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**LRC Oral History Project**

**1<sup>st</sup> Interview: 29<sup>th</sup> November 2007**

**2<sup>nd</sup> interview: 8<sup>th</sup> July 2008**

Int Moray, thank you very much for doing this interview for the LRC Oral History Project.

MH It's a pleasure.

Int I wonder whether we could start this interview by talking a bit about yourself in terms of your formative background...growing up in South Africa under apartheid and what actually led you to become...or influenced you to become a lawyer.

MH Well, I had a very typically white middle-class background. My father was a farmer in KwaZulu-Natal and I was brought up in that community. So I think that in terms of apartheid we were rather shielded from the harsh realities of apartheid. Through university years, one began to question the situation. At High School level too. But I think that one was brought up with and amongst all the prejudices regarding race although, they might not have been severe as some forms of it. But through university years one began to question things and what was going on. I think that for me it was the issuing of the Surplus Peoples Project reports, which began to indicate that white rule was not quite as benign as white middle-class people might have justified it to themselves. And when I came to Johannesburg to do my articles I got to know Gilbert Marcus who was instrumental in getting people at the firm that I was at, which was Webber Wentzel, doing my articles, involved in various projects dealing with human rights issues. The first one was the provision of defences to people prosecuted under the Group Areas Act in the early 1980s. And we got involved in taking on those cases and frankly that was a very direct and my first direct experience of the system as it affected people. And from then on I became ever more deeply involved in legal work, representing people affected by the apartheid system, starting in about 1980. Which I've continued to do to the present day.

Int Could you tell me a little bit more...about growing up... did you grow up on a farm and...?

MH I did.

Int And in terms of farm workers, what were the relationships, that...?

MH I grew up on a farm and of course we had Zulu workers on the farm. In fact, Zulu was my first language before I ever spoke English. Although when I went to boarding school my Zulu collapsed somewhat but it's not completely gone. I think that, you know, I had very close personal relations with people on the farm, with people that I

grew up with, with the children and our farm was very remote. Except for going to school we had limited contact with the outside world. One would play with them. So mine was a typically, you know, white farm boy background. My friends would be black kids living on the farm, and we would play together, etc. And undoubtedly one develops relations also with the farm workers. One gets to know them, they get to know you... obviously...and I think that those were close relationships. Pretty close, friendly relationships and so...but I must say that growing up one wasn't...it was I suppose an employer, employee relationship but I wasn't aware...well, growing up as a youngster, one wasn't aware of the intricacies and of the depth apartheid system, but I think that undoubtedly there was prejudice in the community that I grew up in. There was race prejudice. Although I must say, I don't think that it was very deep. There was race prejudice and there was some sort of justification for it in that community, for white rule or for some sort of variation thereof. I don't think it was Nationalist Party ideology. It was less extreme than that. But nonetheless it was there. And that was the milieu in which one grew up.

Int I'm wondering Moray... you went to the University of Natal...?

MH Yes.

Int Was that the seventies?

MH Yes, I went there in 1974. I was there from 1974 to 1979. And I did a BA degree and then an LLB degree. Then I came to Johannesburg in January 1980.

Int So at the University of Natal, in terms of student politics, were you involved at all? Were you on the ?

MH I wasn't, but I did Political Science, I was very interested in political issues. But more from an academic point of view than from a practical politics point of view. I wasn't involved in student politics at all. And obviously one participated in the shifting sands of opinion that went on around political issues at the time.

Int I'm also curious, because that really was the period around Rick Turner, Raymond Tucker, you know, and the University of Natal was quite a hotbed of student politics from what I understand during that period.

MH Well, I was in Pietermaritzburg, which I think was, probably that all took place in Durban. I must say that I obviously had views and developed views about the apartheid system during that period of time, but it was really the direct exposure to defending people, prosecuted under the Group Areas Act, and as I say, the Surplus Peoples Project reports which were coming out at the time, which kind of catapulted me into doing this work and to continue to do it. I do recall though reading Rick Turner's work "*The Eye of the Needle*" in about 1975 with a sense of excitement. It was a wonderful exposition of participatory democracy.

Int So if you could talk a little bit about your experiences starting from 1980 when you got to Johannesburg.

MH I was allocated a number of cases. I can't remember in what year it was, it was either 1980 or 1981. I think in fact it might have been 1981. It was in the last snowstorm in Johannesburg as I recall, that we went to collect our briefs from John Dugard, and I represented...I took two briefs on. I represented a Mr. Clayton who I think I was successful in defending, the matter went on appeal, because the state didn't prove that the...they didn't have a certificate stating that the stand concerned was in the group area, as I recall. Mr. Clayton was a coloured man. The...the certificate referred to the deeds office stand number, whereas the oral evidence of the investigating officer was that he lived at a particular street address. So there was a...they failed to prove the case, to prove he lived in a white group area. And he took out an appeal and won, which was great. And then there was the case of Mr. Jacobs who came from the Cape, he was a bookkeeper, he was an asthmatic, or at least he had a problem and he was advised by his doctors to come to the Highveld to deal with his respiratory problem. Or maybe it was his child who had a respiratory problem. It was his child. And we got assistance from Professor Lucy Wagstaff, who was in the Wits Medical School, to say why it was necessary for the child to be moved to Highveld. And because of the Group Areas Act, he had searched for accommodation, could only find accommodation in Hillbrow near Joubert Park, for himself and his family. After he was convicted we took it on appeal, but before the appeal was heard, he actually emigrated to Canada. Mr. Jacobs did. He had had enough and he emigrated. So...yeah...that was my first introduction to human rights practice directly doing human rights work.

Int It sounds as if it had a profound influence on you because it's really directed your legal career since then?

MH Oh, definitely, yes. It certainly did. I think it's one thing debating on a rather academic level the pros and cons of politics and political systems, it's quite another becoming directly involved with people at their point of need.

Int By that time the LRC had obviously started...

MH It had.

Int And I'm just wondering at what point your association with the LRC began, whether it was prior to formally joining it...in terms of meeting people in the legal fraternity?

MH Yes, I did. I worked at the LRC sometimes. We came to assist them with cases on a Saturday; there was a project at that point, which I was involved in.

Int Was this the Hoek Street Clinic?

MH No, no, it wasn't. It was at Elizabeth House. I do not know when that was but they had need of outside people to assist them with cases. I also became involved at that point with the Industrial Aid Society providing legal assistance there on a Saturday morning. It had quite a history, the Industrial Aid Society. I played a very active role in its affairs actually through the 1980s before I came to the LRC, which was at the beginning of 1988. And they were representing workers, experiencing employment related problems. In fact, I became the Chairman of their Board, so I played quite a big role in the affairs of the Industrial Aid Society through the 1980s. I resigned from the board in about 1990. I think that they were not very happy that I resigned. But there was a very particular reason for it.

Int I'm wondering is that....relevant to the interview perhaps....?

MH That reason? It is in a sense, because when I came to the LRC in 1988, I began working...one of the things I did was, I was working with Ilse Wilson and Aninka Claassens at the Driefontein clinic in Piet Retief, and there was a series of events there which were very difficult for me to deal with. I was charged in fact with obstructing the course of justice in relation to one case. And it just was a bit stressful so I decided to...that was actually the reason why I resigned I just had enough on my plate to deal with, rather than also having the affairs of the Industrial Aid Society, which were not always simple or easy or straightforward. It was a crisis every week just about, as I think that being in that position in regard to any organisation is. Perhaps I'm exaggerating but obviously one is...the difficult things will always come to you.

Int I'm just wondering, when you were charged, was that because by the apartheid State?

MH Yes, I think so. I've thought...you know, it's a very tricky issue. I have thought it through as to what happened. I would think in about...my recollection of it, it was probably in early 1989, the Driefontein leadership came to see us because a group of five armed men had suddenly arrived on the scene. And they'd come from Ulundi. And they'd taken up residence at the home of a particular individual in Driefontein, a man called Yende, who had been the kind of...Aninka Claassens and Geoff Budlender would know as much if not more about this particular issue than me, although I was involved. But they knew about the background to the Driefontein removal. And Yende had been the...during the attempt to remove Driefontein in the mid 1980s Yende had been a kind of point man, he was kind of said by the government to be the Chief of Driefontein and that he was in favour of the removal, which was to have taken place to Babanango, as I recall, in KwaZulu-Natal. And of course Yende was not a Chief. Most certainly not. Because Driefontein was privately purchased, privately owned land. It was not tribal land, so to speak, falling under a traditional leader. And so these five men arrived...this might have been early 1990, it might well have been, because...

Int By this time you were working at the LRC?

MH I was certainly working at the LRC. These five men arrived and of course this was regarded as a crisis because there were five armed men, probably with links to Inkatha, and the fear was that the war, which was then raging in KwaZulu-Natal was about to spill over to that part of the country, and into Driefontein specifically. They then killed - these five men in Yende's house, and Yende was there - the ANC youth leader in Driefontein. He was strung up over a beam like this with his hands tied, I think, over a beam, left hanging, by his tied hands, then he was whipped and he died. And the District Surgeon did a report. In fact I then had to go down, that very week. That week I went with Aninka (Claassens) and Ilse (Wilson), because Themba Dlamini had been killed and I was going down there to take statements.

Int Themba Dlamini was the ANC...?

MH Themba (Dlamini) was the ANC youth leader. And I also had a trial defending...I went down also for another reason that I had a trial...this is my recollection of it, and maybe one needs to check it out, ... this is my recollection of it...a trial at Dirkiesdorp defending a labour tenant in an eviction case - his name was Witbooi Kubheka - against eviction. It was all in the context of Themba Dlamini having been killed and taking statements in regard to his death. I happened to run into the district surgeon, because we used to run our legal clinic at the medical clinic in Driefontein. I happened to bump into the district surgeon and I spoke to him. And he said to me: look, the cause of his death was, he just asphyxiated on his own vomit. He had seven light blows to the body. So we immediately decided to have the body taken to Johannesburg, which we did. We got the body up to Johannesburg to have the body looked at by Patricia Klepp, who at the time was one of the leading, and still is, one of the leading pathologists. And in her report she said: no, this was the most savage beating of a human being that she had ever seen, you know, and that in fact that she had counted 77 blows. And that he had died of massive subcutaneous haemorrhaging and that the vomit, which he'd ingested into his lungs was merely part of the death throes. So we demanded that Yende and these people, be charged with murder. Of course the five men disappeared. Yende was charged and he was convicted of culpable homicide although he should have been convicted of murder I think, but be that as it may be, he was charged and sentenced to three years imprisonment.

Int Three years?

MH Yes. Now I think that then some time later, we got a message that there was a death threat against me and against Aninka (Claassens) and Ilse (Wilson), because we were the ANC's lawyers supposedly, although that was not true, I can not begin to describe to you the extreme antipathy towards us in that area amongst farmers and the local officialdom. It was actually pretty frightening, quite apart from this.

Int So amongst the farmers, the white community as well?

MH Yes. And we were regarded as the ANC's lawyers, ...although we weren't the ANC's lawyers. And then...I'm trying to think of this thing...oh yes...and we took it pretty seriously this death threat, because, especially as I said, it also contained a threat

against the life of Mr Mandela should he ever come to Piet Retief. One of the local farmers had in fact reported this to one of the people that we worked with down there, an Indian storekeeper by the name of Yunus Cajee. This farmer, you know, obviously thought it was wrong. Apparently there had been a meeting at the Farmer's Hall in Annyspruit near Piet Retief. And a call had gone out from the farmers to Inkatha to have us killed and Nelson Mandela killed should he come down to that area. So we thought we'd better report this to the police and Charles Cilliers who was then head of the LRC's Trust, reported the matter to van der Merwe, who was the head of police, to make sure a proper investigation was carried out so that no stone was left unturned and we could never be blamed for not taking it seriously. Soon after that I was in Piet Retief court in December of that year...whether it was the year 2000 or 1999, I can't now recall, again representing another labour tenant Mbothswa Mavimbela. And I was charged, as I walked into the court, a policeman came up to me and formally charged me with obstructing the course of justice. So between the time of Themba's (Dlamini's) killing, to about ten months later – Themba (Dlamini) was killed in about March or April – and about that December...and there had been this death threat in the interim... about that December I was charged with...

Int I'm just checking the dates, was it 1990 that Themba (Dlamini) was killed?

MH It needs to be checked whether it was 1990 or 1989. I simply can't recall. I've got my diaries and I would have to go and work it out.

Int So you were charged about ten months afterwards.

MH Ten months after the death.

Int So it's 1991?

