

Naseema Fakir

**LRC Oral History Project**

**8<sup>th</sup> July 2008**

Int This is an interview with Naseema Fakir and its the 8<sup>th</sup> July (2008). Naseema, thank you very much for agreeing to participate in the LRC Oral History Project, we really appreciate it.

NF No problem.

Int I wonder whether we could start this interview by you talking a bit about your early childhood memories, growing up in South Africa, where your sense of social justice/injustice developed, and what were some of the formative influences that may have led you into the legal profession?

NF Childhood memories about South Africa...I grew up in a largely Indian community in Lenasia, I've lived there all my life, never experienced apartheid first-hand, to be honest, was in school in the eighties and the nineties and was very much unaware, to a large extent, of the changes that were happening. I was aware, on some level, of Mandela being released, of the first election, but I don't think it hit home to me, I was a kid, I think, I didn't understand it much. I remember my parents talking about the ANC and being members of the ANC. I remember my parents going for marches and stuff like that, and I thought, oh, it's cool, but I don't think I understood the gravity of what they were doing or trying to achieve. And I never had any experience of apartheid or racism at school, very sort of, a stable environment and pretty much something that was happening apart from my existence. You read about it and it...it came home to me, I think, during history class in high school, because there the curriculum was changed then, and we were then obliged to do South African history. And it was a real eye-opener to find out what was going on in the country that you lived in and had absolutely no idea about. And in terms of social justice and law as a career, I don't think I became a lawyer because I had a strong sense of social justice, I became a lawyer because I thought it was something I'd be good at. It was purely a decision on that basis, because my maths and science marks were horrible, I wanted to go to university, I wanted a profession and based on my sex, I made that decision. And throughout varsity I had...I didn't know which field I wanted to go into, in terms of which area of law, and I think, the sense of human rights law and trying to help people, came home to me when I did human rights law, and more in my third year of varsity, I think I had a better understanding of the country, of myself, of what I saw as justice, and I didn't see myself being fulfilled and happy in a commercial environment, and I didn't see myself serving any purpose, I didn't see myself doing any good that way. And I enjoyed human rights law; I enjoyed the legal arguments that were made, the constitutional arguments, the strategies, more than the paper pushing mostly about commercial law. And so that's where it came from, and the Legal Resources Centre, I mean, being at the forefront of that type of thing, was naturally where I applied first, and was happy to get the job. Ya.

Int Ok. I'm going to take you right back because I was struck by...the way you...outlined your narrative, you said that...you lived in an Indian community and you really didn't...experience apartheid first-hand, but I'm a bit curious whether perhaps, living

in an Indian community and going to a school that was predominantly Indian was...in and of itself really segregation, and that you were in a segregated society, really?

NF Ya, now, I see that, and that in itself is experiencing about it, but as a child it was all I knew, and I didn't know life to be any different or that it could be any different, I grew up with it as a toddler, as a kid, as a teenager and it was the norm and I knew on some level, I was told that schools were going to be integrated and there might be white children in my class and black children in my class, and to be honest, for the most part of my education, I...and my childhood, I never had contact with many other races. Integration had just started then, and there were probably about two or three black students in my school, let alone my class, and I pretty much kept to my own friends, I think I had only Indian teachers, and so my integration and my idea of a mixed society, and stuff like that, started when I went to varsity.

Int Right.

NF And, I mean, I got a sense from my parents that this was not the way it should be, but I didn't know any different and I didn't think that I wanted to change it at that point. I would hear stories about my grandparents, and my grandparents lived in Langlaagte before they were forcibly moved to Lenasia, and stuff, and they would talk about harbouring people and feeding people on the sly, and having them sleep over because they were running from the Security Police, and to me it sounded glamorous and it sounded...wow...like a movie, but I don't think I understood, I really don't.

Int It seems to me also that...you talk about politicisation really happening for you when you entered university, but really it seems that your parents, the older generation, were highly politicised, I wonder whether you could talk a bit about that?

