

Henk Smith

LRC Oral History Project

Interview 1: 13th December 2007

Interview 2: 6th September 2008

Int This is an interview with Henk Smith in the Cape Town LRC office, and it's Thursday December 13th (2007). Henk (Smith), thank you very much for agreeing to be part of the LRC Oral History Project. I know that you're tremendously busy so it really is a privilege to actually have you on tape. I wondered whether we could start the interview by me asking you about your formative influences. What was it like growing up as a white South African under apartheid and what were the formative influences, if any that led you into the legal profession?

HS Yes, I stumbled into the legal profession because I wanted to be a teacher. And then I was chased out of the history class and ended up in the law class, and then I continued doing that. I ended up with a law subject when I finished the degree eventually. But...um...then I started looking around for a job and I was keen on LRC because as students we used to come around to the LRC and workshops and...you know, we used to come to Cape Town for two reasons...three reasons...for the entertainment, and then the UDF meetings, and then suddenly LRC, which was doing real work and not just talking about change.

Int But how did you...I want to take you right back, where did you grow up? What was that like?

HS The Stellenbosch story. So it was Stellenbosch, in a privileged house and privileged home, and Paul Roos School, rugby, and all those things. But I ended up on the wrong side of the law in terms of being disciplined at school and university and so on, for questioning authority rather than anything else. And I also did law so that I could understand what was going on in the student courts because we were often disciplined for taking university vehicles to the wrong places and, you know, the university looked after one like a parent in those days.

Int Stellenbosch University?

HS Yes. And the Security Police assisted the university authorities to check on where students take the university vehicles.

Int Really? Where were you taking them to...the university vehicles?

HS We came to UDF meetings and to townships and ended up to...aagh you know...

Int So this is 1983?

HS '80, '81, '82, and '83. Then '85 the restrictions started and the State of Emergency. First partial and then finally the total state of emergency. '81 was Nyanga crisis. So there were lots of opportunities for students to learn about what's going on around them. I think I was fortunate to use some of those opportunities. And we were...and the more you find out the more you want to know. And you've got all the time, because you're a student and it's not encouraged by the authorities, therefore you want to find out more and more.

Int I'm curious Henk (Smith), you went to what's regarded as a rather conservative university, Stellenbosch, and yet you became rather politicised. Were you involved in the student movement? Was NUSAS a body on campus?

HS No, NUSAS wasn't an option at the time because it did not exist at Stellenbosch at the time...but we formed another organisation, and we had close contact with NUSAS. And then very soon you start moving out of student politics and you want to be part of this UDF thing, which was the most exciting thing that can happen to a young person, to learn everything about...her own community, because we were divided communities. And then in the broader Western Cape. And Western Cape was relatively open...was relatively friendly to people wanting to learn more about...so it was an exciting time because there was the Koornhof bills (laughs) kind of politics of Cape Town at the time, with the Cape Action League and the UDF. And both those organisations were as, I suppose, intrigued by then Stellenbosch students as we were in learning more about Cape Town and South Africa's current politics that one didn't read in the newspapers at the time. So that was fortunate that we got in trouble so often, so you get into more and more trouble. (laughs) So I was doing more to understand my problems. And then very fortunate to get accepted for this fellowship programme at the LRC, where I worked in an office with Shehnaz [Meer] and Lee [Bozalek] and Nomatyela [Hangane] that worked as receptionist. Now she's a Deputy Minister. And the two Fellows, my colleagues, were Ismail Jamie and Wallace Mgoqi. Now, you know, what a privilege to work with those guys, all the new experiences and ideas flying around in that office. The LRC was very conservative as a litigation firm...(laughs) we engaged in a conservative manner with the law and challenging the authorities all the time. But the disciplined conservative approach to law and legalism actually was its strength. With Lee (Bozalek) as a hell of a taskmaster. And those pass law cases where you've got to meticulously use legal procedure and use the detail of the law to defend the rights of an individual; but it affects a lot of the others. And Arthur (Chaskalson) came down for one case, he taught us a lot. I was so fortunate. I sat in one case, worked with him in one case, where I suddenly realised that Lee (Bozalek) goes through 30 drafts with me, but Arthur (Chaskalson) is even more meticulous (laughs).

Int Prior to you joining the LRC what was your knowledge of the LRC? Had you come across people like George Bizos, Arthur (Chaskalson), etc, prior to joining?

HS Oh, yes, I told you when we were at university we used to go...LRC started in '76.

- Int '79.
- HS Ya. '76 the Lawyers for Human Rights kind of thing started, then '77 they...then '79 they...
- Int Ah..
- HS So we were supposedly with the Cape Action League. We were supposedly critical of the LRC (laughs) using law to bring about change. And then of course once we criticised the formation of the LRC we had to find out more about it. But we did it in the law journal. A law publication...not a...a kind of newspaper, a student newspaper in Stellenbosch, but we...
- Int Why did you criticise the LRC?
- HS Aagh, I don't know, I suppose we picked it up from Grassroots magazine or something. So suddenly this LRC office for Cape Town is announced, now we've got to engage with the LRC, so I came to all the Saturday morning workshops and learned...so I learned a lot about the LRC. Now...so that's how I learned about...oh, and Geoff (Budlender) came to speak at Stellenbosch, not as a student politician, as an academic, as a serious lawyer, on new approaches in admin law. And Geoff (Budlender) was just the most innovative administrative lawyer attorney at the time. They planned and executed the pass law challenges. Now the discipline of pass law challenges, we used to do about... the clerks, we did a few a week. It's a 30-page affidavit every time. You've got to take down a person's history and we didn't have precedents or examples, that we could follow slavishly... *interruption*
- Int You mentioned, curiously enough, that you had criticised the LRC and then ended up working for the LRC. So what was that shift?
- HS No, it, our criticism, was ideological at the time. A man was running along with the hounds. Because...we were students, we had to be critical of the use of the law for revolutionary purposes. Does one take the South African government to court in The Hague or do you use other methods. And that was (laughs)...Cape Town office opened when? '83?
- Int September '83.
- HS Then '84 Andrew Corbett was the fellow and '85 it's Wallace Mgoqi, Ismail Jamie, and myself. There's three males. And how it changed.
- Int How did it change?