MH Yes, and in the interim this man Yende had been charged with murder as a result of our efforts and he was close to Inkatha. The farmers had called upon Inkatha to have us killed in that period and then I was charged with obstructing the course of justice. And I've often wondered whether there's a link between this series of events.

Int It certainly sounds like it...

MH Yes, I wondered because I couldn't understand what was happening to me. When I was charged it was an extremely traumatic event, because it's difficult to defend yourself against something that you haven't done. Too negative...a negative... it frightened me. And also during this period something else even more awful had happened. During the week in which I had gone down to consult about Themba's (Dlamini's) death ...this is my recollection of events, it happened a long time ago...I actually was involved in an accident and a young boy was killed...and on the road going to the court case of Witbooi Khubeka of the Dirkiesdorp Magistrates Court. It was unbelievable trauma. And then shortly after being charged with obstructing

justice in December, they also then, the police, arrived at the LRC office in Pritchard Street and I was charged with culpable homicide arising from the death of the child, which I actually stood trial for I was acquitted. And then ultimately they withdrew the charge of obstructing the course of justice. But it was a very traumatic period, it really was. I mean, I was pretty traumatised and it was for that reason that I decided that I wanted to resign from any other (laughs) responsibilities and just concentrate on my work at the LRC. So that's why I resigned from the Industrial Aid Society and also as a board member of the Rural Advice Centre, which had done pioneering work in the provision of water to people in rural areas. So that's a very long way of telling you, of telling that story, but I think that it is very much part of my early history at the LRC.

Int It's quite incredible listening to this because...just arriving at the LRC and then suddenly being bombarded with these series of events...

MH Absolutely. My first couple of years at the LRC were extremely tough. I began working in the Driefontein area in early 1988. And also Geoff Budlender left to go to America during 1988 and I was left dealing with a number of his files, including the Oukasie matter, that's the Brits removal. It came to a head during that period. So that I had an absolute baptism of fire in my first couple of years at the LRC.

Int Talk about not swimming but being thrown into the deep end...

MH I was thrown into the deep end and I very nearly drowned.

Int Well, it sounds like you survived that...

MH I did survive it, yes.

Int I'm wondering what you attribute your survival to?

MH I don't know. I suppose the desperate desire to survive and not to go under.

Int What was the type of support system you might have had at the LRC? Did you have any support?

MH People were very supportive. Very.

Int In particular anybody that stands out?

MH I mean, people like...everybody was supportive but the people that stand out I would say would be Mohamed Navsa. He really supported me.

Int In what way would you say that that support came and as a colleague how did it...?

MH Well Mohamed (Navsa) represented me in the one case in fact. And he was the Director of the office. Geoff (Budlender) was the Director, Geoff (Budlender) and Mohamed (Navsa) supported me. And Arthur (Chaskalson) actually supported me. They might not have but they did. No, just in terms of regardless of that kind of trauma they supported me through it all. And obviously it was quite difficult to be charged with obstructing the course of justice it's not exactly what you want of your attorneys. But they supported me.

Int It's also ironic that this occurred in an interesting period, in a period of optimism and hope in terms of transition in the country. But clearly that was not your experience at all.

MH No. You know, I think that those years through to '94, from a legal point of view inside the LRC, were very difficult from a client point of view it was rough. You know, the system in some strange way didn't really abate actually, until after 1994. And in many ways the operation of the repressive system intensified...actually...they continued to be quite mean through that period. And you know, I mean, one has to think back to, I mean...I just think back to several issues, which underscored the meanness of it. I just remember being at a meeting in Phola Park, with senior police officials and officials of the town council, so probably about 1992. Phola Park is an informal settlement here just south of Johannesburg. And I was there with another attorney from Bell Dewar & Hall. Phola Park was always under threat of removal, and at that point it was a particular issue about people from Phola Park having spilled over outside of the boundary onto another piece of land.

Int Was this a coloured area?

MH No, it was really black. A man called Prince Mhlambi, was our main contact there. He was linked also to people from the Catholic Church who were working there. But he was a very important activist in terms of the link between us and the community and we did provide them with a lot of legal services in terms of opposing removal. Geoff Budlender was much involved there. Anyway Prince (Mhlambi) was murdered.

Int In 1992?

MH In about 1992 by faceless people. You might guess who that might have been. He was one of a number of people who we were working with at the time, community activists, who were actually murdered, you know, whilst we were working with them, by faceless people. I remember being at this meeting, we were discussing this overflow of people, and the attorney from Bell Dewar & Hall I thought made a very rash statement in context with senior police officials and town officials there. Brigadiers and things were there. And he said: the people of Phola Park will never be moved. And this brigadier said: we don't necessarily accept that. And he said it in such a way that I felt my hair standing up on the back of my neck, you know (laughs). It sounded very threatening. And not a week later Phola Park was attacked by an impi



of Inkatha supporters and it was a major attack. I remember the newspaper articles and the picture...there was a picture of this impi coming down the street towards Phola Park, and a little boy running across the front of the approaching impi. So that those years I think were really...at the LRC we were working in conditions, which were, um...I think quite tough actually. The situation as it affected our clients was not an easy one. There was a lot of violence around.

Int How did it impact on you because this association with the LRC, working with community activists and then finding that they're actually being killed?

MH Several were killed. I can think of three who were killed that I worked with. One in Phola Park, another at Ivory Park, and another at Swanieville. Swanieville itself of course had been attacked in one of the most notorious massacres, which took place, and 28 people were killed on the one day, if you remember.

Int Is that in 1991?

MH I think that was about 1991. I came in to assist that community when they were threatened with eviction by the owner of the land who was a white man called Swanepoel, that's why it was called Swanieville, and he had enlisted the assistance of the AWB, which at that time was very active. And we prepared an interdict to stop him and the AWB from carrying out this unlawful eviction. But the TPA stepped in and expropriated the land. So the next morning after finalising the court papers, we got a call from officials of the Transvaal Provincial Administration to say we've expropriated the land and then I got involved in the development process. And one of the leaders in Swanieville who I worked with was killed at his house, by faceless people. Likewise Ivory Park, just here north near Tembisa, one of the young men with whom we worked and who was a community leader...I can't remember his name now... it was Sunny Boy or Lucky Boy or something was killed by men wielding AK47s or machine guns. So there were those three. And Geoff Budlender can tell you about another one at Oukasie, Brits which happened earlier in 1988. That was David Modimeng. I just think that it was a pretty traumatic period. I think that one was living under a degree of stress and trauma actually. And certainly from our own personal experiences of that part ...it was an extraordinary period.

Int It certainly sounds like it...

MH Yes, it certainly felt for me that way.

Int It certainly sounds to me that even though the 1980s were pretty horrific, the 1990s from that you've described, the work of the LRC hadn't really in any way changed with the release of Nelson Mandela and the unbannings.

MH I don't think so. I think that in fact the Inkatha ANC war intensified after that. And I think that a lot of our clients were caught in that situation. But again one doesn't

know these things. One is talking about things, which happened but you're not quite sure why they happened. Because it hasn't actually been revealed.

Int And that's what I was curious about, how much of this has come to light within the TRC Hearing?

MH I think very little of it. I'm not aware that the killing for example of Prince Mhlambi has ever been resolved in any way whatsoever. I'm not aware of it. Or...you know, the killings at that level by faceless people. The death of community activists.

Int So...starting in 1988 when you started in the LRC, how did you come to begin working at the LRC? You'd been working at Webber, I think...?

MH Mmm. Well, through the 1980s I became more and more involved in various human rights issues, detainees, represented a lot of detainees.

Int And this was at Webber...?

MH At Webber Wentzel.

Int And was it pro bono work?

MH Yes, it was pro bono work. I think I was co-ordinating the pro bono work. I was in the mining department there. But it became an issue of, you know, how do you respond to what was going on in South Africa at the time? And it was a pretty big decision for me to take; it was a difficult decision to take.

Int To move?

MH To move. It really was.

Int What was the impetus, do you think, for you to leave?

MH Well I believe it was my own conviction. It was just the right thing to do. That you live once, the country's on...in a State of Emergency, and what do you do about it? Are you just going to continue with business as usual, or are you going to actually do something as constructive as you can if the opportunity arises? That's the way I saw it.

Int Did you see the LRC as a constructive move in that way?

MH Oh, definitely, yes.

- Int ... Do you think it was the type of work the LRC was doing, the people involved...what are the decisions that led you to actually move? I'm just wondering what the motivations were?
- MH Well I think that...I mean, I think that the rule of law is a very important thing. And I think that in the 1980s everything was coming to a head. And one had to, to the extent possible, assert the law in that context. And to me that was a very important thing to do. Because...you know...apartheid was unjust, one had to deal with that. But we also had to look at the future. What sort of future were we going to have? Both from a selfish point of view and from a point of view of the country as a whole. And I felt, I think, that in some small way, if one was able to assert the rule of law under those conditions, it might have a long term beneficial impact for the country. And I mean the LRC I think was founded basically to assert the rule of law as much as to fight an unjust system. It's part and parcel of it. I think that that was very much at the heart of the vision of what the LRC was. And because the outcome of a revolution can also be grim, you know, unless it's tempered by things like the rule of law. And we've been very fortunate in that regard. Because outcomes of revolutions can sometimes be worse than the system overthrown in one way or another. So obviously the country was in a very precarious state. The ruling party had ignored and...the then ruling party had completely ignored and held up to ridicule and contempt every value which might, you know, secure at least a reasonable future for most people in the country. So how does one respond to that?
- Int You'd already been involved, having worked for the LRC from time to time so clearly you were familiar with people such as Arthur (Chaskalson) and Geoff (Budlender) and others...?
- MH I didn't know them very well. No, I didn't know them well at all. I didn't really know them, I'd met Geoff (Budlender). As I say, apart from the LRC I was involved in other activities, so I didn't know the LRC people particularly well. I think what happened was that a friend of mine, from Webber Wentzel, moved to the LRC. And that played a big role in my decision to come across.
- Int And Webber Wentzel was the head of the company you worked for?
- MH Webber Wentzel was the legal firm that I worked for. And which I've now gone back to because they asked me to come back to head up their CSI department in 2003.
- Int The CSI being?
- MH Corporate Social Investment. And we started a...Pro Bono Department. So I continued to do the same work with the same kinds of clients, which is nice.

Int In terms of the legal work, by about 1994 do you think there was a turnaround in terms of the type of legal cases you were taking on within the LRC?

MH There was and there wasn't. Because...well, the one big turnaround for me of course was that I was earmarked to do land restitution claims. So that was a totally new area of work, which predominated my life in researching and lodging those claims. So through that period I was very busy doing that. But...you know, I think that the housing crisis is huge. When one considers the number of, even now, there are probably two hundred thousand households living in shacks in Johannesburg alone. I mean, it's staggering actually. It's an amazing...I remember, I think it was in April 1994, there was a so-called Botshabelo conference on housing. And where the ANC had said, look, we'll build a million houses in a year. Or was it five years? I can't remember.

Int It was five, I think.

MH And they had said, as a kind of compact or accord, there should be no more land invasions, because obviously homeless people in the urban areas were, and continue, to invade carefully target land I believe...although we didn't know it then but I think it's true...target and invade land and establish shacks. Although every single informal settlement has a different history. There is a particular history, you can't just say it's land invasion only. There are various factors going up to make an informal settlement. Most of the work that I do now is in informal settlements. And I remember that by...by the latter half of '95, people were saying, where are the million houses? And the sort of groups who were at ground level and involved with the homeless were beginning to raise their voice and beginning to express their dissatisfaction. And then in late '95 there was a rush of land invasions around Johannesburg. And the new government came in very hard, didn't, as the apartheid government would have done, just brought in the bulldozers and the police and the whips and driven them off and knocked the shacks down. They brought eviction applications. And these people arrived at our office en masse at the LRC in Pritchard Street. And we were faced with quite a decision. Do we actually represent them? Because they were land invaders and, you know, we had sort of...although we weren't the attorneys for the ANC, some of our senior legal people here had represented ANC in fact, and some of their leaders, etc, and here you were dealing with land invaders under an ANC government. And we decided to take the cases. And I'm glad we did. And we fought them. And we were actually successful in helping to...and it got to the point where...in fact I was asked to come into the ANC provincial caucus to help them over a period of three months on a Monday afternoon...probably this is another secret, but I don't know...but to help them to formulate a housing policy, which is still not perfect. But...so in a way, the kinds of cases didn't change because the basic problems that the people faced were still the same. And although the new government would have had a more...in many cases, a more constructive and pro-active approach, and that was fundamentally different, very often the same problems arose and very often, you know, people at the lowest end of the socio-economic spectrum found themselves still up against it. So in a way the cases didn't completely change.