NF Ya, to be honest I should know more about what their activities were, and I don't. I think they are the type of people that did what they did on the basis that they thought it was right, and they had a sense of justice at the time, there's very little openness and talking about, actually. I remember my late uncle telling me he was, you know, he was always the rebellious one, and him walking home from school and being arrested on a Friday afternoon because there were too many of them in a group, and he was bailed out on Sunday evening. And I thought...too many of you in a group...I don't understand...I didn't understand. My great-grandfather, having moved to Langlaagte and my grandfather were...were great friends with people like Ahmed Kathrada and the like, and they would have meetings at their house if they needed a place to have meetings, and stuff like that, and I think that was the involvement...my father's best friends were all involved in the ANC on a much more active level. My father is a very timid sort of...'I'll do things on the sideline', type of person, and I think that was the extent of his support. My mother, being a teacher and a member of SADTU, would always take part in marches and boycotts and strikes, and stuff and...so, that was her involvement, and that's basically the sum total of what I know about my family's involvement.

Int Is it because it's something that's not openly talked about, or is it something that they felt they did because it was right and they don't feel the need to really discuss...how do you understand the....lack of history about your parents?

NF Ya, I think...I think it was about them doing what they felt was right, and doing it for that sake only. And I, you know, I don't know what their attitude would have been to telling me more about it, more for my benefit than for theirs, in terms of a learning curve and to gain experience in...and to know more about them, actually. But, I think it's for them, pretty much, a very personal experience, and they've kept it that, I think.

Int Right, ok, fair enough. So, at what point did you go to university and where did you go?

NF I started university in '99 and I went to Wits.

Int Ok, right.

NF Ya, that was my first year, '99.

Int Ok. And what was the...you said that this was the first time you really experienced integration, but you also experienced integration in a post-apartheid society, so things had changed, how did you cope with that? in a way...for you it was more of a change than for the environment?

NF Ya. I found it overwhelming at first, I felt small, actually, I felt like I, you know, Lens was my whole world and suddenly there's so much more out there. So on one level I was very overwhelmed, and on another I was completely excited because I wanted to take all of it in, you know? And it's strange because if I look at my first year of varsity, I was pretty much...I only had Indian friends, and I was shy and I didn't know how to talk to other people of other races, and what they would think of me, you know? And I look at how, in my third or fourth year of varsity, I had friends from all across the board and I was comfortable with each and every one of them, and it's taught me, it's taught me a lot and I think that experience was the most important in my life, I think had I not gone to university, my outlook would have been very different...

Int In what way?

NF ...because...I look at my sister, for instance, my sister and I are a year apart, I'm just a year younger than she is, and she did not go to university, she finished school, she got married to a guy from the neighbourhood and she's been a housewife pretty much since then, you know, wife and mother, type of thing, and we have such very...such different views on life, on people, our tolerance levels are completely different, our idea of culture and right and wrong, is completely different. And I'm very thankful for the experience, I think, and that's what's helped me to look past, I think, race, because

as much as my parents were politically active on some level in the community, pretty much shaped what I thought about race and colour, and it was a very conservative, even wrong view I think, at this point. There was always this, we and them, type of thing and I think if I hadn't been exposed to university, to the LRC, to other people on that level, I pretty much would still have that thought pattern.

Int ...I'm wondering, you also mentioned that you were in...it was really in your third year that you developed your sense of... human rights and also the type of legal work that you were really interested in, I'm wondering what turning points happened that actually developed that?

NF I think it was me getting to know me, and in that process I got to know people from other races, from other walks of life, and what their realities were, what their sufferings were, and I think until that point I was pretty one-track minded as to what suffering entailed, you know? I never suffered, to be honest, I...my parents were middle class, I never wanted for anything in my life, I never experienced poverty or violence, or come from a broken home, or anything like that, I never knew what apartheid did to families, to people, to people's idea of self-worth, and I think that hit home to me once I had heard stories and people talking and I realised that there was so much more out there than my reality. Ya.

Int ...in terms of actual legal work, the type of degree you did, do you think that it really informed you substantially, because you mentioned earlier about how, in school, you really came to grips with change in South Africa, through the history curricular change. I was wondering whether, at university, the type of law really, was in touch with the changes in South Africa, and in terms of issues like rule of law, the Constitution, etc?

NF Not really, I think that the curriculum changed and, I mean, laws were changing, it was a very exciting time, the Constitutional Court and...I don't think it was emphasised enough actually, in our curriculum. We had a course on Constitutional Law and that was once a week and you pretty much had that, and Human Rights Law after that was an elective, you could choose to do it or not to do it, so you weren't obliged to do it and so, I don't think my legal education informed me any more than...it didn't inform me the way it should have, I think. And the thing that, I think, influenced me most in terms of what the law could do to help people, was final year of varsity where we actually had to consult with clients in the law clinic and try and help them, and that's when I put the two together between studying law and helping people.

