

Int This is an interview with Nthini Mtshizana, and it's Monday the 11th August (2008). Nthini, thank you so much on behalf of the SALS Foundation for agreeing to participate in the LRC Oral History Project.

NM Pleasure.

Int I wondered whether we could start the interview if you could talk about your early childhood memories, growing up in South Africa under apartheid, and where you think your sense of social justice and injustice developed?

NM Ok, thanks. I think, for me, growing in South Africa, I was born and bred in Soweto, and I think you can understand the impact that, you know, the apartheid era had on us, you know, as children. I was born in 1974, so '76 uprising I was still very little but, you know, have some of the memories of what was happening, especially around your 80s, '85, '86 era. So, I think, you know, at that point, as I was growing, I mean, I grew up in Soweto, I went to school in Soweto, I matriculated in Soweto, when I was supposed to go to high school it was around the '85, '84, '85, you know, uprising around, you know, issues of school, and all that. And I remember very well the high school that I went to, you know, it was after those '84, '85, '86 uprising and, you know, the in-fights, you know, in South Africa between your IFP, ANC, you know, it was during that era when, you know, people were killed in trains, the whole issues and allegations of involvement of Death Forces, you know. So I grew up around, you know, that era, I was a teenager around that era. And having to go to high school whereby the building itself was built in, what you call, prefabs, you know, and when you are in one class it's almost like a wall...there are holes in each and every dividing wall, so if you are studying this side, you can hear a teacher teaching on the other side of the other classroom. So, all those things, I mean, were not...if you have to compare, you know, what is happening today in terms of education and what happened then, and the circumstances that we had to study under, I think those were very difficult circumstances. And you had to choose, you know, schools, not to go to this one, and go to that one because you think there, there's a little bit better in terms of order and all that. But, besides the educational part, even, you know, growing at home where if your parents cannot afford...firstly, like for instance with me, my dad had to move to Rustenberg to go and seek employment, my mother was left alone in the house. And during that time you couldn't own a house as a woman alone, so they took our house, so we had to move to my grandmother's house, and moving back to my grandmother's house, you can imagine, it's your grandmother, it's other kids, other grandchildren, uncles, and so on, growing in one four-roomed house. So, and if you can't pay electricity or you cannot pay rent, because then you were supposed to pay rent, you don't...if you don't afford to pay rent, they would come, you know, in the early hours of the morning with torches and take out the stove plates, you know, the coal stove plates away, so that you cannot even be able to have some fire and be able to cook. And once you have paid rent then you can only get your possessions back. So, I think, you know, somehow it had that impact on me and growing up. I mean, I remember when I was doing my Matric, I wanted to do law, I wanted to be a lawyer,

but the first thing that was, you know, haunting me was where am I going to get the money to study, you know? And I remember having a second option of being a nurse, you know? I never...I never saw myself staying at home, not studying, or, you know, going to work straight from Matric, that I never had in mind. So, I had options, ok, if I do nursing, I understand you can go to the Nursing College and you can study there, you can get a bursary and you can maybe earn some money whilst you are studying, but if I have to go to study law and go to university, where am I going to get the funds, you know, to go to university? You know, when I got my results I've passed very well, but, you know, there was that question in my mind, this is my dream, but, I didn't even have a single idea of how am I going to accomplish that. But one other thing that led me to studying law, funny enough, was that my aunt was working in the Advocates' Chambers, in Innes Chambers here in town, and she used to pour tea for the advocates during the week, and on Saturdays she used to go there and clean their offices. So every Saturday I used to go there with her...

Int Oh, right.

NM ...to clean those offices, you know, (laughs) with Hoover, polish and the duster and clean those offices.

Int But this wasn't the LRC office, was it...?

NM This was not the LRC's office.

Int ...it was the Advocates' Chambers?