Int Yes.... What was interesting...

MH But the context changed.

Int The context exactly.

MH Yes. And we had more legal ammunition because of the Constitution and the new legal framework, which had been established by the new government. Or which were in the process of being established by them.

Int But this having to almost change track, is so interesting, the way the LRC and the staff within it, people like you, had to change track. That must have taken a considerable amount of adaptation in a matter of .... I would say.

MH It did. No, we had to rethink carefully. I remember that we were at our annual conference at the time of the April election of 1994, and of course I remember that the results were coming and we were sitting in our conference and the results being flashed up on the board or something like that, as the results of the election came in. So we had that conference just at the time of the first democratic election. And obviously that conference, I remember it was quite a...having to make strategic decisions about the future of the LRC.

Int And what were some of the understanding about that, in terms of the rule of law and in terms of the actual association, as you said, people had been quite heavily involved with the ANC and representing the ANC?

MH I think that people like George (Bizos) and Arthur (Chaskalson) who had represented the ANC, maybe the leaders of the ANC, I think that fundamentally they...and I might be quite wrong...their primary loyalty is to the rule of law, I would say. That to them is paramount thing. I think that they made it quite clear in fact also...even in a joking fashion to leaders in the ANC. Better watch out for us, you know. Because we're not going to stop our role.

Int Interesting. So since '94, you worked at the LRC till 2003, what were some of the important cases you took on and also important changes within the LRC?

MH Well, I think that those urban cases we did in late '95, early '96, were quite important cases.

Int The housing...?

MH The housing cases. Where it did certainly...those evictions just didn't take place, in fact what the provincial government did was to make alternative land available for those people, which is in fact the first time that it happened. And that was a major change. So I think that those were important cases. And it's certainly a lesson to an

important interaction with the government at the time. I think that the other important cases really for me mostly through that period related to land restitution cases, various cases around land restitution, which were important. Getting the claims lodged and getting some of them through the court, to the point of settlement. So I mean, for me the Makuleke case was very important. Another important case which I was involved in where I was the attorney was in the challenge: the Transvaal Agricultural Union brought a general challenge to just about every single practice of the Land Claims Commission. Every single policy and practice saying it was unlawful and unconstitutional. Quite a lot of our cases were implicated there in that. And so we came in acting as *amicus* for the National Land Committee, which was then the umbrella body before it was closed down for lack of funding, I think, or whatever reason, of the umbrella body for most of the main land activist NGOs. So that was an important case which went to the Supreme Court of Appeal and the Land Claims Commission was upheld. And we played a role in that litigation; I think that was an important case. Land claims, those housing cases in '95...I would say that those were the most important cases at the time for me that I was involved in. And I think that there was a fairly solid record of achievement there, although, you know, one is now dealing at Webber Wentzel, I'm very glad not to be doing rural work anymore because it was pretty exhausting, travelling all the time, virtually every week, often, into the rural areas. I'm glad not to be doing that anymore, but you do find quite a few cases come...I've got a number of cases on my desk now concerning land reform...we have one case of a highly successful communal property association to which land has been restored and we do their commercial work, which is not insignificant. That's the Makuleke community. There are others where the communal property associations have become dysfunctional and we're involved in trying to sort those out. So we're into a second phase of land reform issues, which I've got on my desk right now. But also, maybe just talking about the work I'm doing now, and some of it in fact is in collaboration with the LRC in one way or another, is around the housing policy of the government. Around issues such as, you know, the fact that in the inner city until now official policy has been that there is no place for the poor in the inner city. We've challenged that – I think the inner city government have accepted that they're wrong, and they're now beginning to make plans towards the accommodation of poor people in the inner city, but we're waiting for a judgement of the Constitutional Court on that question, on the constitutionality of their program, or lack of program, for the very poor living in the inner city, who can't afford any prevailing rate of rental whether it's subsidized or commercial. But the city is now moving to remedy that gap before the Constitutional Court has even spoken. We'll wait for that judgement. LRC is in that matter. I act for the occupants of one of the buildings in that matter. So there are various housing issues which...and that and also the issue of the informal settlements in terms of the Chapter 13 of the Housing Code, which was published in the September 2004: informal settlements should be upgraded *in situ* where they are if at all feasible. That issue is very much on the boil as to whether in fact that policy has been properly implemented or whether in fact people continue just to be relocated to the farthest flung parts of the municipal boundary. Linked to that is the issue of urban sprawl, is the city actually densifying appropriately in order to bring people as close to the city as possible? That's a goal of the Housing Act itself and a number of policies, so one wonders whether it's been properly implemented. So there are a number of issues around implementation of housing policy, which poor people are unhappy with, and which their organisations are quite active in articulating. I'm getting a bit sidetracked. So that's how the work

has kind of developed I think. And I've continued much of it where I am now. In regard to the changes in the LRC...I think that's an issue, which has got various factors to it. One factor is, is that in '94, or around '94, a lot of people left the LRC to go into either the judiciary or into government. You know, you think of Arthur Chaskalson who went to the Constitutional Court, Mohamed Navsa went to the Transvaal Provincial Division, Geoff Budlender went to the Department of Land Affairs, Thandi Orleyn to the Independent Mediation Service of South Africa...just from the Johannesburg office. So, a lot of senior people left. And they left people like me, you know, now being so-called senior people around the place. So that was a big change. I think...and one of the biggest...the issue of race in the LRC also...um...it was also part of the trauma of the LRC, internally. The issue of how do I deal with...the feeling amongst black lawyers that they...I'm not quite sure how I put it, I guess they might have spoken to you about this, I don't know if they have. But that they were...if not discriminated against that they were working in an organisation, which was predominantly white and controlled by white people, from the Trustees on down. That had to be dealt with. Many of those were very bruising encounters.

Int Really. When did those really start? Did they start in the late eighties?

MH I think they started in the late eighties. When I came here they were very much in full swing. I think of the first staff meeting as a staff member that was hot on the agenda. So that was very much an issue. A lot of those were bruising encounters and I think that in retrospect...I can only say that in retrospect, thank heavens there is now legislation dealing with these kinds of issues, you know, in which you can have a structured debate. The new laws dealing with employment equity provide a legal structure and context in which one can work these things out. In those days of course, in the LRC, there were no such structures. I think that that made the conversation more difficult. And it was a conversation, a dialogue, which was happening in places like the LRC, very, very strongly.

Int It certainly is a dilemma in that the LRC which may from certain quarters be regarded ... as a predominantly white institution with white lawyers and white Trustees, the dilemma really in the early eighties, even though you weren't involved, I'm sure you can relate to this, was finding good black lawyers to be within the LRC and furthermore also the initiative of the Fellows program was a step towards...in that direction. Would you say that's fair?

MH That's absolutely fair. Undoubtedly that is true. I mean, that is also...I just...I'm not...and the Trustees...if the Trustees had not been white, the LRC would simply not have survived. It was those white Trustees who'd been senior members of the legal profession, who shielded the LRC from various things, even being closed down as far as I understand. So, you know, they played a necessary and important role.

Int Well, clearly there's a counter argument to what I've just said...

MH Yes. I mean, there's a counter argument but it's just part of the development of the country, the way the country developed. I mean, um...you would probably find...you

would not have found at one point a sufficient weight of distinguished black lawyers to have been the Trustees. And even if there were maybe the government would have banned it anyway, you know. I mean people like Ismail Mohamed were on the board of Trustees from an early stage. But it was a very hot topic of discussion within the four walls of the office. I mean, it was a very rigorous and at times bruising debate, which was going on.

Int When you say they were bruising encounters, was that predominantly between black lawyers and white lawyers...?

MH Between black and white lawyers inside the office, yes. No, it was a fact. I think it was a fact, it was a tough debate, which went on inside the LRC. And, as I say, the only comment that I can have on it, at least now there are statutes in place which help to...which give context to these things, at least the legal context now makes it easier to deal with.

Int But then the dilemma then remains is, regardless of the race of lawyers in the current climate to really be...for the LRC to really attract good lawyers that seems to be a problem doesn't it?

MH Yes, yes. It is a problem.

Int Right. And what do you think are some of the reasons for that?

MH I think that the LRC was at one point certainly more able to attract people because of their conviction about matters. Because of what was going on in South Africa in the 1980s, in particular, and before. And I think that the commercial prospects these days are huge. I think that the commercial profession in the last ten years in South Africa has exploded in terms of its earning power, in terms of the opportunities for lawyers, black and white. I mean, I think that there's been astronomical growth, actually, in the commercial profession in this country in the last ten years. And I'm not quite sure why that is, I suppose it's linked to the fact that there's been pretty steady and strong rates of economic growth or something like that, no doubt. The country's become, I think a lot wealthier actually over the last ten years. So that the opportunities for lawyers in the commercial sector are great. And...maybe be the LRC, it's not so easy to attract people anymore.

Int It's interesting you mention that the LRC would not have survived had there not been such distinguished white lawyers on its Board during the eighties...

MH So I'm told. I mean, that's what Arthur (Chaskalson) says.

Int Sure. I'm wondering also whether in fact during the 1980s, and this is something you alluded to earlier in the interview... under apartheid Parliament was supreme and so the LRC from quite early in the eighties garnered some significant victories against



the apartheid state. What do you think were some of the factors that actually led to those victories not being overturned by Parliament?

MH Well I suppose it was South Africa's growing isolation during those years. The government was at least notionally committed to a program of reform, wasn't it? I mean, they were really...I just think of the...on the one hand they continued with their worst excesses in many ways, even with forced removals which they said they'd stopped. But they were so keen to prove to the world that forced removals had stopped that...and it's quite humorous but...what they had done in the Black Communities Development Act of 1984, which was in fact in the context of the time a kind of...what's the word I'm looking for... a measure of reform because it allowed for the first time for leaseholds to be issued to black people living in the urban areas, you know. Which is a form of real right in land, which was, you know, a departure from the pure apartheid concept that black people have no rights in land except in the homelands. In that also I think there was an amendment to that Act...that Act also provided for the disestablishment and removal of...oh yes...I'm not quite sure whether this is pertinent but it provided for the disestablishment of townships, which is a normal thing, sometimes townships must be disestablished and relocated. Now in their haste to prove to the world that they were no longer in favour of forced removals, they repealed the section, which upon disestablishment of a township made provision for the subsequent removal and relocation of the people. So they were obviously trying at that time to show that in fact reform was happening, that they were moving away from apartheid. And therefore in that context, in that political context, I suppose it would have been quite difficult for them to have tried to turn back something like the Rikhoto decision by legislative means. After all, in 1986 they abolished influx control; some two or three years after the Rikhoto decision. So that at least there was the beginning of a move towards a reform of the apartheid system. So that they were no longer as committed I think, to the hard apartheid, the strict separation philosophy.

Int I'm wondering also whether...

MH In the Brits case when they tried to remove Oukasie, after the disestablishment of Oukasie, they were suddenly struck with this dilemma, how do we move them? Because they had repealed the section that provided for removal and relocation, after disestablishment. So they tried other means to remove the people through the Prevention of Illegal Squatting Act (laughs). So that on the one hand they were trying to show the world they were reforming, on the other, underneath the table, they were still trying to do the same thing in many instances but by other means...they would use another piece of legislation. In the Brits case the court found therefore that the use of the Prevention of Illegal Squatting Act was improper and illegal. They were stopped.

Int When you joined the LRC, it was a crucial period really, because it was transition... But also as you mentioned, key people started leaving by 1994 to join government, etc, and so there was this change in leadership. And I'm wondering also in terms of funding, were there problems with funding at that point?