Int Right.

NF That the law could be used to help people, that it wasn't just legal arguments in the air and academia, that it actually had an effect on people on the ground. And I never got that until that final year, to be honest, I never saw the link, it didn't seem real to me.

Int Right. I've heard a lot about the Wits Law Clinic and how good it is, etc, etc, and I'm wondering whether you could talk a bit about your experiences at the Wits Law Clinic, because in some ways it poses as some kind of alternative to the LRC, and I wondered whether you could talk about that?

NF I...it was hard...it was hard to make that transition to suddenly practising law rather than learning law, it was very hard to translate the law into practical solutions for people. It was also, for me, a bit of a culture shock, because of language barriers and stuff like that, and I must say that the lawyers in the law clinic tried to make your adjustment as easy as possible. And I spent about two hours a week in the clinic, and I spent time in the family unit doing divorces and custody cases and stuff like that. So I had, to be honest, a very limited idea of what the Wits Law Clinic actually did, and the type of ground-breaking cases that they were involved in, until I got here, actually. At that point I found it more of an opportunity to hone my own skills as a lawyer, it was the beginning, and for me it was important on that level, more than the role the Wits Law Clinic actually played in human rights law, in the province, or in the country, so, ya. I actually didn't even know about the cases that they were involved in until I got here. The precedent-setting cases, so at that point, it was more of...I'm glad I've had this opportunity because it's going to make me a better lawyer. Ya.

Int Do you think that the Wits Law Clinic, in some ways, prepared you for the LRC?

NF Absolutely, absolutely. I had...if I had walked into the LRC without that, it would have been a much harder transition, because there is a technique to consulting with clients, and there's an even bigger technique to learn, if bigger is the right word, to consulting with disadvantaged clients as opposed to clients that you can talk to on a one-on-one level, I think, a rich corporate client as opposed to somebody from an informal settlement. You really have to be sensitive, you have to be aware of their circumstances and their plight and you have to be sensitive to it, and you have to, more than in any other area of law, put aside your own thoughts and prejudices and it's much harder. And it's easier to do now, when you've had that initial experience with it. So yes, it definitely prepared me; I think it would have been much harder without it.

Int So you entered the LRC in 2005/6?

NF (200)4.

Int 2004. So you've been here two and a half years, really?

NF Mm.

Int And what made you... you said that the LRC seemed somehow the natural place, but... you could have also gone into a major legal firm, done Articles and actually

done CSI, corporate, social, investment work, pro bono work through that, why the LRC and what actually drove you?

NF I...it suits my personality.

Int In what way?

NF The corporate world did not appeal to me at all, this suited person going to Sandton every day, this highly competitive world, this world of meeting target every month, it seemed shallow, somehow. That's what I felt: that's not what I'm here to do, that's not what I want to do, I don't want to be happy...I won't be happy making rich people richer and cutting corners to make them richer. And that essentially is what commercial law is all about, it's about profit, and I didn't see myself thriving, I didn't see myself fulfilled in that environment. So...and the idea of Sandton is just not me (laughs), actually, so, ya. But that was very much a big factor in the decision to come here first.

Int And you'd heard...about the LRC earlier on in the LLB degree or did you learn about it during the Wits Law Clinic, how did that happen?

NF Actually I heard about it in my third year of varsity...third or final year, I'm not sure. I was elected onto the Law Students Council as a Careers Officer and I had to plan a careers day, and I had noticed that in the previous careers days the majority of the big corporate firms come to careers day, about eleven of the companies represented our corporate law firms, the big ones in Sandton basically. Occasionally the Legal Aid Board or the Public Defender would make an appearance and the only different or other type of firm, was the LRC.

Int Ok, alright...

NF And I tried, I tried very hard to change that, during my year at the LSC (Law Students Council) and maybe get different types of avenues available to people. People were not willing to come through, so...

Int You mean people from the Legal Aid Board weren't willing to...?