HS I suppose, Ismail Jamie was probably amongst the first ten top students at UCT at the time. Probably the top black student at UCT, came to LRC. And I was very fortunate. I don't know why Shehnaz (Meer) chose me to join the team ...because I interviewed late (laughs). And she taught me to write English and to speak English. She was very friendly, she invited me into her home. Now remember I come from Stellenbosch, I'm not objecting to military service. I did conscription. (laughs) And I come here, and the next moment I get a call up. What the hell do I do? So I realise that...Nomatyela (Hangane) was the ANC operative in the office, so I went to ask her for advice. And she said, no it's fine, I must just not come to her house in my uniform (laughs). So I had to do the camp. I mean, what do you do? You either go to jail or you become a conscientious objector. I wasn't ready for either of the two. So I do the camp after hours and during daytime I sit in the office (laughs). Nomatyela (Hangane) takes calls from Lusaka on what should happen around the country.

Int I'm wondering...that is quite curious, I'll admit to that. I'm wondering, early on, you joined in '85, by that time the Komani case and the Rikhoto case had already been set in a way. From '85 to about 1990, really in South Africa in terms of State of Emergencies, it was quite horrific what was going on. I'm wondering what your role was, even as a Fellow, in terms of what were the types of cases the LRC was taking and what was the general atmosphere?

HS In '85 we were doing the pass laws. So it was the weekly review applications. So a person is turned down for section 10 rights, and you review. So it's all...using the Rikhoto precedent...but now, you know, it was extended all the time ... for women and dependants. So we do a whole lot of women applications; we work closely with the Black Sash in doing that, and a number of other organisations. And then defending people on pass law cases, there were a string of attorneys sending their clerks in Cape Town to do that. We sometimes went to help them, but we didn't actually do criminal prosecutions. Remember now we're Fellows, we're not registered as Articled Clerks at the time. And then secondly we did Labour Law. Because Lee (Bozalek) and Geoff (Budlender)...

Int And Charles Nupen?

HS And Charles (Nupen). They were the labour lawyers. They started Labour Law in the country and...Paul Pretorius. And they used to come down to Cape Town for some of the bigger cases. So that was the beginning of labour law, '84, '85. The important...the (Nodlela) case of Lee's. A wonderful case against the Mount Nelson Hotel. And LRC fed the labour court...at the time it was called the Industrial Court...with the important cases. And that carried on for a while and then we stopped doing that. Now the *habeas corpus* cases. The people were detained without trial...we did a handful of them towards the end of '85. But there were a number of law firms in Cape Town at the time, in the Cape Flats and a few white firms in centre of town, that got SACC and Carruthers money – the IDAF money from overseas to do *habeas corpus*, to do the cases where people are jailed or...so those detention cases, William (Kerfoot) did two or three in '85, and we worked very hard on those. Sometimes there...so there was a very symbiotic relationship, and they would come for advice to LRC, but LRC would not take on all the cases.

- Int So when you say, 'they', you mean the people or do you mean the white firms?
- HS The white and black firms and coloured firms. So it was Moosas and Mallinicks and Bernard Vukic and Abercrombie Sonn...about 7/8 firms. And thereafter there were the Treason cases. So even in small towns there were treason cases. And the LRC didn't do the criminal work. So your research of the eighties, I suppose, LRC was more involved...and I'm not saying, I didn't mean conservative that LRC shied away from certain work. LRC didn't do criminal work. And there were other people getting money to do criminal work. But it's actually political work. So at the LRC we did the pass laws and the labour law cases and then the kind of admin law test cases. So we did the fellowship for one year and then we had to find articles. So Wallace (Mgoqi) went off to Richard (Rosenthal)'s firm to do articles, and Ismail went to the Bar straight away, and I went to...I applied at Moosas and all the firms and got a place at Mallinicks. And then I stayed there until '91, but in between I went to Warwick University to learn about Marxism because by now I had to find out more about it. And Arthur (Chaskalson) helped me to get the scholarship with the British Council, and that was also very exciting.
- Int So you spent one or two years as a Fellow?
- HS One year.
- Int One year as a Fellow. And then you left for Warwick.
- HS No, no, Mallinicks. And then...
- Int To do your ...?
- HS With a two-year candidate attorney articles. And in between I went to Warwick. That took a year. And then I was pleading with Lee for a job at the LRC, and then when the funding dried up and the ANC was unbanned, I quickly got a one-year contract at LRC. But the contract never ran out (laughs). I'm still on a one-year contract. And I couldn't have been luckier. It was even then, Lee (Bozalek) said, I'm lucky, I'm a white male and they...but they wanted a land lawyer, I think.
- Int So is land your key area of focus?
- HS Yes. Yes, it's always been.
- Int I wondered whether you could talk about your seminal cases, cases that have really inspired you...

HS I'll be anecdotal about it, because the law on it is...not that complicated, ...and it flowed from a natural progression from the work that we did resisting evictions. And then people stayed on the land. Eventually we could fight for the land to be returned or development assistance. And the land...the restitution and land reform law is extraordinary, because there are these extra-ordinary provisions for the return of land, restoration of land in the Constitution. Because the other socio-economic rights looks at and aims at improving conditions from an existing floor. But the property clause provides for restitution of land rights and the return of land rights dispossessed under apartheid...return of land rights and then on top of that the basic developmental assistance. So you can't claim for lost education under the Constitution, but you can claim land that was lost under apartheid. So the moment that was accepted under the Constitution it became a matter of limiting the scope at that time. It had to happen or one had to deal with this extra-ordinary concession, as it was regarded at the time. But it was really a very legitimate demand at the time. How does one shape it and ensure that it be dealt with responsibly? And in retrospect I suppose it could have been done differently. And it is unfortunate that socio-economic rights and the promotion of human rights through statute law lost some of its political weight. Because it was regarded as very important initially.

Int 1994 would be the time?

HS Yes. It was regarded as something very new, people were uncertain about it, but it was regarded as important enough. But...and now I think it's seen as the courts must take on this responsibility rather than all the arms of government. But one doesn't really see the executive or Parliament initiating, trying new things that promotes socio-economic rights. The early experimentation around the equality principle, and in the Equality Act and how one uses promotion of socio-economic rights and equality law within departments, through reporting mechanisms and parliamentary oversight, there's not much excitement about that. So it looks like we're relying more and more on the courts and putting extra-ordinary burden on the courts to protect and promote these rights. But that's now more recent. But in the early days I think that we were very excited about the possibilities of using law. And that is probably a reflection of the experience of activists at the time, the relative importance of using law to protect rights. So, you know, it was ... the challenge was, for the land lawyers, to use the new found rights in a manner that's both responsible and progressive. And the laws had to be written and then executed. So it was very, very exciting to participate in the writing of the laws and then to do the first few cases. And then LRC was probably hoping we'll play that role and then we'll move on to the other...I suppose the land lawyers also felt, let's do some land law and maybe in five years time we'll look at education or something else (laughs). But it ended up getting stuck into the detail. Which is in itself a wonderful experience but strategically I think that LRC put a lot of effort and resources into land work. It was justifiable at the time, it's still justifiable, but it could have been slightly different. And so land reform and the use of law to effect land reform got a bit stuck. It's stuck at the moment. Both the policies are stuck and the use of the law to sometimes grease, or oil, the machinery has slowed down. This machine is running very slowly not getting more and more resources, more fuel, political fuel from government. And it's becoming a...the leaders aren't doing land reform.