- MH No. As far as I know the funding remained pretty strong.
- Int At what point did funding become an issue for the LRC do you think?
- MH I think in the early parts of the current decade.
- Int Right, so around 2000?
- MH 2000, 2001, 2002. I think that's when it began to tighten.
- Int And what do you think the reasons for that have been?
- MH I think that there was an internal reason and an external reason. I think the internal reason was that the funding office was in a pretty good shape. Then some key people left in about 2001, I think, or 2002. And I think that that led to a...although I left quite soon after that. I think that that undoubtedly created a problem. And an environment where maybe funding was becoming more difficult.
- Int And externally? Do you think...?
- MH Well, I think external funding was becoming more difficult, as I understand it. And internal funding even more difficult still.
- Int Right, ok. You know, one of the interesting things is that even though, certainly from people I've interviewed abroad, the LRC is regarded as the greatest public interest law organisation in the world. I'm wondering whether within South Africa, in the legal fraternity as well as corporate organisations, whether there's been this kind of acknowledgement of the role of the LRC and whether that's tied itself to...sources of funding?
- MH I don't think that there is. One of the things which amazed me when I started my new job at Webber Wentzel, is I recall there were some people who didn't even know what the LRC was. And these are lawyers practising in Johannesburg. So I think that there's a low level of appreciation in the legal profession, whereas you would have expected it to be high in this country. Because I think that for the majority of lawyers in this country, quite frankly, it's pretty much been business as usual, you know, with the odd exception. Very conservative. So I don't think that...I don't see it racially... I don't mean in a racial sense but in a very conservative kind of...you know, law as a business, whatever. And yes, I'm amazed actually that internally...I don't think, certainly the legal profession, the LRC, has the reputation which it deserves. I don't think it does.

Int So looking back at your quite long period of work at the LRC, I'm wondering what were some of the... besides the wonderful cases you actually worked on, I'm wondering what were other organisational issues that you felt were really causes of concern within the LRC?

MH I mean, to me the main organisational issue, the main problem always, was the tension between focused work on particular issues and responding to the front desk. It's probably been said to you before by others. But it was a source of considerable difficulty you know, I believe that in fact we worked under great pressure we worked incredibly hard at the LRC. The demands on us were tremendous. You know, on the one hand you had particular focused issues, which required an enormous amount of your time. Whether it was in regard to land or whatever. On the other hand you had the unending stream of people coming in through the front desk with acute problems. And to balance up these things was not easy. So to retain a focus on certain things which one felt had had a real...a big impact publicly, dealing with individual issues on the other, this was a constant source of difficulty in ones own working life, in balancing these things. And so I do say therefore that we worked under conditions, which were extremely demanding. I mean, the Legal Aid Board was a joke in the early years. It didn't assist anybody. The LRC was really, just about, the only body giving people legal services, on any scale at all. And I think that the other more specialised human rights groups which have sprung up and which now provide services, that's all been relatively quite recent. Organisations like the Women's Legal Centre. I think that's a very new organisation established in the last ten years. The Legal Aid Board has become revamped in the last ten years. So I think that the stresses...and during that period the LRC was well funded and it was big. It was a big organisation, it had a lot of lawyers. Maybe 40 lawyers. But during those years the demands on us were very great I believe, and we worked unbelievably hard. what am I trying to say?

Int Well, we're talking really about some of the areas of dilemma organisationally...

MH That was the organisation dilemma.

Int The focus areas as well as the specific... the general...

MH And I don't think that it was...I think that it wasn't sustainable. And also unfortunately, this division between the so-called...in the Johannesburg office anyway...between the so-called impact work and the dealing with people coming through the front desk, it also became a point of, if not division, but of...it became part of the debate around race...and inside the office. Maybe I'm saying something, which is very bad. But you know, I mean, I do think that there were some black lawyers who thought, it's the white people who want to do the impact work, and they don't want to do the individual cases. They're not interested in the ordinary individual who comes in. So that was also a point of internal stress. It was part of the race issue in terms of the professional composition of this office.

Int So there was this sort of sense that the high impact work, the work that was really interesting and taking on legislative change was really directed at senior and white...?

MH I think there was that feeling. Yes.

Int Was that resolved in any way?

MH No, I don't really think so. I don't really think it ever was resolved. I think the matters had been left unresolved.

Int I'm also wondering, at the time that you were involved at the LRC, as you said it was a large organisation, it had quite a few centres and lots of staff, I'm wondering also whether that was also a source of stress in terms of levels of communication across regional centres with different Regional Directors, or you think that worked? I'm not quite sure, I'm just wondering what your experience was?

MH I think it worked reasonably well.

Int Would you attribute that to National Director leadership within Johannesburg office or would you say that it was just a consequence of each Regional Director taking on...?

MH Partly that. And I think the regional directors also. You know, running their offices quite well. I think so.

Int One of the things I'd like to actually talk about was that you brought up the issue of the fact that there have been recently in the past decade or so, new sources of legal assistance, certainly in Johannesburg. And I'm wondering whether that then poses a dilemma for the LRC in terms of people coming through the door, and also there not being sufficient understanding, certainly in the wider legal community of what specifically the LRC's mandate is? Do you think that's an issue?

MH I think it does. I think it does. And I think that it simply means that the LRC...the LRC has got certain strengths in certain areas, and my view that they need to concentrate on those.

Int What would those areas be?

MH Land. Particularly rural land reform. And perhaps environment. The Constitutional Litigation Unit. But I would think that the fundamental strength of the LRC is in the area of land reform. Today. That's how it developed. In terms of damages claims against the police, I can tell you now that the best place to go is not the LRC, in Johannesburg, it's another place. It's the Wits Law Clinic. The Wits Law Clinic is very strong in that area. I think that the LRC is suffering as a result of its failure to

grasp the nettle of exactly where it stands in this new context, where you've got new organisations coming up providing a legal service. I don't think that the LRC is any longer the leading organisation in housing in Johannesburg. Simply isn't. CALS is. I think that they've lost a degree of ground because of a failure to look squarely at what's happening around them and to say, right, we'll concentrate on this. And they've got such obvious strengths and they're still there; you only have to look at the law reports to see that the LRC is streets ahead on issues of land reform.

Int What then happens, is that not a dilemma in terms of the general cases that come through the door?

MH It is a dilemma. Because I can tell you that doing land reform work myself here, that it's tough work, it's very demanding, and that to have to be doing at the same time any and every case that comes in the front door, is difficult.

Int In terms of the Constitutional Litigation Unit, when you were here...it sort of started around '95 if I'm not mistaken?

MH I think it was set up at that meeting, the year of '94, when the elections took place, it was established. As was the Land Reform Unit established at that meeting.

Int And do you think that works, the Constitutional Litigation Unit, in an organisation that where cases obviously overlap in terms of constitutional issues?

MH I think it does work, yes. I think it does help to have a focus for some of the bigger cases. If one looks at the challenge to the Communal Land Rights Act, which I'm involved in because I'm attorney to one of the applicants, the Makuleke. The CLU has played an indispensable role in co-ordinating that case.

Int In terms of...reflecting on your experiences, you've obviously had a long illustrious legal career, doing a lot of human rights work. So the LRC was not in any way kind of unusual for you. But I'm just wondering in that period, more than ten year period, if you had to reflect on some of the memories and the stories and your experiences, and certainly you've spoken about how difficult your entry was, I'm just wondering what the rest of the time was like, besides hard work?

MH I think that we had strong friendships, that's what I can remember. I look back on the LRC with a great deal of affection. You know, it was like my home, actually. Second home. So, you know, I look back on it with enormous affection. At the same time, you know, it was quite a hurtful place to be at times. But... there are some very strong friendships that one has developed in this place. Even if one hardly ever sees the people anymore.

Int When you say...at the same time it was a very hurtful place, was that the bruising encounters you spoke about, or...?

- MH It was partly those bruising encounters, which I spoke about. Those were very difficult to deal with. It was mainly that in fact. It was never easy that side of things.
- Int Yet at the same time you obviously had very strong friendships with black lawyers as well.
- MH Absolutely. Very strong friendships indeed, you know. But at the same time, you know, interlaced with some really hard talk about certain issues. But at the same time ones friendships were very deep.
- Int So what was your decision to leave the LRC in 2003?
- MH Well, frankly it was partly money, with a growing family on an LRC salary, I tell you, I was actually about to go broke. By getting this new job it has averted that immediate prospect. Because I am paid more. So that was not unimportant to me and it came out of the blue this request. Plus the fact that I could continue to do the work. And it meant I returned to the place I had started my working life. I suppose at the end of the day, the fact that I could continue to do the work for more money was quite important because I needed it. My eldest daughter is now just finishing third year at Wits. I don't know how...and I said it before...how on an LRC salary can one maintain, with a growing family, middle class lifestyle? I think it becomes really difficult. And I think that's also a fundamental problem for the LRC. I really think so.
- Int When I interviewed Felicia Kentridge she did say that when they started employing lawyers right at the beginning the understanding was that they would pay them the best wage possible. Clearly that seems to have sort of stopped or was not continued, that tradition. Or is that because the wider legal profession has now had exorbitant increases?
- MH I think the wider legal profession has absolutely gone ahead in an incredible way. And incomes have risen dramatically. And I have some insight into that, of course it's all confidential but I can tell you that I've seen the graphs. What's happened to the legal profession in this city in the last ten years, I mean, it was going along like that, in '96, '97, quite flat it suddenly goes like that (illustrations of increase using gestures).
- Int Gosh. How did that absolute huge increase...?
- MH I don't know! I don't know what happened. All I can think of is that, South Africa came back into the international community economically, and in fact, you know, the one or two percent economic, or nought percent economic growth rates which had been happening in the 1980s, going through the early 1990s, kept income flat. Suddenly those three or four, maybe five percent at best, but just the four percent economic growth rate on say, average over a period of ten years, has taken incomes

through the roof. That's all I can think. Because it is flat, then suddenly in about '97, '98, it just goes into a step upward curve. The earnings of lawyers in this city.

Int And is that predominantly Commercial Law?

MH *nods...*

Int Right.

MH And litigation. And the LRC has continued at that flat trajectory I think. But also I do think that, with a growing family, as I think of the LRC lawyers, even the older ones who have very young families, people like Steve Kahanovitz, their kids are young...his kids are young. Kobus Pienaar. Mohamed Navsa with a young growing family had actually left the LRC by the mid 1990s. His family is more or less the age of my family. And others too. A lot of them left actually. Some of them who had growing families at that time were leaving and going elsewhere. So that by the time with my family in their teens and now up into the early twenties, I was going downhill fast financially, I think that was fundamentally why I moved.

Int You've been extremely fortunate in that you got a job..., which allows you to do the kind of work you're really interested in?

MH Well, I'm very fortunate. Very fortunate.

Int So what is your association, if any, with the LRC now since you've been working at Webber Wentzel?

MH I continue to do certain cases in collaboration with them. I'm working with Kobus Pienaar right now on the Khomani San matter in the Northern Cape where they've had land returned to them. But there are problems inside the Communal Property Association. It's a very complex history actually, but hopefully with Kobus' (Pienaar) help, and we're working very much together on the matter, we're moving towards sorting that out. And it's quite an important case because it's the San land claim, and it's become a bit problematic. They got a lot of land back in 1998, but for various reasons it has perhaps not worked as well as it should. But hopefully with quite an intensive process of discussion with the Department of Land Affairs and with Kobus' (Pienaar) help from the LRC, which has been absolutely huge, we might be getting it back on track. And I'm working on that matter and the Communal Land Rights Act case, the challenge to the Constitutionality of the Communal Land Rights Act. So I'm still working quite closely on a number of matters with the LRC.

Int In terms of the rule of law under transition, I'm just wondering what have been the key issues and dilemmas and how the Constitution, in a way, has impacted on that?

- MH I think it's been very good, and I think that on the whole it's worked pretty well. Because the Constitution was the outcome of a very intense negotiation process, involving all the main actors. And they came out of it, all of them fortunately, reasonably well satisfied, I think. And that therefore it's been able to be the background of dealing with socio-economic issues, fairly constructively. And also other constitutional issues, so I think it's served pretty well, the Constitution. Hope that answers your question.
- Int Yes, it does in a way...
- MH In a kind of way.
- Int Yes. Also in a way....I'm also wondering in terms of...certainly when you look at South Africa in the past ten years, thirteen years of transition really, what are you finding are...the issues where the legal profession could be extremely useful?
- MH Well there are so many issues, which need to be dealt with.
- Int I mean, certainly land seems to be one of the most urgent.
- MH Undoubtedly it's urgent. But if you look at family law issues, the need for a whole range of services in that regard is also important. This new organisation ProBono.Org, which was set up by Odette Geldenhuys who was the Deputy Director here at the LRC, is playing a significant role. They've got a project going for family law issues, which is mainly involving smaller firms of attorneys in dealing with family law issues on a pro bono basis. So there are so many things, which need an intervention. So the legal profession can play very important constructive roles.
- Int One of the things that certainly is my sense from doing these interviews, and correct me if I'm wrong, is that the LRC was really at the forefront of public interest law in South Africa. Would you say that's an accurate statement and would you elaborate on that?
- MH It certainly has been at the forefront. And it still is at the forefront in a number of very important areas. Particularly around land reform and constitutional litigation. I think traditional authority issues also to a degree, which is linked to land reform. And I think housing. Certainly in regard to those couple of very important issues, it has been at the forefront. There are other important cases too. Although. There are other organisations on gender equality issues or HIV-Aids, which I think have come to the fore, like the Women's Legal Centre and Aids Law Project, the LRC's role cannot be underestimated on virtually any front actually. Up to this point it still is probably the leading public interest law firm in the country.