NF Ya, and other...like Black Sash, other types of...so, it was hard, and so what it ended up being was, eleven corporate firms and the LRC. And that's where I got to know more about the LRC, speaking to people, and arranging the careers day and doing pamphlets and speeches and promoting, basically the firms that were going to be on offer that day, and that caught my interest.

Int Right. And so you came in as an Article Clerk, if I'm not mistaken, and how long does that take?

- NF Two years, so it's 2004, 2005.
- Int Right, ok.
- NF And then I've been an attorney here since 2006.
- Int Ok. In terms of doing Articles here, how do you think that differed from your peers, what were some of the differences...from those who may have gone into corporate legal firms or other types of legal avenues?
- NF Ya, I've spoken to friends that have gone to the bigger law firms in Sandton and stuff, and they, I think, are groomed to specialise in one area of law, if you're groomed to do tax, that's what you will do, if you're groomed to do mergers and acquisitions, that's what you'll do, so, I don't think you are equipped to come out of that and practise generally, so that was an advantage.
- Int So, the LRC gives you a broad range of experience?
- NF Absolutely, and they throw you into the deep end, and that was my second point, that you're not treated as a photocopier or a messenger, and you're...you will draft pleadings, you will appear in court, you will consult with clients, you will consult with counsel and advocates, you will do research opinions, you will do legal opinion, you will conduct workshops, you will get exposed to public speaking, and I don't think people in bigger law firms get that exposure because of the numbers, and the way they're structured, they have a litigation department that does all the litigation and the candidate attorneys basically slot into the departments doing the running around, basically. And so for that, I'm really grateful because, I think, I've had experience in a number of type...a number of areas of the law, and not just experience in photocopying and running around, I've worked on cases from start to finish, I've handled cases from start to finish, and I don't think a lot of candidates can say that in bigger law firms. They don't really get to manage their own case work, and stuff like that.
- Int Ok. I was also wondering, in terms of your decision to then stay on, what was that prompted by because generally people do Articles and then they leave, they go somewhere else? What were some of the reasons that have actually kept you at the LRC?
- NF The work, more than anything, the work. I have my own issues with management and the way the place is run, so it was not from that point of view at all. I looked at the type of lawyer I want to be, and I don't want to be a specialist lawyer, I don't mean to be a jack of all trades and master of none type of thing either, but I will...I'm not at a level where I think I only want to do refugee law, I only want to do environmental law, and the LRC offers me the opportunity to do different types of law. I mean, I do

land, I do housing, I do non-profits, I do refugee law and I do environmental law, and I have, if a case comes before me, I have the opportunity to motivate, to do that type of case, no matter what area of law it falls under. And had I gone into any other law firm, I would have been a specialist lawyer, in any other...NGO sector, for instance, if I had to go to Wits I would have to have made an election to do a certain type of law, if I'd gone to Lawyers for Human Rights, it would have been only refugee law, and that didn't suit me. And also a young lawyer, you know that the LRC throws you into the deep end, it's a good place to get experience and it's a brilliant place to have on your CV, that you've been an attorney at the LRC, so...ya, those were the things that...

Int You think that....do your peers think that?

NF No.

Int So, what's the difference? What makes you different, in the sense that, what makes you think that the LRC's a brilliant place and why do other people in your peer group ..not think the same way?

NF Ya, I think from my point of view, from the people...from the peers I've spoken to...and I might be completely wrong, it's just a completely...my view, but I don't think there's that overall passion for wanting to help people, and the overall passion for the work that you do. Many people that you speak to have come to the LRC because it was the only place they could get Articles, they applied to the bigger law firms, couldn't get in and then...oh, shit, now what...ok, we'll go to the LRC now, because that's the next option. And it was that type of decision that prompted them to come here, it wasn't about a conscious, informed decision...'I want to do Articles here because I have a passion for justice or social justice or for the work the LRC does', it's about getting a job, it's about getting paid, it's about getting the LRC on your CV so you...it's a stepping stone to get somewhere else. That's the difference.

Int The irony...is that it's...there's a perception that it's easy to get into the LRC so almost it's...the last choice...

NF Yes, absolutely.

Int But then it still looks good on your CV?