NM ...it was the Advocates' Chambers, but, you know, I think that made my dream to be complete, to say, you know what, I want to see myself doing this one day, you know, not cleaning their offices, but being one of them, you see? And at that point in time you're just thinking, but you don't really see it coming to reality as I'm saying, when you are faced with a mother who is working in a factory, and a father that went to Rustenberg to work; in '84 he passed on. I mean, by the time I did my Matric, he was...he had long passed away, so, you know, issues of funds was just my mother working and my sisters. So, I just told myself: one day I want to be sitting in there. I remember helping her with the cleaning of those offices, and then sometimes she would get jobs to do, annotations on the law reports, you know, and that really drove me to saying: I want to be a part of this. So, and, as I'm saying, you grow and you see this whole change in your life, I mean, I was a teenager, I was at school, but weekends I had to work so that I can get some pocket money and be able to buy whatever that I needed. And I think, you know, that's where I developed that sense of, you know, ok, there's apartheid, this is what's happening, we are different here and there and...but, you know, I had this thing that I need to make my life, you know? I'm not going to pass my Matric and then stay at home, I need to do something. So, after my Matric, after I got my results actually, my eldest sister said to me: you know what; I'm going to give you money to register at university. Remember she had her own three children, but she had this thing of saying, you know: I don't know what will happen, I don't know whether my kids will want to go to school, whatever, but with the means

that I have now, I'm going to give you money to register at the university. And whilst registering at the university, during that time my mother was working for another advocate and she got her job via my aunt. So she used to clean that lady's house, so, that lady also helped me with my...with the financing of my studies, because she took a loan from Standard Bank for me, and she stood surety for my loan. For about three years she did that, and after I started working I started repaying that loan, but, you know, thanks to her, because she stood surety for me, and she was paying the interest on that loan, so when I was supposed to pay that money back, it was just around issues of paying the capital. Then I studied law, I went to University of Zululand, remember I didn't apply because I didn't know that I will go to university, so I went to University of Zululand and then I did my B.Juris there. And then my mother got sick, she was diagnosed with cancer in '96, so I decided, no, I'm coming back to...in fact '95, February, she was diagnosed with cancer, so I decided I'm coming back to do my LLB this side. So I went to Wits, that's where I studied my LLB, '96, '97. And then LRC...how I got to know about LRC, I got to know about LRC, you know, when you are at university, you know, different law firms would come on open days to say: those who want to apply for Articles of Clerkship, they can come, this is what we are doing, this is what we are doing. But, you know, as I said, working with...knowing where my aunt used to work, I used to know and read about people like George Bizos, as I was saying, I was, you know, interested in the area of law. So, that's how I got to know, and being introduced to LRC was through the Zimmerman Scholarship...

Int Ok.

NM ...you know, so I applied for the Zimmerman Scholarship, I came for the interview for that, so, I was a runner-up for the scholarship (*laughs*), so they offered me Articles.

Int Did Ntheri get it when you got it; who got the Zimmerman scholarship?

NM It was AJ, the name of the guy.

Int Ajax Baholo?

NM Ja, it was AJ who got it. So, then I was a runner-up, then I was offered Articles, and at that point in time, I was also offered Articles at the...at Blakes Maphanga, you know, which was more of a corporate law firm, you know, and Legal Resources, you know, your Public Interest Law and everything. But, you know, I was more interested in Public Interest Law than Commercial Law, and I think that was my passion and I just felt I would do good in this area, because it's not just being a lawyer but it's an area of law that I would love to practise in. So I decided to take the offer with LRC and served my Articles here in '97, '98 actually, '98, '99, I was serving my Articles here at the Legal Resources Centre. And the first person...the first person that I first worked with was Happy Masondo, and I remember she was in the interviews for the scholarship, so, I always say, sometimes you get that person who will just give you that break, you know, in life. And ever since then I never looked back, in terms of Public Interest Law.

Int Sure. When you were at the LRC, who were you working with? Who was your Principal, for example?

NM My registered principal was Achmed Mayet, yes. But I firstly worked with Happy, you know we used to alternate every six months, so I worked with Happy for my first six months, we were doing Gender and Law, and then I worked with Mandla...Mandla Mkatshwa, I worked with Achmed, I worked with Jakes...what's his name...his surname?

Int I have no idea.

NM I don't remember, Jakes, but now he's a judge at the Labour Court. I worked with Jakes...

Int Oh, Ellem Francis.

NM Ellem Francis, we used to call him Jakes.

Int Jakes, ok.

NM Ja, Ellem Francis, I worked with him...

Int ...and then you worked with Moray (Hathorn)?

NM I also worked with Moray, yes.