Int If you had to just project a little bit into the future, I'm wondering what you think would be the key sources of concern for the LRC in terms of how it continues to operate?

MH I think that it needs to look at those fundamental places of strength which it has, and also if it can provide a first class Constitutional Litigation Unit service generally. The idea was that you'd have top advocates and people in there and that they would be a source of expertise to which other people might come, to which other organisations, might come in respect of constitutional litigation. I would have thought that that may be an important strategic objective. But, to find that level of person may be very difficult. You had people who were prepared to do it in the early stages of democracy, but it becomes increasingly difficult to justify making the kind of sacrifice that one does financially in working at the LRC. I don't know. But what it means then to me is that the LRC needs to build on those fundamental areas of strength, which it has. And to protect the lawyers doing that work. To make sure that they're looked after.

Int When you say looked after, you mean financially?

MH Financially and guard against them having too much work stress. Looking after them, in that overall sense. Because I just think that we work too hard, frankly. To the point of almost personal detriment in fact. One was over-tired all the time working at the LRC. And I don't think that that was properly handled, frankly. I don't think that, the powers that be realised that people worked very, very hard. You need to keep your good people in cotton wool to a degree. Looking after them a little bit like that.

Int Do you think that, certainly the commercial firms or the corporate world of law, do you think that being in that environment while doing pro bono work is a better environment for being looked after as such?

MH Yes, it is. Because I'm being given the freedom to look after myself and to do it the way that I want to. So I've been able to look after myself better, yes. Than I did at the LRC. And I'm not as tired as I was at the LRC.

Int (laughs) That's a good thing, Moray. I'm wondering....I've asked you a whole range of questions, but I'm wondering whether I've neglected to ask you things that you think are really fundamentally important to this interview, and certainly I wouldn't mind if you share any sort of particular story or memory you think would be....?

MH Well, we had some wonderful times. We had great times. Ilse (Wilson) and Aninka (Claassens) and them when we were down there in Driefontein. Always had a bit too much to drink on the second night of our clinic. The most awful possible brandy which Aninka (Claassens) used to buy. I think also some of the people that we got to know in the client communities. Those were great relationships. I think I should mention Mr Zwane who became a very good, close friend of mine, who worked down and he lived in Amsterdam. He used to refer a lot of labour tenant cases to us.

Int Where did he live...?

MH He lived in Amsterdam, which is on the Swaziland border. In fact I used to stay at his house a lot, you know, when I was doing cases down there in the courts. Because I was told that...they said to me: you shouldn't go and stay in the hotel because they'll bug your room. So I used to go and stay at his house. That probably made the Security Police, if they were interested in me, even more interested because only years later when I came to do Mr Zwane's application for a Special Pension, did I realise that all the time that I was working, living, staying in his house and doing labour tenant cases that he (laughs) was one of the MK operatives in the area. (laughter) He didn't ever tell us that. He was a very disciplined man. And so if anybody else in this organisation knew that, I didn't know, I can tell you, until it was disclosed to me years later. But I mean, getting to know him was great. I mean, I remember when I first met him. I'd gone down with Aninka (Claassens) and Ilse (Wilson) I think, to do a case at Sheepmoor, which is a little village in the area. And when they saw me this lawyer from Jo'burg in the first case I did there, when I walked into the courts they just withdrew all the charges and the men were released. And I must say, I'd walked in there and I'd seen these woebegone people who'd been obviously sitting in police cells and waiting for trial just because they were trespassing, because they were labour tenants refusing to get off the land, on which they'd lived for generations. They were out. So obviously, my first introduction to Amsterdam and Driefontein was triumphant. I felt obliged, you know, because my father had been a farmer, and I said to old Mr Zwane: you know, I want you to know that I'm coming here to represent the farm workers but, you know, my father was a farmer. And he said to me: it takes a piece of the old riem to tether the bull, (laughter) which was great. So he put me completely at ease and from then we became very, very great friends actually, and he was a remarkable man. And so on my first visit to Amsterdam I remember going into the room, with all the clients waiting to see us at the clinic there, and I was given a huge round of applause because obviously this story had infiltrated around the place pretty quickly. So those kinds of things, you know, one can think back on.

Int Thank you so much, Moray, for sharing a very wonderful, rather remarkable and thoughtful interview. I really appreciate it.

MH Thanks for the opportunity.

## Second Interview: 8th July 2008

Int This is the second interview with Moray Hathorn and it's the 8<sup>th</sup> of July (2008) in the afternoon. Moray, thank you ever so much for again giving of your time so generously to be part of the LRC Oral History Project and I said this before the interview started, which was, you were wondering why I was wanting to interview you again. And it really is because having...gone through and listened through all the interviews and I've done more than 40 in South Africa and of course more in the U.S., I really felt that your interview was so...in some ways everyone has been candid but yours really kind of went to the heart of the matter as such, and so for me it really resonates as the best interview that I have felt we've done. And I felt that it was rushed last time and I really wanted to pick up where we'd left off and go through some of the issues you'd raised and perhaps in more detail. I'm also very pleased that you invited me to Webber Wentzel because I can see how the other half lives (laughs). And so, I'm sitting in these rather plush surroundings and I'm very aware that you do the same kind of work, so I'm going to keep that in mind. I wondered whether we could really start the interview by picking up where we left off in terms of some of the issues you'd raised. And I don't really want to go back into early childhood etc, but what I'd like to do is, you brought up something, two or three times, in the early part of the interview last time, which was the Surplus Peoples Report, and it seemed to me that it resonated for you, as some kind of critical turning point in terms of your conscientisation and, perhaps not politicisation, but really in terms of the kind of work or awareness that you wanted to develop further. I wondered whether you could talk a bit about the Surplus Peoples Project and report, simply because...for an audience that's much more global, it would give them a sense of what that is.

MH Of course. That report documented, I think for the first time really in a comprehensive way, the forced removals that had taken place during the apartheid system, which had probably been at their height through the 1950s and '60s. So I must say I wish I could remember when that report began to come out. I don't remember that. But I remember it as being an important part, of beginning to understand that things were not good in South Africa.

Int In terms of what that report detailed, I'm wondering...how that influenced you, if you could talk a bit about that...what the report.... Really...gave you a sense of?

MH Well, I think that there was a myth amongst white South Africans that the system of racial domination was for the benefit of the country. There were different ideologies of white domination. There was the National Party ideology, which was of strict separation. I suppose there was another ideology which proposed a sort of gradual assimilation of black people into a dominant white or western culture if you like and that ultimately there would be democracy in South Africa but it was too early now for the benefit of the country. Those are the kinds of, I think, two of the main strands of white thinking. And...I think what...no doubt the 1976 riots were a wake-up call, but I think that what actually began to speak to me, that in fact the system was not in any

way benign, it might have been benign in some ways, but in certain fundamental ways was not benign, was when the history of the forced removals began to be publicised. In my recollection of those times it was the Surplus Peoples Project, which was key component of that. I'm a bit confused though in my own mind about precisely when that was. Also as I think I said in my first interview, getting involved in the Group Areas cases, that was in 1980/81, also that was a direct indication to me that indeed it was not benign...this whole system was not benign.

Int ... I'm also aware that you actually started that 1980s cases not at the LRC but really at the Webber Wentzel with Gilbert Marcus, and I wondered whether you could talk a bit about those cases?

MH Yes. Well...those cases were...I might have spoken about this last time ... but I think that really it was Lawyers for Human Rights and John Dugard in fact, I think wearing the Lawyers for Human Rights cap at that point, although at the time he was also, as I recall, head of CALS which had recently been formed, which co-ordinated that work.

Int That's quite right, yes.

MH So they were...I think that landlords had begun at that point to rent properties in Hillbrow, to Indian, and coloured people, but not to black African people at that point. I think that was just a step too far for anybody to consider at the time. And those tenants came under pressure for eviction and the Group Areas Act was applied pretty vigorously, from about 1979, 1980/81. And it was really through Gilbert Marcus' influence that we played a role in that and I became quite involved in representing people in the course of those prosecutions. I think that was 1980 I can't remember I think it was 1980 actually when it all started.

Int Yes, I think you mentioned...yes, you said between 1980 and 1981, that's what you mentioned. And I remember you mentioned two cases, Mr Clayton and Mr Jacobs and outcomes of those cases.

MH That's right, yes.

Int And we didn't really get to discuss this because I think we discussed your reasons for resigning rather than what you did at the Industrial Aid Society, and from what I can gather from your interview, you really were heavily involved in the Industrial Aid Society...

MH I was.

Int ...I wonder whether you could talk a bit about the kinds of work you did...the tensions, the difficulties, but also maybe the rewards of being involved.

- MH Well, I became involved there in about 1981/82, also, worked there on weekends with a group of people, professional people who were interested. In fact the person who I think brought me into it was Clare Thompson; I think she did, through the church. We were members of the same church actually. So she brought me into that. I actually don't know what she's doing these days.
- Int Is she a member of the South African Council of Churches or...?
- MH No, I don't know that she was that but she...she was a labour consultant as I recall during those years. And...so this was...and I became involved there and I must say I worked there for years actually, and eventually got on to the Board. You know, we did just basic paralegal work for workers. It was really paralegal work. Things like...for really for non-unionised workers, for workers who didn't have union representation, dealing with basic issues of unemployment insurance claims, leave pay, you know, those kinds of fairly...
- Int Workmen's compensation.
- MH Workmen's compensation, that level of activity. And we would run those clinics on a Saturday, and we put a lot of time and effort into it. I mean, we were there most weeks...very, very many Saturdays for many years, during the 1980s.
- Int And then at some point you got onto the Board. And then how did your role then change or did it change?
- MH When I got on to the board, I became very much involved in the administration of the Industrial Aid Society. There were various people on that board. It was a long time ago. But...was it Claire Greesy?...Claire Greesy was on that Board. I wish I could be certain of her name I think she has a daughter called Barbara. Again my mind plays tricks on me (laughs), you know. She was a great person. And then Martin Monyela was on that board and Ellison Mohlabi was on that board. He was called Malume in fact, which means uncle. That was his nickname. Those were the board members that I can remember. And then I became Chairman of the Board and it took up a lot of my time. I was involved there a lot, because inevitably problems arose fairly often, you know, in relation to administration.
- Int I remember you saying in the previous interview that it wasn't a simple thing, it was quite a complex matter, the administration of the Industrial Aid Society.
- MH Well it was. I mean, you know, I remember, and I just wish that I could clearly remember...you know, I think that on one occasion the Industrial Aid Society was sued for failing to lodge a claim timeously. Things like that. And I remember once there was a serious defamation, which occurred, I think of Industrial Aid Society personnel by somebody. So one had to deal with that. There was the administration of fund-raising and we would meet and make sure that we were doing fund-raising, and

just the basic accounts and fund-raising. And then also those kinds of problems would arise quite often. That kind of crisis would be there and you had to deal with it.

Int It seems to me that you were doing labour work really, at the Industrial Aid Society and I'm wondering, given that Charles Nupen, Karel Tip, they all were at the LRC at the same time, how did that dovetail, because the LRC didn't want to have specifically a labour focus, but there were people there who were really interested in labour issues, so I'm wondering what the social context was, or the legal context as such in terms of referrals etc.

MH Sorry, Roxsana, in what way?

Int How did your work overlap the Industrial Aid Society and the LRC, did a relationship develop where you could actually refer on?

MH Possibly. Actually that just reminds me, the Industrial Aid Society did represent people in the various tribunals, which existed. Just one of the other things, which occurs to me, there was also a complaint that they had no legal right to do so. That was another of the kind of crisis, which came up, it just comes to mind. But there was no obvious relationship at that time as I recall with the Legal Resources Centre. By the time I got to the Legal Resources Centre, I had already been on that Board for some time and was chairman, so that I don't recall a...I must say, I don't recall a specific relationship during those years with the LRC, between the LRC and the Industrial Aid Society. There might have been referrals of course, one way or the other.

Int You also mentioned to me how when you started with the LRC, the tragic set of circumstances, but within that, you also I think worked very closely with Aninka Claassens and Ilse Wilson in Driefontein, and you became quite close in terms of the community as well. And I wondered whether you could talk a bit about that, the kinds of work you did, etc?