NF Mm, because of the type of work you'll be exposed to, I think, because in other law firms there's not the opportunity to say: I worked on a Con. Court case that appeared in five national newspapers. There's not the opportunity to say: my attorney or I was interviewed on SABC News or Carte Blanche, whereas we have that. And I think most people, when they apply here, don't know that. They apply here because of the last resort, not because...and when they get here they realise: oh, this will look good on my CV. Because a lot of people still ask you: what are you doing at the LRC? I didn't even know you could do Articles at the LRC. So, there is, on one hand, a lot of



misconception about what the LRC does and what it achieves, and that perception lies with universities, with students, with people coming into the profession, whereas people that have been in the profession for a while have a very different view on the LRC.

Int What is their view?

NF Oh, we're great, you know, we're up there with human rights law, we're one of the leading NGOs, social justice, and that might be so with what we have achieved. At present, I don't know, I think we're, at present, riding on our reputation.

Int Right. Tell me a bit about that?

NF I don't think we live up to our reputation any more. The cases that people commend us for, have taken place years ago.

Int What are the cases that they've commended you for?

NF Grootboom, TAC, the Constitutional Certification judgments, Makwanyane, you know, it's been a while.

Int Right. What's happening?

NF What...why? You're asking why?

Int Yes, exactly....

NF I don't know, I think we haven't changed with the times.

Int In what way?

NF Our mandate should be different, because people's problems are different now. The problems that we experienced when South Africa just became a democracy are very different than what they are now. I think the idea then, was to give effect and to give meaning and to give interpretation to what was in the Bill of Rights, it was very much a new area, so you had to spell out what it meant to have socio-economic rights in the Constitution, you had to have meant what access to housing meant, and all of that. We've done that, but now it's done, and there's got to be a shift in focus, I think, and we haven't made that shift. I think AIDS is a big problem, education's a big problem, the migrant issue's a big problem, and we seem to be lagging behind, we seem to still be focusing on the issues that were important then, I think and we pretty much have had it, if you look throughout...the focus areas have pretty much remained the same

and their statements or the vision for each one has pretty much remained the same. It needs to change.

Int You also said that...earlier you said that...you really stayed on at the LRC because of the work, but in terms of management and the way the place is run you have... problems, and I'm wondering what are some of the issues that are of concern?

NF Well, there are many. The first one is that I don't think the attorneys are given, I don't know what's the right word, enough say, in the running of the organisation. I think it's...there used to be this debate, and I wasn't part of it because I wasn't at the LRC then, but I hear that there was always this debate about which office...which decisions Regional Office should be making, and which National Office should be making, and that there were very good sound reasons for keeping National Office separate from the Jo'burg office because it puts us in an unfair disadvantage compared to the other offices, in other provinces. And I see that now, because I've been at the LRC for about two years when National Office wasn't here, and now that we are integrated it's as if the Jo'burg office has become absorbed by the National Office. And while, I mean in terms of the administrative running and stuff, and cost, it might be effective, I think, the blurring of the lines is a problem in terms of making legal decisions because, I think, National Office makes a lot of calls and a lot of decisions on legal issues, make a lot of statements about legal issues, which I don't think that they're equipped to do because they don't have law degrees.

Int Right.

NF And I think certain decisions should be informed, or at least be made in consultation with lawyers, especially about taking on cases, and giving undertakings to clients and making statements to the press, without consulting the lawyer involved because it might be **inaudible** to shorten the case, you might think you're making a statement in a sense, but it might have a different implication in law, it becomes tricky. And I also think, well, I mean, the fund-raising has picked up now, ya, but I...it's been a problem. And there's this...**inaudible**, I'm very confused as to who makes decisions to take on cases, I, you know, when I got here it was very clear-cut, we have a meeting on a Monday morning, we discuss the merit of the case, we discuss our funding, can we do this, can we not, what happens if we don't do it, can we refer the person, a decision is made. And now it seems that the National Office has a much bigger role to play in what cases we take on, and I don't...I'm not saying that they shouldn't have a say, but I'm not say...what I'm saying is that we should, too.

Int So, I'm confused...so the National Office joined up with the LRC in one physical space recently, how long ago?

NF 2006.

Int Ok, and ...Johannesburg...has a Regional Director?