Int Right. And so what areas of law did you particularly like and found very rewarding?

NM When I was working with Mandla, we used to do a lot of, you know, Labour, your Land Tenure Act, your...and when I was working with Moray, we used to do a lot of Land Claims, you know, and with Happy it was more of Gender and Law and with (Achmed) Mayet we did a lot of High Court applications in terms of disability grants and everything. But, you know, the work itself was rewarding, I always say, you know, I used to meet, you know, some of the colleagues that I went to school with and I would say: you know what, the work that I'm doing, it's so much rewarding, it's so much fulfilling. We used to go to workshops and make presentation to different...what do you call them...paralegals, you know, in terms of...

Int Advice Centres?

NM Advice Centres. Different kind of laws. I used to travel a lot with Achmed (Mayet) in terms of visiting those different Advice Centres, and it's sometimes in rural areas, you know? And they would come there with different problems, and, you know, the mere

fact that you could reach the people that don't have money, people that would not even afford to hire a lawyer, that used to be very much fulfilling to me. And you end up, you know, having to even counsel those people, you know? I remember I had one case that I did here, a lady came and it was, you know, around Customary Law, her husband having passed away, and she couldn't inherit, you know, the money and the, you know, the family was just harassing her and all that. You know, being able to sit with that person, the person would cry, but at the end of the day you would be able to offer that help that otherwise the person would not have been able to get. I did the Kruger National Park Claim with Moray (Hathorn). That was more, you know, the most fulfilling one, I mean, when I see it on TV, every time, I used to say, you know, I used to deal with some of those cases. I did another case with Jakes, the Amnesty Application and I remember by the time the judgment came out of that, I was no longer in the LRC, but he made sure that he sent me (*laughs*) the outcome of that...of that Amnesty Application, because we were opposing it. So, it was fulfilling because, you know, you wouldn't be treated as a candidate attorney, yes, you were a candidate attorney, but you were given a space to show your potential, you know, and be able to do something that is, you know, rewarding and fulfilling. And, you know, going back home you would be able to say: you know what, today I managed to help so many people, today I managed to represent so many people, today I managed to write so many letters, you know, and you'd find that fulfilment. I mean, I remember at that time we had a lot of disability claims that we were doing, you find that a person has applied for disability and then their grant is stopped and then we have to apply, assist them apply, to have their grant re-opened or, you know, claim the money in terms of interest, and all that. We used to help a lot of people in terms of that. So it was really fulfilling.

Int Ok.

NM It was fulfilling, and up until now, I'm still, you know, practising, somehow, in Public Interest Law because I'm in the Department of Education.

Int Oh, right...

NM So, I enjoy it, I enjoy it because, you know, I'm able to help the people who could not otherwise, you know, be able to get help. I'm able to make sure that, you know, learners who cannot have access, you know, can have access. I remember I had one case with (Achmed) Mayet, and when I received it, my colleague was delivering this case, and when I saw it I said: LRC, what's happening? You know, I had this thing, if it's from LRC they cannot be fighting something that is just not on. So, when I perused the file and I called Mayet, I said: Mayet, can you just give me a chance to settle this case. You know, because it was for learners with special need that have been moved from one district to the other and going to that district, they don't have space for schooling there. So, I had to call both District Directors and say: look, we are one department, let's make sure that these learners have access to the education that they need, and we will solve the internal issues after that. And I was happy because I called Mayet to say: these learners would report to the school on this day and the matter was resolved and closed.