MH Yes. Well, I do not know if I recall I said it last time, but there is a report which is called "A Brutal Harvest – The Roots and Legitimation of violence on farms in South Africa", by Lauren Segal. Lauren (Segal) was with the Centre for the Study of Violence and Reconciliation. It was published by the Black Sash.

Int No, you didn't.

MH Did I not mention it? The report deals with quite a lot of the cases that we were dealing with. The south eastern Transvaal was having difficulties. To me it seemed like the...I think the Wild West is not the right thing, it was like the Deep South, you know, that kind of thing. That Mississippi Burning film to me rang bells, because...the number of times that farmers would get away with literally a rap on the wrist for killing a worker was significant. I mean, I think that report documents

probably ten cases of murders of that nature, where the farmers would literally get a fifty rand fine and be convicted of an assault. And so we would litigate those matters. We would make dependants' claims. And linked to that was the eviction of labour tenants. Those are the two main issues. Dealing with the labour tenants, opposing eviction and litigating in the magistrate's court and then on appeal to the High Court. Because those farm workers when they got a notice, those labour tenants, they resisted eviction...understandably so, because these were their ancestral homes. And we would litigate those matters. Those are the two main sources of...two main issues, which we dealt with. Ilse (Wilson) for example...you've probably interviewed her...she was dealing with other matters, such as for example, making sure that people got their ID documents, old age pensions, unemployment insurance issues. So Ilse (Wilson) was doing a lot of the kind of...at Driefontein in that clinic and at Amsterdam...the kind of paralegal work, which also we did at Industrial Aid Society. That basic level of protection. And just the problem of actually accessing it for people, Aninka (Claassens) had such a...always had a tremendous strategic view of things...and so we became involved also in negotiations with big land-owning companies such as NTE, which ultimately became part of MONDI, in regard to opposing evictions and with some success. Our cases led to serious negotiations with MONDI, for transfer of land to those workers, which was a tremendous breakthrough in the context of the times. And those were some of the main issues we dealt with. There were also township issues, the rents boycott issue, which was very much alive during the 1980s because it was such, I think, an important element of the struggle. I do not know to what extent it was but I believe it was. We dealt with litigation in that regard. I do not know if I mentioned it last time but we got a pretty good settlement ultimately for Kwathandeka Township of Amsterdam, in terms of which the Transvaal Provincial Administration agreed to, to write off the arrears, which had built up. And I sometimes wonder whether that was politically a good thing, whether the politicians liked it very much...the political people liked it because that settlement was a breach in a way of the passive resistance. I had a close friendship with Jotham Zwane the community activist of Kwathandeka, which I think I might have mentioned. That was a very close friendship. I think I might have mentioned I spoke at his funeral.

Int Could you talk about that aspect?

MH So his funeral was in about August...no, I think it was the year before last...yes it was about August of 2006 when he died. And he lived in the Amsterdam Township, Kwathandeka and he led the...well, he was really the primary community leader in Kwathandeka, and he had links with people on the farms, on the estates belonging to SAPPI and MONDI, in helping to organise resistance to attempted removals. He was a key figure. And farm workers would come to him when they had problems with either eviction or acts of violence or impoundment of cattle, etc. We became close friends, he was something of a father figure in a way to me and I do not know to what extent I spoke about him last time...

Int You spoke towards the end of the interview about a fond memory, and you were remembering that you went to court together and he'd said: it takes the old riem to

tether the bull or something to that effect. And you also mentioned that you hadn't known that he was an MK operative. That's the extent of it.

MH I didn't know he was an MK operative until he told me years later, in connection with his special pensions application. And...

Int You mentioned you spoke at his funeral.

MH I did speak at his funeral, yes.

Int That must have been very moving considering that he'd become like a father figure for you...

MH Absolutely. Yes..., we went through many things together. I used to stay at his home and so we really did have a close relationship. A very much first-hand sort of experience of, you know, of the sort of minutiae of rural oppression, which I came to understand and to work with. Very largely as a result of him. Other people who had close relations of course were at Driefontein, particularly Beauty Mkhize and Yunus Cajee and his wife, Mesh. I don't know if I mentioned that last time.

Int You mentioned that Yunus Cajee had informed you about the farmer's plot.

MH Oh yes, he did. That's right he did. You know, all of these people were very much involved in the struggle at grassroots level. I wouldn't want to speak for them as to what they were involved in. They were the objects of various rather terrifying activities against them by the farmers.

Int And you mentioned Beauty Mkhize.

MH Beauty (Mkhize), yes. Of course her husband Saul (Mkhize) was assassinated in the mid 1980s. And we used to stay at her home. But those were occasions of great fun actually, staying at her home. We'd always sleep at her house, we would get up very early in the morning, I think Ilse (Wilson) would pick me up at my house – we generally drove in Ilse (Wilson)'s car, I think – pick up Aninka (Claassens) in Becker Street in Yeoville, and the three of us would drive down early in the morning and get to Amsterdam at about ten for the clinic, do the clinic through the day, and then drive down to Beauty (Mkhize)'s house in Driefontein, have a party, and then the next day deal with the Driefontein clinic and the drive home late the next afternoon.

Int I'm really struck by this story, because in a way, it's kind of such a sense of normality, isn't it, in an abnormal circumstance. Because this is really apartheid and, the kind of relationships you developed really flew in the face of legislation.



MH Yes, I think they did. It was unusual I think. I remember one farmer saying to me, I don't know how it came about but he asked me where I'd slept the night before. So I said: in Driefontein. And he looked at me and he said: 'jy is 'n verlore kind.' (laughs) You're a lost child. So you know, that was the predominant view in the white community about (laughs) the kinds of things that we were doing and the relationships that we had. It was Aninka (Claassens) and Ilse (Wilson) who had created those relationships and they were also the result of Geoff (Budlender)'s relationship with the people in Driefontein. And of course, Mr Zwane was Geoff (Budlender)'s client. Driefontein was his client. When I came into the LRC Geoff (Budlender) asked me, would I be prepared to take over the running of these clinics with Ilse (Wilson) and...

Int Geoff (Budlender)...?

MH Geoff Budlender.

Int Yes, because Geoff (Budlender) had gone to the U.S. for a while I think?

MH He had gone to the U.S. for a while, but apart from that he asked me to take over those clinics really full-time, the Amsterdam and Driefontein clinics. Which I then did with Ilse (Wilson) and Aninka (Claassens). The person prior to me had been Ingrid de Villiers. I do not know where Ingrid (de Villiers) is today. At the LRC. And then prior to that was Geoff (Budlender). So Geoff (Budlender) was very much...Geoff (Budlender) and Aninka (Claassens) had been very much the creator of those relationships, because Mr Zwane, Baba Zwane had come to Geoff (Budlender) through the Black Sash when he had problems in the early 1980s. Driefontein had come to Geoff (Budlender) probably through TRAC and Aninka (Claassens) concerning the forced removal. So I was brought in later. Those relationships were all in place.

Int I'm still struck though, because...you grew up on a farm, and really the work that you ended up doing is about land, against farmers, how did you manage that juxtaposition really?

MH I grew up in the white farming community, and I'm not unsympathetic to the interests and needs of the white farming community. At one level I was acting as a professional, you know, for those people. I was just doing my professional duty to them. And...wherever you stand ideologically ...there's little doubt that, you know, there was and still is a tremendous amount of unfairness in property relations in the country, which needed to be rectified. And I think that actually it's also in the interests of white farmers that that is rectified in the longer run. So...I don't think it is such a great juxtaposition. I do think that there needs to be a rectification of property relations. Because that also is in the interests of the white farmers actually in the longer run and of the white community as a whole. So I don't see a complete and utter juxtaposition I mean, it might turn out that way, you know...I mean, if you look at what's happened in Zimbabwe, it seems to be...you know, the white community has no place. But...and one can't foretell the future, one can't. But you know, one has to

work for a measure of fairness...and one can't be...I don't have a precise sort of, in my own mind, a blueprint as to how things should exactly work out.

Int Sure. I'm also struck though in interviews, and I think also with you the last time the comparison in Zimbabwe sometimes I think might get a bit sloppy, in the sense that in South Africa there's this sense and understanding that it's not just about the land restitution but about capacity building, etc.

MH Of course.

Int And I'm wondering whether you think that, when you say it's beneficial for the white farmers and beneficial for the white community in general, whether you're really speaking about the future of agriculture in this society or the kind of sense of safety really?

MH Well...of course, I think the future of agriculture, but I just think that unless these issues are dealt with in a greater measure of fairness, the way in which the land is divided between the race groups is dealt with, you know, there's going to be a convulsive kind of solution, which...I think that's always...you know, if that was to happen, I think that that would not be in the interests of the white farming community certainly, and whether it would be in the interest of, you know, black farmers, is also doubtful, having regard to the practicalities of farming. And if it's done in an unfair way, you know, it's a complex issue becoming involved in it and working in it on the ground. You know, the issues are quite complex and it requires perseverance and hard work from day to day, year to year. And I think that that's what the LRC played a very important role, and a whole group of activists, in actually doing that work and creating, you know, a sort of movement around land, it was rooted in the practical struggles of people on the ground, in the real struggles of people on the ground. And not in some sort of idealistic, if you like, notion of, you know, of a wholesale revolution on the ground. So that, I think what the LRC did was to help to root a struggle grounded in the practical...in the practical needs of people on the land. And in terms of trying to deal with those through processes of negotiation, litigation, etc., as opposed to the kind of convulsive change which seems to have overtaken Zimbabwe with probably consequences which are not entirely foreseeable. And you know, I mean, as a person dealing with these things, I think that that was a worthwhile thing to do. Because, you know, I think that that was the...I think that was an important contribution which was made by people like the people in the LRC, in TRAC and others, to actually get down to grassroots and help to articulate those struggles and help to fight them.

Int I also want to talk a little bit about...you mentioned the last time in terms of the work, you immediately started doing from, I think it was 1994 really, in terms of land restitution and housing, and we didn't really discuss cases, and I wondered whether...dates are not important really, more your sense of what you accomplished, left behind, in terms of housing and land restitution cases at the LRC.

MH Roxsana, you know, I think what we did do was to play quite a big role in trying to make sure that land claims were decently researched and formulated and presented to the Commission. I think what happened in the early times, a lot of the easier claims were resolved. I'm not sure if I mentioned that last time.

Int No.

MH And were resolved fairly quickly. Particular claims based on registered title, where black committees had a title to land, those claims were resolved. Of course we had to dig around to find the basis of the claims. But did so. So I think that that was an achievement quite early on in the restitution process. The Makuleke case, which I dealt with in court, wasn't a title case, it was something quite different. It was based on beneficial occupation of land and so quite a difficult one, but because the Commission supported the claim and the Department of Land Affairs strongly supported it, and the main respondents were other government departments such as the Department of Defence on the one side and the South African National Parks on the other, it became possible to achieve a settlement of that claim. And it was the...I think it was one of the prototypes for restitution claims in National Parks, as to how they could be dealt with.

Int I want to fast forward on that basis because my sense is in terms of the organs of State, as they're called, to really comply with court orders, etc., has it been very difficult now for land claims to be resolved?

MH I don't know, I haven't been much involved in land claims since I left the LRC. I really haven't. I just continued with two matters since I left the LRC. Well, there was the Khomani San matter, which Kobus Pienaar is helping me with, which does seem to be moving forward. I think that that is a claim, which was settled very much on the similar basis to the Makuleke claim, which we had settled. That Makuleke claim became a prototype for settlement of claims in National Parks. The Khomani San claim was to the Transfrontier Park, the Kgalagadi Transfrontier Park which was previously called the Kalahari Park.

Int Has that case been nearly resolved, the Khomani San with Kobus (Pienaar)?

MH Well, I'm working with Kobus (Pienaar) on it still. The issues have been, we have made substantial progress in terms of...the issues have been articulated, and possible solutions to those issues have been articulated, which is a big step forward. We do now need, and we are moving, I think, towards a situation where the...you know the affairs of that Communal Property Association were placed under the administration of the Director General of Land Affairs. Part of the problem has been to get the Department of Land Affairs to actually administer. But to administer in an informed way as well. And I think that our participation has assisted in that process. Fortunately Land Affairs eventually got to the point where they spoke to us and we've had many meetings and they've continued this year down there with the Department of Land Affairs in Upington. We've done two things. One of the big problems is around membership, around this issue of a claim of a relatively small group of San people, an

identifiable group, with identifiable links to that park, and it having been broadened into a big ethnic claim. And tremendous tensions as a result within the Communal Property Association. Between people who are closer to the claim and others who are not. And we've unpacked the entire...we've managed to unpack through...we were given carte blanche to the books, Land Affairs said to us: will you do like a commission, you know, and investigate how...did I say this last time?