- Int You mean the leaders in government?
- HS Yes. The leaders in government. The best bureaucrats aren't doing land reform. I don't know what the best bureaucrats are doing but there must be good bureaucrats because there are apparently good capitalists and there must be good bureaucrats around.
- Int What do you think are the reasons for the land reform and land restitution as agendas, government agendas? Or do you think that is the reason for them to slow down that drastically?
- HS No, I think it slows down by itself. Because it's difficult. And we've, in the government programs, GEAR programs, are all short term, taking short cuts, and I think the...and people are frustrated with long haul. Apartheid was meticulous in its execution and reform must be meticulous in its execution. And I think we're lacking some of the discipline at heart. And politics is about taking short cuts, and unfortunately (laughs) the economic development people are also taking short cuts. The infrastructure development is also relatively one-sided. It's happening in the cities and on the coast and so on..., which is a world wide phenomena. Rural development in southern Africa is not happening. If it wasn't for the mines, which is both the scourge and the saviour of the southern African economies, we would have had very little rural development. Now the LRC's focus on land reform is very much with a rural bias. The urban restitution, personally I think it's a mistake (laughs). It shouldn't have had restitution, restoration, in the urban context. Despite the fact that we've put a lot of effort into some of the urban cases, and trying to give it a developmental bent. With rural it was always the restoration but for the sake of that being one aspect of promoting socio-economic rights.
- Int That's right. I'm curious, because every person I interview says to me is that really the LRC's focus into the future will be land reform. I'm wondering what your sense, as someone who's devoted a lot of your professional life to this area of law, I'm wondering what you think in terms of...?
- HS Yes, it's not just land. I think its land and related. Because if we want to develop...to change power relations in a rural district, in a rural, magisterial or municipal district – because that's what transformation is about, where there's got to be a more even distribution of land, but the water goes with it; we've got to participate in mining development; we've got to participate in the beautiful places, the eco-tourism, economic opportunities. So it's not just land, it is...land is often exemplifies the colour of...the skin colour of the owner of the land exemplifies, illustrates the change in power relations. But we cannot have these half...ok, we also have economic empowerment - black economic empowerment models apply to rural development, to land reform, to mining, but it doesn't change power relations for the local community in the rural setting, and that's got to be part of it. Because it doesn't help to have a Sandton empowerment face but the power relations have not changed. Social relations of production and reproduction have not changed in the local council.

- Int Sure. I want to ask you about...
- HS Another anecdotal cases?
- Int Also I want to ask you about Richtersveld because it's often regarded as something you have devoted so much of your professional life to and I wonder whether you could talk...?
- HS And LRC generally. Because the other day we counted, there were seven...we started the case quite early, but there were seven Articled Clerks that worked on this case, and some of them almost exclusively so. And a number of them say that they've learned a lot out of it...
- Int I wonder whether you could tell us what the case was about very briefly and then your experiences, anecdotal and otherwise.
- HS The first land handover in '94 was Riemvasmaak. And that's also on the Orange River, and that's a community where we...I think we rushed it quite...within two years or so, the community got their land back. They were moved from Riemvasmaak on the Orange River to Namibia, those that were called Damara people and those who the government classified or the magistrate classified as Xhosa speaking, they went to Welcomewood in the Ciskei. So it's thousands of kilometres apart. And I worked on that Riemvasmaak case. And it was the first handover of land by the new Minister of Land Affairs, Derek Hanekom, that was our favourite minister at the time and we were his favourite lawyers at the time. So...
- Int This is 1994/95?
- HS Mmm. So the handover of the land was done by new government and the first annual report of the Department of Land Affairs was just Riemvasmaak photos all over. Now Riemvasmaak is not really a huge success...not much has happened there since the restoration of the land; they got electricity, they got a bridge costing millions of rands over the river and so on, but people are working on [white owned] farms, they're not developing their own land. But they've not moved back to where they moved under Apartheid, you know, they choose to stay there and it's quite an inhospitable place to be, but they choose to stay there. So that was an exciting project. Then the very first Land Claims Court case under the new legislation case was Elandskloof and the LRC also did that one. So...and we had a lot of our cases on our books from the early days...resisting them from forced removals, but that was now the northern offices. So in Cape Town we were quite excited to look at the possibility of A: a case where there's State land involved and one can use the Aboriginal title ideas from Australia and Canada to say that the people who were still living on State land can claim land in terms of that concept and combine the Restitution Act...use the Restitution Act...because, you now these...statute law is strong, it's backed by the Constitution, but if you can back it with common law concepts as well, it's even more enduring and if you take lessons elsewhere as well. So conceptually, theoretically, we were

interested in State land removals case. And in Richtersveld, combined with the fact that it was questionable whether people were removed for racial reasons or for mining development reasons. Ok. But...perhaps more importantly why we thought that Richtersveld was an interesting case was because it involved very high stakes and if there was a slight possibility of them succeeding, it would be an opportunity to catapult a rural development situation into the mainstream economy. A rural land claim community into mainstream economy. So...we'll probably say yes again, if there's such a case again. But what it involved was to...was a huge commitment. And I was fortunate that the LRC backed the case in the manner that it did, and it was a...it was a huge...I regret to say that it was so big that it was very consuming, time consuming and energy consuming, it took a lot of our time. It took a lot of my time. It took a lot of my life. And the other countries did it with huge teams of lawyers. The Mabo case was done over 17 years in total. 11 years concerted effort, but a team of people.

Int When you say other countries?

HS The Australian case. The landmark case in Australia. So I've spoken to those guys also about how they did it, and we did it differently, we did it with very little...we did it with one firm. The other countries had more firms and...the Delgamuukw case, the big cases in Canada also had huge teams. And we've spoken to them about how they did it. And there was just no other way in which we could do it. So only towards the end in 2005 that we put more money into it, but before that we were doing everything on a shoestring and it was effort rather than anything else, to do the Richtersveld case. Now why did we...