- NF Yes.
- Int And who's that?
- NF Achmed (Mayet).
- Int Ok.
- NF Ya.
- Int And then the National Director, of course, is Janet Love, and how does that then differ in terms of...for example, Cape Town?
- NF Yeah, you see that's exactly the difference, because Cape Town pretty much, they can have their meetings on a Monday, they can decide which cases they're doing, and nobody interferes. With us, with having the National Director under your nose, it's pretty much: oh, I think I've read this in the paper, investigate this, I think you should take this case on, I think you should follow this up; I think you should do that. And in terms of other offices and the Jo'burg office, we are subject to much more stringent admin control, for instance, 'phone calls, photocopies, printing, hours, late-coming, disciplinaries, because we are right here, and the other offices don't have that scrutiny. And I think it puts us at an unfair advantage not because we shouldn't be under scrutiny, but because everybody should be under the same level of scrutiny, and that is not the case. So, ya, that bothers me.
- Int So...you've had the experience of working when the offices were separate, and now you've had this experience of the togetherness, in what fundamental ways do you think it ran better when they were separate?
- NF They were...I had a lot more clarity as to who was making what decision, and who to go to with a particular issue. I don't have that anymore. If I want to take a case on, I...you know, the Monday morning meeting might decide on a principle of law that it's not a good idea, but we get a directive from National Office that you got to take this case on, so we take it on. So, the lines are blurred, I think, I...
- Int And has this been discussed in any medium, in any forum?
- NF No, not that I know of. I think there's this, to be very frank, I think there's this dissatisfaction amongst most people, with the way the organisation is being run, but there's a complete unwillingness to say it in any formal forum.
- Int Why is that?

NF I wish I knew...I don't know. Nobody wants to rock the boat, nobody wants to be seen to be the outsider, I think that's more it than anything else, that if you are seen to be towing the line, then it's ok, you know? I don't agree. But...and it also seems that there are a lot of...which I, obviously am not a party to, but I've been told that there are cliques, there are groupings of people that favour a particular objective and they are one group and you'll get another group and, you know, this group will not say anything against the other group and this other group doesn't like the other...and it's all sorts of politics. And, I suppose, every office in every organisation has that, I think it would be naive to think that they don't, but, I just think it's a problem that people, for whatever reason, are afraid or unwilling to say what their grievances are, especially in a human rights environment.

Int Sure.

NF So, that is a big problem that we...what we profess to do for other people, we don't implement within the organisation, and that...I mean in terms of labour practice and the way you treat your employees and how decisions are made and...there needs to be transparency, there needs to be accountability, pretty much what we tell our clients they are entitled to. I think we need to do that within the organisation.

Int How non-transparent...has the LRC become?

NF Very.

Int In what ways?

NF Well, people are appointed, and the only time the rest of us know about it is the day that person starts.

Int Ok.

NF And you hear that the National Office has appointed this person to do x, y and z. And the rest of us were not even aware that there was a position available, that these were the candidates that this is what we seek to get out of this person, and for how long. This person's just arrived and this is what this person's going to be doing. And whether this person is going to be employed on an interim basis, or on a contract basis, or on a permanent basis, is irrelevant in my opinion, I think especially if people are going to be appointed to the Johannesburg office, then surely the Johannesburg office needs to know about it? We don't, in some cases.

Int ...Who makes...does the National or...Regional director of the Johannesburg office not make decisions about hiring staff?

NF I mean, sometimes the Regional Director is just told that this person has been appointed, and then I think: ok, but that can't be right. In other instances, for instance, with candidate attorneys, because I've been involved in the candidate attorney project, Achmed and I will sit down and we'll say: look, we need four candidate attorneys next year, let's get an advert out, the closing date will be this, the interview date will be this, we interview...there is an affirmative action manual, there's an affirmative action person in place, which is Josephine, she attends all the interviews, we jointly make a decision, and that's that. But in terms of interns, in terms of attorneys, it doesn't seem to happen.

Int Attorneys as well?

NF Mm. I mean I've heard that people are going to be...I mean, I've been harping on the fact that we need more attorneys in the Jo'burg office because I'm a bit swamped, and it hasn't happened, and it hasn't happened, and at the end of last month I hear that this new person is starting in August. Oh, ok, when was this person interviewed, who was this person interviewed with, when did the advert go out? And nobody knows what process...surely there must be process?

Int Absolutely...

NF And it's worrying, it's very worrying, to me.

Int Indeed. Do you have an annual meeting where all the regional centres get together and all the staff get together?

NF Yes we have an AGM once a year.

Int And has this...come up as an issue?