Int No, not at all.

MH How did this membership issue come about? How was it that we started with this group of claimants but the membership had expanded? So we've done a very full and thorough investigation, which is now on paper as to how that happened. Which I think...and we've also done a kind of a mapping out of the way forward, a possible way forward, and it will involve two levels, and fortunately Land Affairs have accepted this. Two levels. The one is to get an administrator on the ground to actually take control of the daily affairs, of the Communal Property Association. Because a lot of allocation of land rights has been done on an unconstitutional basis. And number two: to also develop an appropriate business plan, and hand in hand with that to deal with the issues of membership and to reclassify membership. Because not everybody can have the same rights. You know, not everybody, you know, there has to be some hard decisions made about who has priority rights and whose rights in fact might be purely of a symbolic nature. And one has to make those hard decisions and we've made recommendations in that regard as to how it can be dealt with. And Land Affairs seems to have accepted it. So it will also involve changes to the Constitution. So we're going into a process now of appointing people to take over daily administration, and hopefully also, people to take over the administration of those processes leading towards the development of overall business plans linked to constitutional changes around membership. To put the affairs of the Communal Property Association on a sustainable basis. So those processes have really moved forward and...but, you know there's a lot of unhappiness on the ground, because nothing has actually happened. What has happened has happened illegally and unconstitutionally.

Int It sounds...a fascinating case, it also sounds to me like an example of, certainly at that level, where there's been positive working relations between you, the LRC, and government.

MH Indeed. Very much so. And that's been great. I must say I think that fortunately I had a relationship with the main Land Affairs person involved, Peter Makomele, going back many, many years. I think the only reason he actually agreed to see me was because we had worked together when he had been with AnCRA which was the affiliate of the National Land Committee, which operated in Kuruman and does to this day in the Northern Cape. And I'd been involved in dealing with a number of land claims in the Northern Cape from 1994 together with him before he moved to government.

Int During the LRC?

MH During the LRC years. And Peter (Makomele) had been with AnCRA and we had worked together. Peter (Makomele) had gone on to government. It was really...I suppose that relationship and Peter (Makomele) said: well, let me see you. Flew to Bloemfontein and we met, and I just sat, he said: ok, tell me what you want to tell me. So I sat for two hours and I told him, and he didn't say anything. And I walked away from there feeling quite...just shows how, you know, Peter (Makomele) was now in government, and he just sat there with an impassive face and listened to what I had to say (laughs). And, you know, and 15 years before when we were trying to stop the eviction of the remainder of the so-called coloured community from the Lohatla Military Battle School, he and I had worked together. And just shows how times change, you know, in one way or another. But since then, you know, we've developed an absolutely great relationship with Peter (Makomele).

Int So the impassive face was a front?

MH So the impassive face was a front. He just wanted to hear what we had to say, and obviously he wanted to judge whether it was legitimate, because I do think that one of the problems, certainly in the Department of Land Affairs, is that the officials are overstretched and overworked, and they are absolutely at the outer limits of their abilities to deal with things, just because of the amount of work and the limited personnel they have to deal with. I think a person like Peter (Makomele) is completely overwhelmed with work.

Int And there's not enough appreciation I think, generally about that.

MH No, definitely not. You know, Peter's (Makomele) completely overwhelmed with work. I mean, It's just really awful actually. I mean, I do not know how he keeps going frankly. And I having done rural work almost solidly at the LRC for 15 years, I know the levels of exhaustion; I just do not know how he does it. You know, how guys like that continue. But fortunately we've been working very closely together.

Int Thank you for sharing that because it seems like such a fascinating, almost ground-breaking case really...

MH It may be. It may be Roxsana.

Int I also want to really move to the idea that around 1994, you said in the last interview, and we really didn't unpack that, was that the LRC then had to rethink its mode of operation. And I think that can apply on many levels and I was just wondering whether I'd leave it to you to discuss how you think that the LRC had to rethink its mode of operation?

MH Well of course, I don't know if I mentioned it at the first interview, the LRC did in 1994 rethink its mode of operation.

- Int But you didn't unpack it and I wondered whether we could talk about that more....?
- MH Ok. I do remember that we had the...it was at the AGM of 1994 during the elections, and as the election results came in we were following them and then getting them down and all scribbling furiously during the AGM. Who had got what ...
- Int Sounded very historic (laughs).
- MH It was, it was amazing. So the election results were coming through during the AGM and at that point...and I hadn't been privy to that but the Constitutional Litigation Unit was formed during that AGM. The resolution was adopted to form the Constitutional Litigation Unit, mainly to litigate constitutional cases under the new then interim Constitution, and the about to be formed, or the then newly formed Constitutional Court. And those of us who were involved with land matter then immediately decided – we had an emergency meeting and we decided to form a Land Unit to deal with land restitution cases. So those were two important decisions taken at that AGM about the future of direction of conduct to the LRC's work.
- Int What's happened to the Land Unit?
- MH It's still there, I think. The trouble is I think that certainly in Johannesburg the LRC has lost a lot of staff. It played an important role in terms of getting in the urgent claims formulated, lodged, litigated when necessary, and agreements made about restitution.
- Int And the people in the Land Unit that you worked with?
- MH Who?
- Int Yes.
- MH Durkje Gilfillan.
- Int Who I'll be interviewing this week.
- MH Yes, in Johannesburg. Durkje. She was in Pretoria then Johannesburg. Kobus Pienaar, Henk Smith in Cape Town. There was Peter Rutsch in Durban. Louise du Plessis and Asmita Thakor in Pretoria. And...there might have been others, and they were...
- Int Some of the key people really, and then...and of course I've interviewed Henk (Smith) and Kobus (Pienaar) and intend to interview them again. So some of the really key people who worked in the Land Unit...I'm wondering...

MH There are too few people.

Int I'm also wondering at the time...

MH Geoff Budlender.

Int Of course. The last time we spoke, and of course I ought to interview Lex Mpati, the Constitutional Court was going to make the judgement about inner city dwellings, and I wondered whether you could talk about...has an outcome been reached?

MH Yes. I think the court handed down its judgement in about February. At that stage we were waiting for the final judgement when I met you last time. We had negotiated an agreement, which the Constitutional Court approved of, to make provision for the accommodation for the people in those two buildings, in buildings in the inner city. And we just hope that everything is now ready for them to move across into those buildings during the course of July. They haven't moved yet. They're sitting in their drab circumstances, pretty atrocious circumstances. That's just in terms of the implementation of that agreement with the City of Johannesburg. So at least we're at the point now where we're just waiting for the City of Johannesburg to say, this is the day when we move.

Int And on what basis will...what's the criteria for the kinds of people who would be moving in?

MH Well, it's only the people involved in that case living in the two buildings in question. So what that interim agreement did was, after the hearing of the matter in about September or August, the Constitutional Court said: look, we direct you to negotiate such solutions to this problem as you can. And that's what we then did. We drafted that agreement. And two buildings have been set aside in the city for the accommodation of those people. And we've been working on implementation of those agreements, and it's just about at the final point. The Court then gave judgement. We had asked them for an order, which would direct the City to provide, to draft a plan, for the provision, if not in the inner city, then within reasonable distance of it so as to enable the people to retain their economic and social links to the inner city and their livelihoods. The court refused to do that in its final judgement.

Int The Constitutional Court?

MH The Constitutional Court. In essence what it said was that there was a duty on the City of Johannesburg before it invoked regulations dealing with...if it was going to invoke regulations dealing with unsafe buildings and thereby...and which would result in homelessness under current legislation – they had an obligation to consult with those people about the consequences of the invocation of those regulations and how could those consequences be ameliorated, etc. And so what the court has done really, is to

say that we will not grant an eviction order unless you can show us that you have consulted, in fact, engaged with these people, about the consequences of the eviction. And so I think that that is quite a breakthrough, because what it means is it creates space for civil society to engage with the city authorities around bad buildings, people living in bad buildings in the City of Johannesburg, and as to how these matters are to be resolved. And I think what the court was saying, unless there's been proper, meaningful consultation and engagement about these issues, we're not going to grant an eviction order. And in that engagement you must take a count of all consequences of eviction, etc. And the consequences for the people concerned and their welfare. So it was a line of thinking has come through other Constitutional Court cases in relation to evictions. They said in the Port Elizabeth case, unless there's been proper consultation we will not grant eviction orders. So really it was just building on that basis I think. Which is actually quite a strong statement in many ways. I mean, some of the language used was really very good. Things like: it is the obligation of the City of Johannesburg to actually attend and to promote the welfare of its citizens. And in every way with regard not only to issues of education, but to work opportunities. In other words, it is the obligation of the City of Johannesburg to have policies and programs in place which actually do assist every individual living within its jurisdiction to realise their full potentialities and to enjoy a good and abundant life. And that was the kind of language which was used in the judgement. And this is what consultation is all about.

Int It's a very rights based approach isn't it?

MH It is a rights based approach and it's a very broad approach. Because it opens up...you know, the City must take into all account all constitutional imperatives in that consultation. So it also opens up ground I think for civil society.

Int Does it in any way...I know that this is an inner city case, does it in any way then have implications for cases, such as the Joe Slovo one in Cape Town?

MH Yes, I think it does because I think that the LRC is dealing with that case on the basis of really a proper interpretation of chapters 12 and 13 of the housing code, which is the...the housing code is in fact national housing policy, which is made and published by the minister of housing in accordance of powers which he has under the Housing Act. And that code is binding on all levels of government, and it's on the interpretation of that code that that case is being fought. But the values underlying that code are very progressive and completely and utterly consonant with what the Constitutional Court has said in the inner city case. So these things are mutually reinforcing. You know, the language it uses there, this is how you've got to interpret the code, and in fact if you interpret the code, that's what it's saying.

Int Because that case goes before Constitutional Court, doesn't it?

MH It does. The code is talking about agreed mediated solutions to housing problems, and it's exactly what we're talking about in the inner-city case. That's exactly what I was saying here. So what that inner city court case is saying is, that even when you're



looking at building standards or, you know, regulations, you've got to have cognisance of those values as well. And they also are in the housing code.

Int After interviewing you I went to Cape Town and Henk Smith, Kobus Pienaar and Steve (Kahanovitz) took me to the court case of the Joe Slovo, so I did get to see Geoff (Budlender) at work.

Moray you were actually amazingly brave the last time and spoke spontaneously without me asking you about this...of course it's been an issue coming from the Ford Foundation down about gender equity and racial equity within the LRC, and that was as early as 1982. But you really brought this up and I think what struck me is you use these words several times, the phrase is: 'bruising encounters'. I'd like you to talk the idea of the trauma of the LRC internally because it seems to me that South Africa is undergoing this wider macro transition. The LRC in 1994 really underwent its own transition, key people were leaving for government, Arthur (Chaskalson)'s stewardship was sort of in some ways, then came to an end, and we had Bongani Majola and Odette (Geldenhuys) taking over and you were really on board at that point, and I wondered whether you could talk about the challenges and difficulties of an organisation like the LRC undergoing that transition?

MH Yes. You know, I think that if you looked at law firms, most of the law firms probably were totally and completely white dominated. Ok. And I think that firms like this were and still are, but are trying to make an effort and I think beginning to make significant progress. Probably the number of black firms of attorneys was fairly limited at that stage during the 1980s. And the LRC was operating in the context of an apartheid system. Here was this progressive funded law firm operating in an apartheid context, without any sort of legislative basis, or agreed basis to deal with issues of race in an organisation. And...am I talking about the issues you want me to talk about?

Int Sure.

MH And I think that clearly, you know, people like Arthur (Chaskalson) and Geoff (Budlender); I suppose that their networks were mainly with white lawyers frankly, because that was the nature of our society, with few exceptions. And therefore the organisation which they established was dominated by white people, very, very much so.

Int I'm also curious in some ways...I wondered whether you could also talk about the fact that there was a strong NUSAS strain in the LRC, but you didn't really come through that, so in some ways you were in the middle.

MH Yes, I was. I was the non-political one in a sense. One of the non-political ones. And then there was a strong NUSAS strain clearly...the younger people who came in had had a strong NUSAS background: Karel Tip, Geoff Budlender, Paul Pretorius, Charles Nupen, and they were very much involved in the NUSAS trial I think. And in a way were, should we say, 'veterans of the struggle', you know, from the 1970s.