Int How long did you spend on Richtersveld?

HS At times it was 200 hours a month for months on end...

Int But all the time from 199...?

HS So '98.

Int '98. That's seven years on a case.

HS Yeah, but it ran through until this year.

Int Right. So it's more than seven years. That's a long time of your professional life?

HS Yeah...you don't do it all the time. In between I...'98 I spent six months sabbatical with the Minister of Environmental Affairs and Tourism as his legal advisor, Pallo Jordan. And we wrote an Act, the National Environmental Management Act. And after that I more or less, I did Richtersveld, I suppose up to fifty percent of my time,

and at times it's 200 hours a month. We worked very hard on Richtersveld. We did very, very interesting things of evidence collection, preparation of evidence in new ways, did very interesting things with experts. And we were often reminded that...the answers lie with the community witnesses. So in the Richtersveld case I say unashamedly that the facts make the case (laughs); not the tricks of the court. It's the facts that make the case; ...facts happen and people make facts. And the effort to discover the facts or to open your ears to hear the facts was rewarded with the results. And it was the care with which we listened that was important. We had an extraordinary legal team of course. We had to work with Peter Hathorn, the young advocate that was involved in...

Int Moray Hathorn?

HS Peter Hathorn. Moray (Hathorn)'s cousin. Peter (Hathorn) also worked for the LRC a long time ago, full-time, and more or less full-time on the Richtersveld case. And so Peter was...Peter and I were in 12 different case numbers on Richtersveld. So there was lots of litigation. There was one central piece of litigation, but a whole range of ancillary litigation, stopping, interdicting new developments, interdicting the sale of the mine, environmental aspects, mining applications, so we had lots of little pieces of litigation. And then Wim Trengove on the big pieces, the important days. And Geoff Budlender, his direction and assistance is crucial. Very good candidate attorneys that become totally committed and worked for a year, very hard on that. And it's very exciting to work with people who come in with some idealism. We also had interesting interns, America students, Germans, French, who brought their own value to the process. Now to work with Wim (Trengove) is an experience. Wim (Trengove) is a probably a kind of head boy type, but he's so...friendly about his manner in which he does it. He does a lot of work on his own and to contribute to his heads of argument is a huge privilege. And he recognises hard work. And that's a...that was part of the Richtersveld experience for LRC, was what Wim (Trengove) has put into it. And we must acknowledge that. Politically Geoff (Budlender) has put an enormous amount of thinking and effort into...and to have the understanding that a person like Geoff (Budlender) is, with all his political legal combined insights and oversights, is reassuring. And as for the Directors of LRC, which was Vincent Saldanha and Janet Love. Both Vincent (Saldanha) and Janet (Love) often were very important on both legal and political. Cyril Ramaphosa who was at one time the chosen partner of the community before the minister, and his machinations...they worked him out, sidelined him and sidelined the LRC.

Int Who was the Minister then?

HS Alec Erwin. He's still the Minister. How long he'll be the Minister we won't know, but he sidelined Shanduka and the LRC. But Cyril Ramaphosa also gave very, very good advice. And, you know, this is... so the Richtersveld case besides illustrating...there were four new legal concepts, four new precedent setting principles for restitution law and customary law, came out of the Richtersveld case, but that's another story. But the Richtersveld case, we got lots of lessons for us. But the opportunity for a poor rural community to be participating in the mainstream economy, to become a player in the diamond industry, which is the most difficult of

capitalist industries to get into, is now squandered because government, it's now been done in partnership with a minister, of all people, when you've got to do it with a much stronger and better partners, such...but it illustrates a number of things. One is the ambivalent role of government to participate in rural development. Because what's happening here is that government saves its own face and saving Alexkor rather than supporting a community. And secondly, it shows that all the mining companies, the big mining companies, on the face of it, and when we've dug a bit deeper, and LRC didn't do that on its own. It also got others involved to dig a bit deeper and the intentions and the support that the two/three private companies that were interested in partnering with Richtersveld, illustrated that there are real possibilities for the mainstream companies, the big companies, to show a different face and make rural development happen. So we were reservedly excited about that possibility. And I'm now very sorry that it's not going to happen this year or in the next five years for the Richtersveld community. Whether there are going to be other opportunities elsewhere in the country, I don't know. Fortunately I won't have to do that case. But I think that if LRC says that we are looking forward to participate in rural development initiatives into the future, I think it's one area that we'll probably walk some of the way to look at appropriate development, partnering with the private sector. But government has got a huge responsibility for rural development. And unfortunately, Richtersveld is not going to show how that can happen, of a good relationship built on a foundation where the bargaining positions of the parties are secured. And this has not happened in Richtersveld now. From our point of view it's not happened.

Int What's been the outcome of Richtersveld ultimately in 2007?

HS Oh, the community won on the merits of the case, and the final deal is a partnership with government, a business partnership with government. We're saying...we had our reservations about that...when that was the instructions we tried to participate in that but the relationship between the leadership and the LRC was not such that we could continue. Our Minister was saying what must happen, and we can't...and the Minister is not our client so we can't advise the Minister (laughs), we've got to advise another party. Secondly...so they got the land back and they're going to get the mining rights back...some compensation, but the business deal is one with Alexkor, a government entity. And the majority shareholding is held by government. So they can direct where the effort is going and how development is going to happen. But they got a very good deal. We wish them luck.

Int How do you feel about your tremendous involvement in Richtersveld?

HS Part of the road that we walked was wonderful. It was very hard, we worked very hard on the institutional development aspects, the supporting democratic institution building. One is worried if one knows how fragile and how difficult community decision making is, and how much is learnt in a relationship over time...the answer on community decision making, on democratic decision making, on going into a development phase, is not known...we don't have good examples yet. So that's unresolved - what's going to happen on the institutional side. And I'm worried for Richtersveld and everywhere else. We're worried about decision making in Cape

Town, in our country, facing Polokwane. Let's speak when they say something else again. But we're very happy for what they got. Personally I learnt a lot there. So I must be philosophical about it.

Int Before the interview started you said that it really requires people like Charles van Onselen...academics, historians, etc, to really remind you about how privileged you are to be doing the work you're doing. And I wondered whether you could talk a little bit about that, because when I interviewed Wim Trengove he gave me these wonderful stories about the Nama and his experiences at Richtersveld. What have been some of your wonderful memories and experiences of working with that community?

