquiry and consistently lied. Nobody in the regular army or CCB has yet been disciplined and the state continues to pay the legal costs of the very men it claims not to control — the bill so far is estimated at R800 000.

This is not government: it is a criminal farce. The only thing which distinguishes an army from the mafia is an army's obedience to the law and the civil authority. For the rest, they share all the same attributes — loyalty to fellow-members, conspiracies of silence, professionalism in the art of killing.

If the SADF's professionals want to rise above the mire, distinguish themselves from the mafia, they will have themselves to take the lead in demanding a purge of all those connected with this despicable past. The army's reputation is now at the lowest in its history: it no longer has a right to expect anybody to believe it. That cannot be the basis for creating a defence force able to meet the demands of the future.

The Webster inquest may not have answered all the questions, but it has cracked the cover-up. From that all else will flow.

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Demand grows — but not funding

NTOBEKO MAQUBELA is well-placed as national director of the South African Legal Defence Fund (Saldef). As a qualified attorney who spent 10 years in jail for treason he can be said to know the country's justice system inside and out.

He jokes about his hair going grey between February 1990, when FW de Klerk announced the unbanning of the African National Congress and other organisations, and April 1991, when Maqubela was finally released from prison. But the difficulties he experienced early on as Saldef's national director probably also contributed.

Saldef was set up to continue, inside South Africa, the work done by the London-based International Defence and Aid Fund (Idaf), which had funded the defence in political trials for years. That was as far as the relationship went: Saldef was created as an entirely autonomous body responsible for finding its own funding.

But Idaf's closure left attorneys and advocates across the country clamouring to be paid for outstanding accounts — and they landed up at Saldef's door.

"When Idaf closed it couldn't pay every account outstanding at the time — an amount of between R14 and R15-million was involved," says Maqubela. "Saldef was not legally obliged to do anything about old debts. It began with a clean slate.

"But we came under a lot of pressure from attorneys who were not willing to take on new work until their old bills were paid. So, even though we were not liable, we felt morally obliged to try and do something."

In addition to appealing for funds

Running the South African Legal Defence Fund is no easy task — especially if one took over at a time when international funders pulled out. GAYE DAVIS speaks to Saldef director Ntobeko Maqubela

for its own operation, Saldef also approached donors to make a special once-off grant to meet the bad debts, by that time reduced to "a more manageable R7-million". It was not an easy task: most of the big funders had loyally contributed to Idaf's coffers and weren't happy about coughing up more.

"We were able to raise about 30 percent of that sum and people are going to have to be happy with this," says Maqubela. "Saldef feels it has done more than enough."

Today, after a year in operation, Saldef pays out about R1-million a month in fees for lawyers whose clients don't have the money to pay. It received a total of 2 493 applications for assistance between October 1 1991 and September 30 1992 of which 262 were refused: 90 percent of all applications received were granted, and over R6-million was paid out to attorneys during the same period.

Unrest-related cases still occupy the top slot — about 64 percent of Saldef's cases. Proactive work — such as advice to civics and political prisoners and work on land issues — amounts to about 20 percent of the total case load, according to Saldef's legal director EB Mahomed.



Ntobeko Maqubela ... 'We would like to shift the emphasis from political trials to proactive work'

Photo: GAYE DAVIS

"We were hoping the emphasis would no longer be on the defence of political trials because of the government and the ANC talking to each other, but this did not happen," says Maqubela.

"Political violence has added a new dimension to the whole scenario: we're helping with the Goldstone Commission and the Webster inquest and it's costing a packet — but look at their importance.

"We would have loved to move from this kind of thing to more proac-

tive work — legally empowering people, helping them gain access to rights which have been denied them for so long — but this shift has yet to happen."

Saldef is also involved in campaigning for a public defender system, whereby anyone landing up in court will be able to avail themselves of a lawyer's services, no matter how poor they are.

"The majority of people go through the system without any legal representation therefore there is no due process

and therefore, no justice. We need a system where even the indigent are represented," says Maqubela.

However, a pilot public defender project underway in Johannesburg has run into problems: although progressive lawyers' groupings are represented on the steering committee, the work is being done by Legal Aid Board staffers. Maqubela says it is being run "virtually by the government": the emphasis falls not so much on guaranteeing an individual's rights but on how many cases are dealt with in a day. The Black Lawyers' Association (BLA) and other groups are threatening to pull out.

"What is clear is that an independent structure should be set up and there's no reason why we can't do it," says Maqubela, who will be consulting groups such as the BLA, Lawyers for Human Rights (LHR), the Legal Resources Centre and others to determine the best option.

Saldef receives funds from major donors such as USAID and the United Nations, but the taps are not flowing as freely as they once were. Maqubela believes, however, that "those concerned with developing a human rights culture in South Africa will continue to support us".

Applications for assistance from Saldef (currently at about 200 a month) are likely to increase: LHR has closed down its litigation fund and an increasing number of attorneys are becoming aware of Saldef's existence. This has prompted applications from the Free State and other regions where human rights attorneys were previously conspicuous by their absence.

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