Now here they were coming into the LRC when it was a new organisation, becoming the first lawyers, the younger group of lawyers in this new organisation. But again, NUSAS was, I think, predominantly white, obviously. So even their networks were white predominantly. Because universities were racially segregated, and I can't remember now, but I'm sure that there was the equivalent...

Int SASO.

MH SASO. So you know, things were segregated in fact. And so I have the impression that there were acute tensions between the 'NUSAS' group and the new young black lawyers in the LRC people like Thandi Orleyn and Mohamed Navsa and Ellem Francis and the others – who came into the LRC a little later.

Int Where did you position yourself, or where did you get positioned rather, within this kind of extremes really?

MH At a personal level I was friendly with both, and I got caught in the crossfire to some extent. And I was fairly innocent -probably ignorant- actually. You know, I mean, that's why I say it was a rough and bruising thing. Because, you know, I'd come from my own particular segregated background as well (laughs)...and progressing into this situation was something new to me.

Int But I wondered whether I could say this. In some ways you...in perhaps more than the NUSAS people, had very close relationships with black people from a very young age, would you say that's correct?

MH I did. Oh, yes, that's true. I did have very close relationships but in childhood. In fact, you know, the black lawyers in the LRC I had close relationships with them too actually. Mohamed (Navsa) and Thandi (Orleyn). But it was fairly novel terrain actually, to be involved, for me, to be involved in that dispute, because at Webber Wentzel, you know, I mean, white domination, the domination of the existing establishment had been absolute.

Int It's almost the dynamics of an outer society being played out inside an organisation.

MH Certainly they were. And you know...those young black lawyers were...I mean, I suppose, I wouldn't want to speak for them, but I suppose they came into the LRC with a strong sense of their own values and their own history. And the 'NUSAS' group might not, and clearly I think, was not fully sensitive to the feelings, thoughts of that group of young black lawyers in the LRC. And there was quite a clash between...and we got to a point where we worked out, I think it was in about 1996/97, I think it was 1997/98 actually, and I do not know when the Employment Equity Act was enacted. When was it enacted? I think it was 1998. So in fact, the LRC's attempts to create an internal equity policy, which was agreed in about '97/'98 at an AGM, probably only very slightly pre-dated the adoption of...was more or less at the same time as the

adoption of Employment Equity legislation, nationally. So, you know, I suppose that the debate in the LRC about that issue actually mirrored national debate around that issue, when that legislation was being drafted, was on the drawing board, etc, etc. And it was a pretty strong debate.

Int And you got caught in the cross-fires, you said...

MH (laughs) Well, I suppose so. I think so...I mean, I was appointed as Acting Director of the Johannesburg office in June...in 1995 I think.

Int Was this before Bongani (Majola)?

MH Yes, before Bongani.

Int So Geoff (Budlender) had just left...

MH No, Geoff (Budlender) had not yet just left. He might just have been leaving. Thandi Orleyn had just left and I replaced her as Acting Director of the Johannesburg office. That was in about April '95. Mohamed Navsa had just left. Odette Geldenhuys had also left. And I then became Acting Director. And Odette (Geldenhuys) went to America.

Int She came back though...

MH Yes. I got a call from Odette (Geldenhuys) one Sunday. I was at lunch at home. Got a call from Odette (Geldenhuys) in America: hello I want to come back to South Africa. And when I suggested that we – I think at the next Monday meeting – the next morning - I said, Odette (Geldenhuys) wants to come back, I had this call yesterday, and I wanted to bring her in, because...and this led to a tremendous internal debate. So it's in that sense that I was caught in the crossfire. I mean, you know, I was saying things myself which were strongly opposed by black members of staff. And the problem is that one of the issues of dealing with this it's got to be processed in terms of, you know, the whites were always accused, probably quite correctly of employing the old boys network. And in a sense my conduct there was, although (laughs) it was an old boy from within the LRC, you know...an old boy from the LRC, I think my black colleagues regarded my attitude, to say well I think we should employ her, as being no different. So in that sense I was caught in the crossfire. I mean, I was caught in the issue and...

Int I can see how you would be innocent...

MH I think I was fairly innocent. I mean, Odette had been to me a close working colleague through the early nineties in the LRC. But, what it did sort of illustrate was a difficulty in working in a situation where there were no rules, you know. There were

no accepted processes and procedures around employment, which took account of race. And you know, and that's what we actually desperately needed. And I think that that was part of the difficulty in the LRC, is an absence of clear and agreed procedures and rules around the issue. It at times was quite an unnecessarily aggressive debate because the political debate was being actually spoken out at Monday meetings at the LRC.

Int I'm also curious where you think the deficit arises, and why isn't there a process? Is it management? Is it leadership? Where does process need to come in? Who sets the guidelines? How is it agreed? In the case like in LRC which is so, as you know, diverse and the Cape Town office is completely different from the Johannesburg and the National Office, if a directive comes from the national office, I'm wondering whether you see the difficulties of and how does process then come through?

MH Well you know, as I see it, Roxsana, frankly, you've got to vigorously implement the Employment Equity Act and the regulations to it. And you've got to have leadership around that. And I do not know what more to say than that.

Int Of course, fair enough. One of the things several people have said to me, oh you must interview Moray, you know, the first time around, and this time around they said, oh you know, Moray comes in here sometimes and he says, oh, this is home, it smells like... I just want to come in here. And Catrin (Verloren van Themaat), whom I interviewed recently and she said such wonderful things about you in terms of your dedication and commitment. And in the previous interview you did use the word that the LRC was a second home to you. But in some curious ways, it seems to me that you've come full circle, because you started off at Webber Wentzel, you got to the LRC and now you're back at Webber Wentzel, and I'm wondering how you reconciled these....

MH I don't know. You know... I'm given the opportunity to do the same work here, so I do the same work. I mean that's what they want me to do. That's what I was brought here to do.

Int Do you enjoy it?

MH I do, yes, it's great. It's been going well. As I say, the one thing which I do enjoy, and not having had at the LRC was really just by...my practice is Johannesburg based which is a great relief to me. Not having to do all the travelling all the time. The rural work. So I'm in the fortunate position of doing work which I really like with people that I like and it just seems to...it has worked for me. And I could do it at the LRC. So the LRC was certainly home to me but it was not without...I mean, I actually got very tired at the LRC. By the end I was exhausted. And you know, also...frankly I don't claim to be, you know...you know, I think just living...you know, what's expected of the middle class and I was brought up sort of in that situation. I mean, I went to a private school, you know. So, what are ones financial expectations? I don't know. I just wonder how on the LRC salary one can, when you've got a growing family, maintain that sort of lifestyle, the middle class lifestyle. And you know that's

not...and I think that most lawyers in the LRC have found that to be the case, black and white together. That there's a point at which the LRC actually doesn't give them enough money.

Int Funding is such a huge issue...

MH And funding is such a problem. The offer to come back here came completely out of the blue. I didn't expect it. But clearly, financially, Roxsana, it was necessary, because...

Int You have growing family...

MH You have growing family and finances were very, very tough.

Int Absolutely. And it's good that you're really doing the work that you like and in an environment which, in your words, 'freedom to look after myself', that's what you said in the last interview...

MH Yes, yes.

Int And I think that's important. So I was just noting the fact that in some way people like you who are so committed have to make difficult decisions, I think really. The one thing that you stressed in your previous interview and this is in a way...the last point I have, is really the issue of the rule of law. And I've come back to South Africa and on the front pages of the newspaper, of course and I'm not talking about the Star it's about attacks on judges and John Hlope and... and I'm wondering what your experience is about as a lawyer, and particularly work in public interest law, what are your concerns about rule of law and the ANC government, etc.? They might not necessarily be an ANC government, but the current government.

MH I do think that there are concerns about the rule of law. It seems to me most unfortunate and I think that it has to be confronted head on at some point somehow. You know, statements by Gwede Mantashe that the judges are 'counter revolutionary', you know. I mean, these are judges who've spent time on Robben Island. Take the Deputy Chief Justice, (Dikgang)Moseneke, was he not on Robben Island? And he's now a counter revolutionary. I do think that there are some people in this society who are prepared also, I do think, and also, you know, to play...you know, that is one way to shut people up is to call them a counter revolutionary, even if they're on the Bench. And in regard to the Hlope matter I have not...I have an impression that in some respects people who have opposed (John) Hlope have been maybe tarred with the racism brush. Now, I think that kind of conduct is a threat to the rule of law. In fact, I think in some respects it's almost a form of criminal defamation in fact when people resort to that kind of politics. I think it almost goes beyond contempt of court almost to the point of a form of criminal defamation in playing a political game. And I think that it is most unfortunate. There do seem to be

certain...and the irony is that I don't think that the policy positions of the Zuma camp on certain issues are objectionable, but...and in fact are preferable to the, you know (laughs) current positions in the ANC in some respects. But now one finds them resorting to this kind of tactic, which I think is appalling. And I think that COSATU's support for (Jacob) Zuma during the rape trial was a disgrace. And I think not in accordance with the traditions of the trade union movement, quite frankly, if one looks at the history that it played in establishing democracy in this country. Democracy is more than one individual. And you know, innocent until proven guilty has got nothing to do with politics at that level, frankly. And I do think that (Jacob) Zuma...I do understand that maybe (Jacob) Zuma was the one man who could take on (Thabo) Mbeki in the ANC and win, as at the Polokwane conference. I'm not sure that anybody else could have, or would have had the courage to do it, as (Thabo) Mbeki has, I think, made certain serious mistakes. So it is unfortunate and ironic in a way that the one man who could take on (Thabo) Mbeki within the ANC and win, has got these serious charges hanging over him. It's just an unfortunate set of circumstances. I think it is quite a serious situation.

Int The question I ask is more because of the global impact in terms of, in America the Supreme court is hanging by a thread in terms of conservative judges and where that goes...

MH South Africa's the same.

Int And one has concerns of course with the Constitutional Court as well.

MH Yes. I do not know...yes.

Int Moray, you know, I went to see Nzo Mdladla the other day, and on his...as you know he's ill and not well at all, so... on his living room there's a poster board and he's got photos of his family, etc, and he's also got a poster of the LRC and he's got a collage of photos and it's from the financial professional management course that all of you attended – I can't remember the date now – and there's lots of photos of you on there, and of course he proudly points and there's Moray (Hathorn) and there's Moray and there's Moray, and the last time you ended the interview with telling me about the wonderful times...of course there are tensions in any organisation, but you also spoke about the wonderful times and I see you in those photos, very elated, even in some intense discussions with Clive (Plasket) and Steve (Kahanovitz) and Bongani (Majola), etc. So I just wondered whether we could end the interview with some thoughts around that really (laughs).

MH This is where I'm not so good. We did have wonderful times. I mean, you know...we...you know, at lunch time there was a real camaraderie, I think, in spite of the tensions. Our table tennis at lunch time was fantastic.

Int That lives on by the way, the table tennis.

MH Does it? And you know, Mohamed Navsa and Cecilie Palmer dominated it and I don't think were ever beaten in ten years.

Int Right. Cecilie (Palmer) is far too modest to mention this to me, thank you (laughs).

MH She and Mohamed (Navsa) were absolutely, you know...tell you something, Geoff Budlender could run them a pretty good...he was the only one, but he very seldom came and played. So you know, there are those things. There are many, I would say, the wonderful times relate mainly to times of personal relationships and friendships within the LRC. It revolves around that. And also with clients. And I think that that was what really defines the wonderful times at the LRC. There was a real vibe, it moved with great pace and speed, and interspersed with all the tension, there was a lot of laughter as well. And...we always used to meet for...had tea together for example, so that there was...and lunches on Fridays. So there was a whole set of institutional ways in which we sort of met and interacted, and those were great. They really were. It was very special in a way. Really it was, those friendships were very special. I think that's what the wonderful times were.

Int That's great. Moray, thank you again for your time and so generously speaking on a range of issues...

MH It's a pleasure, Roxsana.

Int ...it's not always easy to cover ground that's already been covered, but thank you very, very much.

MH I hope it was of some value, thank you very much.

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## **Legal Resources Centre Oral History Project**

### **PUBLISHER:**

*Publisher:-* Historical Papers, William Cullen Library, University of the Witwatersrand

*Location:-* Johannesburg

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### **DOCUMENT DETAILS:**

*Document ID:-* AG3298-1-060

*Document Title:-* Moray Hathorn Interview

*Author:-* Legal Resources Centre South Africa (LRC)

*Document Date:-* 2008