HS In Namaqualand, people speak Afrikaans. It takes a while before one can start using some of their own idioms. And it's figurative language more so than...(laughs). But I start a story about learning from Namaqualand with an earlier case that we did in Namaqualand around economic units in the community adjacent to Richtersveld called Steinkopf. And Oom Paul Cloete there who...he's now one of the community leaders who instruct us. And we've worked on the case for a few weeks...months, and prepared all the papers and we read these affidavits back to them, it's reams of paper. And he asked me: what about the oak trees? Wat van die *akkerbome*? So I say: what? But oak trees don't feature in these court papers now. And oak trees don't feature in Namaqualand, so...you know. He said: no man, there's something about oak trees, *akkerbome*, in the legislation. So this puzzles me and I go home for a week, come back a week later, and he says: have I found out about the oak trees, have I gone to read the legislation? So I (laughs) said we couldn't find it. So he said: no, let me show you. So he finds in the legislation there's reference to *akkerbou persele*. Now *akkerbou* is the Afrikaans for...so it's not *akkerboom* but *akkerbou*...for agricultural allotments. And the legislation says that provision must be made in the re-planning of the commonage, the restructuring of power relations, in economic and political terms that there must be provision for grazing, for agricultural opportunities and allotments, plus housing, township. But in Namaqualand it's dry, it's a desert country, it doesn't make much sense to provide for *akkerbou persele*. But we realised the Act says that there must be...they must at least consider the possibility of irrigation and agriculture rather than just stock farming (laughs). So we put the point in. And the Leliefontein case and the Steinkopf case was won in a Cape Town court on those grounds. So in 1992 the church in Kuboes called us to a meeting on the land claims. And the other day I sat with a Dominee at the time, the Reverend at the time, and we looked at the minutes of that meeting, where we discussed the possibility of Richtersveld bringing a land claim. And at the time the [Restitution] Act wasn't written. And we discussed the problems in the Richtersveld case. And the minutes actually show...the minutes report on the interaction between myself, LRC, and the leadership of the Kuboes community at the time, pinpointing the legal problems that we were going to have. And that was in 1992 before the Act was written, the organic leadership of that community knew what they were in for and identified that this case is about whether they'd be able to show that mining law was racially discriminatory at the time. And so it was 11 years later, in 2003, that our arguments and our planning of 1992 were vindicated in the Bloemfontein court. And I remembered the discussion but the Dominee reminded me sharply, in a focused manner, that we had the discussion then and that we identified the problem area. And started talking about the evidence

necessary. That it was...mining meant that local people were excluded. And we started thinking about the kind of evidence necessary. It's only in '98, so it's five years, six years later, that we formulated the case. But people who are not...who are engaged with their community and their community's future and who think about the problems and the solutions and the challenges all the time, are the best advisors to the lawyers. Because they think about the challenge all the time, all possible angles, and they have the insights. So we don't take law to the people. The legal relations and legal solutions are social relations, and people know their circumstances. And we've got to learn to listen (laughs) all the time. So what does (Charles) Van Onselen do? (Charles) Van Onselen managed to...well, he not only listened, he looked at the weather also. I can't remember the weather patterns on each day (laughs) of my visits to Namaqualand. We started our work in that area with this poster: 'Apologise, Judge tells Town Clerk'. They were going to ban, in 1988, they were going to ban all African people from Namaqualand. African people were only supposed to work on the mines, in the compounds. In 1988. It was going to be a white and coloured homeland. And we resisted that.

Int And what was that in relation to what the judge says : Apologise to whom?

HS (laughs) Judge tells town clerk, you must apologise to the court, because he went behind the back of the court and he was going to demolish the homes of the Port Nolloth African people camping in tents on the salt pan at four o'clock in the morning.

Int And the LRC took that case on?

HS I was involved in that case, yes.

Int Really. What was that case called?

HS Luwalala. I started it at Mallinicks when I did Articles there. So in those days we used to drive up every weekend. And then with the Richtersveld we never drove up every weekend. Drove up every second weekend (laughs).

Int Henk, I'm very aware that you have a meeting in about five minutes time and I've also realised that your experiences have been so fascinating that it really warrants a second interview, but for now I wanted to actually thank you because given that you have to leave. So I want to thank you for your time and for your memories and certainly I think that we need to talk more at some point about the LRC.

HS Good luck with this project because I think it's important for LRC, it's important for the lawyers, but that's not crucial, but I think that we must talk more about how we record some of the living heritage moments that communities have in this...it's still an exciting progression of rights, and human rights, in this society. Because we've been denied it for so long. Human rights are still important. And the calls that we get

and the phone calls that we get, stopped in the street, and the LRC's mentioned, it's in relation to...with reference to human rights. And so I think that the LRC story and the human rights story of South Africa, is an important message, is a strong message, is a valuable message that we need to write down. Of course firstly for ourselves, for this country, and for southern Africa, but for the world also.

Int Thank you very much, Henk. (*end of first interview*)

Interview 2: 6th September 2008

Int This is an interview with Henk Smit and it's Saturday the 6th of September (2008). Henk on behalf of SALS Foundation, we really want to thank you for agreeing to participate in the LRC Oral History Project yet again, and for giving your time so generously and without question. You were saying before the tape recorder was switched on, that I really wanted you to talk about some of your cases, but you were saying that you saw cases as part of a local struggle. I wondered whether you'd care to elaborate on that.

HS Yes, cases and strategy. Because last time we talked about this romantic period of the LRC and now how we saw the NGOs in South Africa in the heyday when everybody knew definitions were crystal clear. And in the post apartheid period we're trying to find our way. And I think that these cases, they're exciting in themselves, but the measure is really how they fit into local and broader struggles of defining the (laughs)...sometimes defining the role of the State...but defining our position in relation to the State. And I think that the LRC, like a handful of other organisations in South Africa, is trying to transcend this and I've not really formulated this before but it's trying to transcend an artificial differentiation between participation and contestation. And legal, in our litigation strategies or...it is the sometimes advocacy, but working sometimes with government and then challenging government. And it's not a matter of accepting the status quo for what it is and tinkering with small reform measures. It is...it can be part of an approach...and I'd like to call it a strategy but because we don't always put the steps in place for it, I don't want to call it a strategy yet and I don't think we consciously think about it as NGOs, but it is an approach to...to use the local status quo tinkering, the local reform struggles to...to move to change the status quo. So whilst much more social change or even social revolution is the aim, we're seeing the means, as the means, these local struggles. And that's where our court cases fit in. So you know, to challenge LRC and to say, we're stuck in the status quo, is I think, one, we've decided to use law as a tool for social change.