- Int That's fantastic. (*Laughter*).
- NM So, as I'm saying, you know, I still carry that with me, I still carry that with me. The other day a parent called me, you know, their child was injured on her way to school and she was given a lift by the teachers because they were going on some trip and they got an accident. That child had to undergo an operation at Leratong Hospital, some neurological operation. The hospital did not have facilities, they had to send her to Bara, Baragwanath, it was full, the only option that was available was a private hospital. And it was Monday morning when I received that call from that lady and she was crying, and I had to speak to my boss, I had to speak to the MEC to say: can we get this learner to hospital and we can be able to foot the bill, as a department? And, you know, that makes me proud to say: today I've managed to save the life of the child. I know the attorneys are claiming against the Road Accident Fund now, but they cannot claim against the department because we have gone an extra mile in saving the child's life.
- Int Sure. You do fantastic work, if I may say so.
- NM So, it's still rewarding...
- Int Absolutely.
- NM ...it's still rewarding, and as I'm saying, and I think, you know, the basis of getting that satisfaction was from, you know, Legal Resources Centre, as I said it's a choice that I made, but I do feel that it was a good choice because I'm still passionate about the work up until today.
- Int That's wonderful. I'm also wondering, since '94, the LRC's had like all other NGOs, problems when it comes to funding, and, it's often said that it's now difficult in a post-apartheid era, to attract young, black lawyers in particular, because the corporate firms, you know...
- NM Snap them up?
- Int Yes, exactly, but what do you think is required to actually attract people, young people, like you, who are so passionate and who want to do something that's rewarding, do you think?
- NM I think, you know, I think LRC has been doing well, I mean, with me, at the point when I left LRC, I didn't leave LRC because I didn't want to work for LRC any more. I left LRC because they could only have a certain number of lawyers on their payroll, and at that point in time they did not have a vacant post, you see? So, I had to move out. So, I think, if they can be able to have, you know, maybe more...a bit more of number of posts available, and maybe try and get some funding to be able to match...you know, you cannot actually exactly match the corporate thing, but at least,

you know, give some competitive salary. Because at the end of the day you do want to work, you enjoy your work, but you have this thing for...in terms of salary. I mean, if I have to go to the private practice, I think I can earn more than what I'm earning in government, but I am still with government because I feel that whatever I'm getting I can be able to afford, you know, life, it is not something that is too little but it's not something that is exactly the same as the private law firm would still pay. So I think they would still be able to attract people like us who still love that kind of job, except if you've, like, gone out and said: no, I'm now in the corporate world, I'm no longer going back there, but I think I can be able to come back to LRC one day. (*Laughs*).

Int That's good to know. I'm also wondering, it's often been said that the LRC, during apartheid, it had a clear enemy, it was quite clear. But in post-apartheid, the lines have become diffuse, as such, but to its credit it's managed to take on key cases against government, because as a Public Interest Law that's what it's supposed to do, but it seems in your department, that's not the case, because you manage to settle things. I'm wondering, but other government departments don't seem to actually obey judgments, there's lots of contempt orders, even those not obeyed, what's your sense of what's going on?

NM I think, you know, I think LRC still has a lot of...a big role to play, even if it's post-apartheid, because as you're saying, I'm working in a government department now, I know the kind of cases that we deal with and I know that in different departments we don't deal with litigation or we don't take these cases as seriously as we are supposed to be. And we tend to be: I'm in government and I need to protect the department at all cost, without looking at the case, weighing your options and saying: ok, fine, what are my options, you know, and if I've got a judgment, I need to make sure that I comply and I honour that judgment. I mean, in my unit now, after the Nyati case, the Department of Justice (**inaudible**) ...

has requested...a Constitutional Development...requested us to submit all judgments that we have, that we have not satisfied. I only have two judgments that I have not satisfied, and because I've applied for rescission, you see? But I don't have any outstanding judgment that I have not satisfied. So, for that kind of enforcement against government, for government to be able to understand that, even if it's government, you have to comply with the rule of law. I think Legal Resources Centre still has a very...major, major role to play. I mean, you look at...you get different, you know, departments with different...and different kind of cases. You look at your health sector and you look at the number of negligence in hospitals, that is still taking place, I mean, inasmuch as we would want to make sure that the department complies, you are not there when a nurse mistreats a patient or when a nurse failed, you know, to do whatever that they are supposed to do in terms of their own professional conduct. So, you will still, you know, encounter those kind of cases, you will still have cases of social grants where people are not paid and they are supposed to be paid, where some official is sitting on some document that is supposed to be processed, that he's not processed. And you...I think you still have, you know, Legal Resources Centre still have a major role to play. Yes, the enemy is no longer apartheid, but the enemy now is more around compliance...do departments comply with their obligations? And I'm...I can safely say, not all of them are complying, and therefore we still have a major role to play for those portions of the communities that cannot afford to pay lawyers. And knowing you've got the Legal Aid Board, but it's not

taking all cases, you know, that's some of the cases that Legal Resources Centre is still taking. So, to still, you know, satisfy the needs of a majority, I must say, of community, we still...Legal Resources Centre still has a role to play. You look at, I mean right now, we're moving from the fight of apartheid to the fight of social classes, you know? You've got those people who can afford, you've got these people who cannot afford, who have to grapple with a lot of things. So, I think...and when you look, the majority of people cannot afford, so, we still have that, you know, role to play in terms of assisting those people.