Int In a post apartheid...

HS Yes. And law is inherently conservative. I think that...aagh and whether one uses, you know...whether it's Joseph Stiglitz or Rosa Luxemburg, or whoever as people who's reflected about it, people in the streets sometimes change, make governments think much more...the World Bank changed because people stood up in the streets and said, shit there's not just one way towards development. Sorry, the expletive wasn't necessary. But it was because they...it's so strange that they had to...there first had to be people in the streets to remind the World Bank there's a different way (laughs). There are different ways. There are lots of ways. But we've decided to choose law to...to remind ourselves and to create opportunities for different ways in development. And I think in South Africa where we've been confused by the fact that we're actually only just catching up with the rest of the world, because the...and in very simplistic terms...because of colonialism and apartheid – colonialism for the whole of Africa, apartheid specific to South Africa, now reinforced by globalisation and whether you want to **inaudible** but being part of the big world where poverty and differentiation and discrimination...is part of the world order, has become part of the

world order, remains part of the world order. And that globalisation has been...has reinforced the old baggage that we've inherited from apartheid and colonialism. Now we're...then we thought that we were special. (laughs) But you can't be special, especially if you don't even stick to your programs of specialness, such as the RDP. But you...ok, now we're just catching up or falling in the same pit as the rest of the world. So I think that we've been in South Africa with the NGOs...have struggled to...or are not really...some NGOs just fell straight into the mainstream of service providers for government...(laughs) One even sees it sometimes in the composition of their Boards. They're working for government, part of their budget is coming from government. They're doing things that other consultants can't do for government. And the minimalist State had to rely on these NGOs. Now LRC is very brave, it's doing it slightly differently.

Int Independently...

HS Yes, we're brave, we're independent. And for that I commend our leaders because we...and that's why I'm saying, LRC's strategy remains emergent rather than blueprinted. So I really appreciate our Trustees, National Director, Janet (Love), Exco, allowing enough space for...in an awkward kind of organisation – for emergence, for, you know, we do the CLRA case. The CLRA case pushes the boundaries of the...well, on the one hand it's trying to protect but it really pushes the boundaries of this thing: what's the role of the State? What's the role of traditional leadership? What's...

Int This is the Communal Lands Right Act?

HS Communal Lands Right Act. Challenging the constitutionality of that Act and the Traditional Leadership and Governance Framework Act, that really gives second rate governance to all our rural areas. We're saying: it's not good enough, government. The State has responsibilities under the Constitution. Give us real governance, look after our interest, our democratic rights, our land rights, our property rights, in rural areas. And you cannot go the way of the rest of the world in neglecting rural development. Now, LRC takes on that case with great resilience and bravery and so on. No other NGOs are really supporting us, a handful of emerging CBOs, but there's no real rural development social movement. But we're claiming that we can take into account the social aspects of development. It's not just about ticking off rural development, there is a governance structure for it, traditional leaders with...so we're saying there's another aspect to development, it's not just about transfer of land, it's not just about private property...whether one uses the De Soto model or another one, it's got to do with people. So we're saying that's important. But can we fulfil that project? Can we provide everything in that project? No! We cannot do so, because we're mere lawyers after all. And we're not trying to do the rest. So awkwardly we're still just reminding government and civil society or what's left of it, that there is a different way. So I think that in the Richtersveld case, if you now want to stick to this thing, I must say something about local, is we perhaps had ideas that here we could have...we had an example because the stakes were so high, the resources is there in the sense that there's (laughs) land, diamonds and there's compensation. The other resource - crucially lacking – was weak leadership, because it's rural. It's a small rural

community. They have what's left over of their community after a hundred years of discrimination against them. So one has got to prop up leadership, because there are no other really supporting social development agencies. The State is denying that it's been complicit in the dispossession and discrimination. And despite all of that, we still thought that because the stakes are so high maybe in this situation one could bring...have an example, set an example of a community participating in mainstream economy. Being thrust into mainstream economy where they participate on their own terms because they've got all this capital. And that...you know, that largely failed. Besides the fact that we pulled out, that largely failed because I don't think that even in their remotest dreams they're thinking that they're now participating on their own terms. There's been no rewards flowing...but in the sense that a more...a less ambitious project of reminding the state about its land reform obligations, expanding the jurisprudence on land reform, land restitution. The Constitutional Court judgements contain very valuable statements by the one branch of government, the judiciary, about property relations of neglected rural people, which statements we're now using in the CLRA case, namely the fact that indigenous ownership rights of communities must be respected, protected, promoted, and fulfilled...which we now say in the CLRA case must happen.... So we can even link our local struggles in interesting ways, creative ways, and us as lawyers because we work with a more analytical approach to social, legal, whatever, community problems, we look for those links all the time. Ok, so the Richtersveld case had...had the potential to transform and transcend the kind of boundaries of the status quo, and now it's stuck there as just another example of affirmative action and an unlikely group participating as minority shareholders. And so, you know, it moved...it's put different players on the playing field there in that instance. It's not a Sandton or a Rosebank community being affirmed in the mining sector, it's a local community that will...it's opened some space for them. They wouldn't have had it otherwise. So there's a lesson there and the lesson I think if one really wants simplistic terms related to strategy, it is how much one can do. So there's a lesson, I don't think a beacon...

Int So you worked on this case for fourteen years? Richtersveld?

HS The Richtersveld, yes. We worked very hard since '97...till 2005, but prior to that we dealt with other aspects of it, with intensive kind of litigation...adversarial litigation part started in '97.

Int So about eight years, but in totality, 14 would you say?

HS Yes, we actually started (laughs)...

Int Tell me when you started?

HS With that community I first met them in '88/'89.

Int So nearly 19 years.

HS Yes, and been doing other things also.

Int And then, from what I can gather, from other people's interviews, Alec Erwin played a very problematic role in Richtersveld and I wondered whether you could talk about what your thoughts are about how the State intervened?

HS Yes, but that's at a conspiracy level. And law always...I mean, with law you can...using law and strategic litigation, you're lucky if the facts make the case. Secondly, (laughs) it all depends on the facts, one needs the facts if you apply the law to it, despite whatever approach to legal...to law and social theory one has, there's...there's the...in litigation and using the court you've got this little problem that you must have the right facts. So there's the facts that just favoured the Richtersveld people all along in interesting ways. And secondly, one's got to have the...one's got to have a client that is principled. And thirdly, it helps to have an adversary that understands the rules and knows when it's losing. Because if an adversary never knows why it lost a case, it becomes difficult to win properly, to translate the paper victory into real...so...and the State is incredibly powerful and community leadership is influenced by a whole range of things, including the politics of the day, whether it's (Thabo) Mbeki or (Jacob) Zuma, and at local levels they call it different factions, and one can have a whole range of...so I think that the minister and his advocate...decided that there was an opportunity to exploit the...risks involved in any translating rights and they exploited it in a consistent manner. So, you know, for the...one can't really fight back against that as a law firm...and one can only provide up to a certain point, opportunity, space in your...for the community structure to choose different routes. And I think once we've tried once or twice for community structures, with all their inherent problems, the leadership issues and so on, to try a different way, and they were just not...the Minister, the State, the local leadership, the municipal officialdom, political parties at local level, were just too strong for them, so in the circumstances they couldn't really avail themselves of another way of...and that, I think, unfortunately that will leave a legacy that may be permanent. Maybe that there are remnants to it. But the strong bargaining position that they had to...negotiate a winning deal for themselves and restructure political, social and economic relations in that part of the country. And it's not over ambitious because the economic players they were saying one could go into Namibia even. So one could have changed, one could have made an impact on the industry. Not one, not us, but that community with their...so yesterday one of the other big mining companies announced that this community and its resources could have played an important role in bringing three big players together. Now yesterday the other two players announced formally that they are doing that. They're consolidating. It could have been done under the leadership and this community and its legal and other strategies and victories could have been the catalyst for all three of them coming together – in fact four, across the border as well. Now, it's much more limited, it remains private sector, there's no community component, the social aspects of the impact for the region is gone. So it could have been very different. But that I think it happens in the constraints, the other constraints of the...the reason for those other constraints...(Alec) Erwin and his mates participated in that.

Int Creating the constraints?

HS Knowingly or unknowingly. But the...undermining of the Richtersveld deal as envisaged by us and the...happened at other levels also because it was immediately after (Thabo) Mbeki's State of the Nation Address, that Oppenheimer and Sonjica, the Minister of Minerals and Energy, announced the deal that would undermine our deal and the...(Alec) Erwin just took it further, took it to its conclusions. And, aagh, you know, at that stage...'cause now we're going into absolute detail that again perhaps shows how the case, or this Richtersveld case involved, what, 17 different case numbers. So 17 times we went with a fresh little application and its seven reported court judgements. But the last one, number 18, could have been a challenge to interdict De Beers and the State from undermining the deal. So that was part of the context that we, I suppose, also reflects on how this case started as a land claim and became a challenge to the land property relations social and political and economic order. And, you know, maybe we were (laughs) just pushing too far and too hard. So I don't know whether (Alec) Erwin saw it like that, but he certainly thought that we were overstepping what he thought could be contained and what he promised his cabinet two years earlier. We were going well beyond what he promised his cabinet two years earlier. I'll contain the fallout, and where we were, we were ready to step into a deal that went well beyond that. And when you challenge those kind of forces...I don't...you know, so...I think Janet (Love) sees it that way, but it's not as we consciously...you know, check our cases, whether the Xolobeni, it's also a mine...we make lots of mistakes in between. So that's why I'm saying that LRC and NGO strategy is more emergent than...you know, lots of influences there and at the end of the day we say, ok, this was our strategy for the past year, this is what we're saying our strategy is for the future, but...can one really talk of an NGO, a government with a strategic direction in today's world? We go through such dramatic changes, so...but that's what politics is about and (Barack) Obama must say I've got a strategic intent, I know where I'm going, I know where we're going. And it's about change. Then change happens in different ways for different reasons. So there's systems within systems and it's the interesting complexes of systems that we've got to translate in South Africa to make change happen. It's exciting and we're participating in it, which is why it is so helluva exciting, but we mustn't say it's...I suppose recognising that it is complex is in part what it's about. We know we can use law, we've got some experience of it, we use that, we're adaptable to change, we treat each case differently, we don't have blueprints. When we look at legislation we know that we can't blueprint for the country. And in that sense I think we've got a good strategy, we've got a good approach, and we're perhaps...and we mustn't get scared of that having worked. Because who 30 years ago could have believed that, that could have worked as a strategy? Aagh, it was a different world order, one thought you just had to fight apartheid consistently and it will go away. Now we fought it consistently, it went away, it still (laughs)...colonialism, we still have the...so it's a...so I'm...I don't want to admit it on your tape now, but I should...we must be serious about our strategic statements, the stuff that we write down, because I think it reminds us all the time of how contingent they are on a whole range of things, and the LRC being adaptive and adaptable to contingency in this South Africa and in this world order as perhaps being one of its strengths. And I hope that it remains so. That's perhaps why we're sometimes regarded but we're all loose cannons. Maybe that's part of our strength. Now one needs an understanding and a sense...we talked about this, why are we an organisation? Why don't we just work as individuals? I suppose because we find one another in this place where we continue to try and make sense. This week I

was in this Fishers case. As once again it's about exclusion and inclusion and trying to make sense of this group of artisanal fishers that's got to be part of our law, must push the boundaries of the legislation that doesn't provide for them in the current order, and...just again appreciate it. William (Kerfoot), the attorney, the advocate, brought silk in at the last moment. So Nadine Fourie brought old Jeremy Gauntlet in at the last...each making their, bring their own individual take on this, and...remarkably coming up with...adding value to carving space for this group of fishers. With the CLRA case, we're busy writing the heads now, and I'm playing a negligible role in that. We're five advocates all working on it, thinking, bringing ideas together. And the attorneys also there and snapping at the heels and insisting that this or that must be remembered. And at the end of the day I trust that that one...because it's a complicated case, it's complex also, but it's also complicated, ones got to pull things apart and put it together again and so...complexities Wim (Trenrove) can work his way through, but the complicatedness, which is just putting the parts together is, you know, lots of people must help with that. So what I wanted to say about that, I think that there once again, we'll come up with a statement in these heads of argument that will attempt to make sense, carve away for rural development and governance and property rights in this country. And it's not one that will necessarily stand the test of time for ever and ever but it will play its role in...in being a step or a statement on this road of...of contributions on how rural development can happen. And interestingly that case, it certainly very conscious of, it's not just South Africa, it's in Africa.

Int I think as I understand it, you're not on the Exco at the moment are you?

HS No.

Int But are there plans to put you on Exco?