Int Ok. I'm also wondering, just to go back to your time at the LRC, you were here for two years, and you worked with a range of people, but the person that perhaps you learnt the most from, the person that you enjoyed the most working with, who was that?

NM (*Laughs*).

Int Difficult to choose, I'm sure, but...

NM Difficult, very difficult, (*laughs*) very difficult because, I would say, you know, I...the first person, I mean, I worked with, was Happy, and I think that was the most...the person that I best enjoyed working with. But, Ellem Francis as well, very strict, you know, to the point, but, you know, you learn, you learn a lot from those two people. I didn't come and sit and do nothing, whatever, I mean, with Happy, she taught me the basics, you know, I was fresh from school, so, that kind of a person you cannot really forget, you know?

Int Mm...

NM Ja. So...

Int And then in terms of particular cases, what were some of the cases that you found particularly rewarding while you were at the LRC?

NM The one case was that Amnesty Application and the Makuleke Land Claims and...

Int Ok, could you talk about that because I've...I tried to interview ...but couldn't get to interview the clients, I was hoping to interview them, but they are quite a distance away?

NM Ja, ja. That was fulfilling for me because I have been to the area, I have been to the community, you know? I remember sitting there, the only lady sitting on the chair, others are sitting on the floor, and men are sitting on the other side on top of benches, and to get them to understand that if they appoint a...you know, communal representatives, they need to make sure that they include women there. You know, it

was quite a struggle to make them understand why they need to balance, why they cannot have men only representing them, and all that. I think that was really rewarding, that was one case that is still standing in my head, when something happens I hold it, and I say: that's the case. And the amnesty one, because it gave...

Int What was that about?

NM The amnesty...there were guys who were burnt on their way to Nelspruit, if I'm not wrong, and, you know, it was the whole thing of, you know, people spying on them that they were going there, and they were taken to Vlakplaas, and they were burnt, so I got an opportunity to meet...who's this guy? I got a chance to meet (Eugene) de Kock...

Int Right, gosh.

NM Yes, and I had an interview with him and Happy (Masondo) at the C Max, you know, and we got a chance to go through with the Amnesty Application itself, you know, and, you know, at the end of the day, making sure that he doesn't get amnesty for that particular case. That was very much, you know, rewarding, seeing a case from beginning to end, you know. You hear of TRC, you are not sure whether it's working or, you know, whether it's giving people amnesty just like that, but, I could see that it was not as easy as that, you know? You don't just apply and get it, it depends on how far and how truly you have been able to confess and disclose. But it also gave me a different side to what was happening, you know, during apartheid in terms of, ok, we thought this was just happening, but actually we were our own enemies, in a way, because we would find that people are being killed because somebody, within them, you know, went and spied on them, you know, it gave me, a...maybe a balanced view in terms of, it was not only about apartheid, but it was also about us, you know? Mm.

Int I've asked you a range of questions, I'm wondering whether there's something I've neglected to ask you which you feel ought to be in your LRC Oral History Interview?

NM (*Laughs*). I don't know, I think...I think the manner in which we were taught as candidate attorneys, you know, I remember we used to have Monday morning meetings, which I still have in my office.

Int Right, good for you. (*Laughter*).

NM You know, and we would discuss the kind of cases that we used to deal with, you know, the difficulties, and all that, we used to do mock trials and Advocate Bizos would sit there and say: one day you'll meet an old judge like me and when you're speaking so softly they won't be able to hear you. You know, those kind of things would boost your confidence, would tell you that you are going, you know, towards the right direction, and when you have to deal with your case, the following week, you would know exactly, you know, what to do because you've got inputs from all

the people and then it's easy for you. And the fact that when you are there as a candidate attorney, you are there to learn, you know, and they give you that space to teach you because, you know, in other law firm, you'd go there as a candidate attorney and you run around being a messenger, delivering documents from one place to the other. But, with LRC it was different because you would really get to do the lawyer's work, you would know when...how to open a file, you'd know how to paginate a file, you'd know how to do file notes, you know, all those basic things, you would learn how to do. So, when you leave the place, you've got that confidence that: you know what, I can make it.