HS No, I'm not keen...Exco is a very valuable thing, because it's...through Exco we can influence the kind of...the infrastructure stuff of the LRC, which is so crucial. And which is neglected. (laughs)difficult circumstances, but it comes with the terrain.

Int I'm curious what your vision is, having been at the LRC for such a long time and gone through such tumultuous changes, the organisation as a microcosm of the external world, I'm wondering what you think are some of the important strategic directions you think that the organisation ought to be taking in the short to medium term?

HS Yes, but now ? I was qualifying myself, I said strategy emerges.

Int Yes, of course and exactly that's what I wanted to talk about. How do you understand an emergent strategy?

HS No, I think we'll continue, we'll continue to be shaped by our interactions, rather than to (laughs) say we can stand apart and position ourselves from the outside in a complex world, where every day our strategy is pushed and pulled.

Int Of course. Well, what would your ideal vision be for the LRC?

HS To remain as open minded and brave as it's been.

Int Independent?

HS Well, the independence comes from...you know, we're not completely independent because we're tied to the system. We're not trying to step out of the system. Who is independent today? Some of the small CPO issue specific guys can really say, I'm now making an independent statement today. But the LRC...but very soon they start becoming interdependent.

Int I'm also wondering, Henk, in terms of what's been happening currently in the judiciary, there's crisis in the judiciary, Constitutional Court judges are referred to as counter revolutionaries...

HS (Laughs)

Int ...and Constitution is under attack. There's also what Arthur (Chaskalson) and George (Bijos) have issued a statement emphasising the independence of the judiciary and also criticising the use of intemperate language. I'm wondering what your concerns are for public interest law organisations like the LRC in this context?

HS Yes, it's a...because if those...the judicial system feels that it's under attack, siege, by even a small part of the population or government or the other...then it may be...it may be...it's always got to be very circumspect, like the LRC is very circumspect in opening...making statements and like the judiciary must make statements...it must always be circumspect. But...they've got to be brave. And it's their...so it's going to be a test for them

Int How do you think, Henk...

HS ...The word independence when we're...we're not completely independent.

Int Fair enough. What I want to understand from you, how do you think these kinds of manoeuvres, attacks on the judiciary, how do you think that it impacts on judges and ability to actually make judgements in cases, for example in front of this Constitutional Court where LRC goes and makes cases, how does it impact on the case?

HS Yes, I must say, I was very, very worried on that day of the Joe Slovo hearing. And one or two judges **inaudible** would have been more comfortable, felt more protected, and would have been less...would have looked and appeared more...self-assured two years earlier. It was worrying but that was only two of them fortunately (laughs). But I thought it was a strange behaviour and it was during the week of the (John) Hlophe hearings in the WLD. So, let's hope that by next year this time we don't have...so in that sense I've got to recognise that, it looks like it could have been a bad day for those two guys. But for the rest we can only speculate and I can't really speculate about these conspiracies, because their strength one never knows and where...and I'm not there. I'm not in the front line. There's some of those advocates who get close to it, they say that it's scary. They say that it's scary how they're treated by their colleagues who are supposedly siding with the stronger. And that worries me immensely. Because at the end of the day it's people who create these perceptions, or people who really change. Now in terms of power issues at the Cape Bar or where you have these competing lawyers, I find it worrying that supposedly they say that people are aligning themselves with groupings, political groupings, or figureheads, or (John) Hlophe, Advocates for Transformation or something, and that that affects the way in which they work, the way in which they relate in the...not only in the passages but in the way they argue their cases. Now that proves again that the law is not...can't stand completely apart but when it becomes a matter of social networks and power and largesse and handouts and who gets what work, then that's spilling over into these exalted chambers of the advocates. I've got to say then maybe even those guys sitting across the road in the courts, and how it affects the way they think and talk about it and the circles they move in. And that is incredibly worrying because it means that my...it means that the case that the rural community brings to court, influenced by these things, how...we may for completely extraneous reasons...get a bad hearing. But that happens.

Int Henk, in terms of the Cape Town office it's always a marvel how you and Kobus (Pienaar) and William Kerfoot and Steve (Kahanovitz)...Vincent (Saldanha)'s left, he's become a judge...the four of you, how you've maintained and stayed together...

HS And Angela (Andrews)

Int And Angela (Andrews). And worked closely on so many issues over the years, and I'm wondering what is the secret of the Cape Town office (laughs).

HS Maybe we're just stuck, we haven't got anything...we can't really...we haven't got anything else to do, or we can't move on. Stuck in our old ways. That's part of the reason, because at different times when people had choices I suppose it was the easy way. Um...I mean, that's not really true because...

Int You also teach as well so it's not exactly true is it.

HS That's a pastime. But unfortunately we have never exploited the opportunities of working in strong teams. So I had the privilege in Richtersveld when there was often one or two and with Desirée and with Charlene (May) and Shehaam (Samaai) earlier and Chantel (Fortuin) and so with that case we could work as two lawyers in the office at least. And that's...sometimes slightly even unusual and it's completely unfair, because our adversaries work in huge teams. And commercial firms work in strong teams and they can mutually...so we've unfortunately not really exploited the possibilities of working as teams. So we've got to build our teams with the advocates and experts, so you now, in one sense you're saying we're stuck together, but we've not really even exploited that possible advantage because...what I must say is that, I suppose a team that's stuck together for such a long time you're just completely trusting. It's trust that's so valuable. I can rely on my colleague because I've known him for so long, and she can rely on me consistently in (laughs) criticising this or that shortcut because she knows she can...Angela (Andrews) knows she can expect me to come up with (laughs) this or that objection or idea or proposal and...that's a privilege to work like that. It's also...but one needs new people. So Vincent (Saldanha) leaving, because Vincent (Saldanha) brought a lot of ideas. But Vincent (Saldanha) also said we should have circulated more often. And I don't know how one in a small organisation like ours, how one really, whether people should go away and come back, whether that's perhaps a way of doing it, you know. Because that could be one way, work on succession but return. Entry and exit strategies in a very...that could be a way, because even old Moray Hathorn, he'd like to maybe come back for a while, maybe somebody else can go and work for Webber Wentzel where you're stuck, you can't fight mining companies. On the other hand they've got pro bono department now. Because, those mining companies they're easy game (laughs), we want to fight mining companies.

(Interruption)

Int Henk, I have a feeling that I will interview you again, but for the time being I want to thank you for actually sharing some of your thoughts. I really appreciate it.

HS Ya, thanks...

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