Int if you could share a memory that was particularly...something you treasure, of your experience at the LRC, whether it was with a client, and I know you've mentioned some cases, or whether it's a particular individual, you know, whether it's Happy, or someone, and just something that you feel you've taken away as part of your experience of being at the LRC?

NM Phew, there are a lot of things that I've...(Laughs).

Int I'm sure, I'm sure...

NM There are a lot of things that I've taken, but, you know, one thing that I've taken from LRC, and not only from a particular individual but from most of the attorneys that I worked with, was the confidence they can have in a person, to say, you know: I can teach you how to do this. And give you a space after some time, to run on your own and do it, and see if you can do it, and where you're making a mistake they can be able to correct. When I was doing my final six months of the Articles...of my Articles, Ellem Francis went to the Labour Court to be an Acting Judge, and I was left on my own. So, I would run, you know, with his cases and go to my head for signature and all that. That gave me space to really see my potential and to really practise what I've learnt, you know, in the past one and a half year, when I was there, and that, I must say, I took with me, you know? Up until today, if I've got somebody new, this is how we do things and I leave you to it, to do it. I'm so much used not to baby-sitting people but to letting people, you know, have that confidence that, you know, my boss can have faith in me and know that I can be able to do this on my own, whether they are there or not, you know? And I think it also comes with discipline, as an individual, an organisational discipline itself because, I mean, if you've got a disciplined boss, chances of you going around, you know, being naughty, are very, very slim, I must say. So, that's one thing that I have taken away with me from LRC, and that I'm still, you know, practising.

Int Nthini, it was a pleasure to meet you. Thank you very much for a very focused interview. (Laughter).

Interview continues

NM In terms of our legislation, ne, if a child is injured at school, the department becomes responsible, ok? But a lot of black people do not know that, and do not understand that. The child gets injured they seek to finish medical **inaudible**, everything, but, if you have a white child getting injured it's very easy for them to come in through the department. I mean, we had a case of one of the judges in Pretoria, and it was difficult for us to get counsel in that case, but, you know, he was suing us for three million for a child who was injured, not paralysed, injured. But, you know, then we have these kind of cases that you pick up along the way as you're doing your work. I...there I really feel that I need to make sure that I advise appropriately and say: look, regardless of the fact that these people are not suing us, legally we would have that obligation to pay, so, if we are going to let this child die, and pay later, that would be unfair, and whereas we have Trusts, and we can find some ways and means to find money and help the child, you see? I remember it was not an easy decision for the Department to make, but they made that decision and they took him...the child to a private hospital. I sent one of my colleagues because I was going on maternity leave then, to follow up the case and to even visit the child at hospital.

Int Gosh, right. But that sets a precedent, doesn't it?

NM It does, it does.

Int Which is a good precedent...

NM Yes, and that's how I deal with my cases, you know, this is what the legislation is saying, you'll find that other child lose their eyes, the child has lost an eye at school and the parents write a letter, they are not sure whether they can sue, whatever, I would go and advise to say: ok, fine, yes you've got the right to sue, I'm not saying sue the department, or encouraging you to do that, but, how about us settling this in this manner. And also making sure that parents don't come, take the child's money and when the child has to receive treatment, then they don't, you see?

Int That's hard, in terms of follow up.

NM Ja, it's not easy. It's not easy, so it depends how well you know your rights. If you don't know, then chances of you losing out, you know, they are very high. And I don't believe in fighting those kind of cases because I know the legislation it's clear, you know, I can rather argue with the lawyer or whoever, around quantum, but I don't.....I don't...I don't at all even want to argue merits if I see that the teacher was supposed to be in class and they are not in class, what would be the purpose of me arguing merits, you know, because it's just to incur unnecessary legal costs, and to waste this child's time, maybe they are supposed to be getting some medical treatment, and so on, and they are not getting it.

Int Ok. Nthini, thank you again.

NM Thanks.

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