NF No, it hasn't. Because I think the only people experiencing the problems are the people in the Johannesburg office.

Int How many attorneys are there in the Johannesburg office? In the National Office, it doesn't have any attorneys, am I correct?

NF No, they don't. Well, I was...there's a bit of confusion there because we were told that the Jo'burg and the CLU office was one, and then there was this split again, and then Achmed's (Mayet's) the Director of Jo'burg and CLU, so, ok, for example let's just assume it's two different offices, so if that is the case then the CLU has...Adrian (Friedman) is an advocate, Sushila's (Dhevar's) an attorney, Achmed (Mayet) is an attorney, then the Johannesburg office has Achmed (Mayet) as a Director, myself as an attorney and Durkje (Gilfillan) who's an attorney, two to...she's here two to three times a week.

- Int And she's based in Pretoria?
- NF Well, she comes to Jo'burg...she supposedly to be at the Jo'burg office three times a week, and the rest of the time she's to spend in Pretoria. And then there are the candidate attorneys, so...The sum total of the Jo'burg office attorneys is myself and Durkje (Gilfillan).
- Int Right.
- NF So...ya, I mean, there is definitely a need for attorneys, that's not an issue, I'm just worried about the process in which these people are appointed.
- Int Ok.
- NF I mean, I'm not saying that the wrong process was followed, but I can only make that call if I know what the process was.
- Int Sure, fair enough.
- NF So...I don't know what process was followed.
- Int Right. And what do you attribute... you've said that the fact that the National Office has...in terms of actual management, where do you think the problems are arising, is there not sufficient communication between the Johannesburg office and the National Office...I'm trying to understand what the dilemmas are?
- NF I think...I think there is a lack of communication, I don't think it's the biggest problem. I think the biggest problem is that roles are not defined. I think there needs to be some serious planning about what National Office is allowed to decide and what they aren't, what decisions need to be made jointly, and what decisions need to be made by the Jo'burg office, alone. And I think once that is in place and people respect those boundaries, then it'll be fine.
- Int Ok.
- NF Because at this point, it's all over the place.
- Int Right,.. in terms of the types of work that you're doing, if I had to walk downstairs onto the seventh floor, I don't see very many people there, waiting, what is the reason for that, because having done the Oral History at the LRC about the early days, I always hear stories about the lines and lines of people, and of course I've also had the

privilege to go to other places, public interest law places around Johannesburg and I do see queues of people waiting. What's going on in terms of that?

NF I think, my view is that there are a whole lot more NGOs working in the area now, than there were, ten to fifteen years ago, and there are a whole lot more organisations doing exactly the same thing we're doing, and they're doing it better.

Int Right. Tell me about those, which...organisations are those?

NF Lawyers for Human Rights, Tswaranang, Women's Legal Centre, CSV, Wits, they're out there, in the sense that there's a lot of public presence as to what they are doing and what they are achieving, and that is also another issue because...it brings up another issue because the LRC has always been an impact litigation centre, precedent-setting litigation centre, and that's fine, but I think we've got to do the everyday cases, and we've got to publicise the everyday cases. If you have helped somebody...one person today, to get out of Lindela, that was there for an entire year...then we need to make known that fact, not only make known the fact that we got a ground-breaking judgement that's going to affect every migrant in the entire country, and ProBono.org, Wits, Tswaranang, even if you look at the format of the annual reports, it's not all ground-breaking cases, but they have had impact for that particular individual.

Int Sure.

NF And the difference has been made. And I think we've lost sight of that a bit. And so, ya, that, and the fact that the majority of the people that we get in, we seem to be referring away, and that goes back to my point about us having to redefine what our mandate is. Because we, on a duty day, any given duty day, we refer away ninety-five percent of people.

Int Where do you refer them to?

NF Other organisations...more than...

Int Why is that?

NF Because we don't do this. We don't do labour cases, we don't do criminal cases, we don't do refugee application cases, and we don't do eviction cases if they involve landlord and tenant and it's not a large amount of people. So, ya, we need to redefine, I think...

Int What do you do?

NF Yes, what do we do? We seem to do environmental law, on a very limited scale. I was told that we don't do refugee law as such, we don't have funding for that as such, but I have been dealing with detention and deportation.

Int Well, so has William Kerfoot, in Cape Town.

NF Mm. So, I don't know where the funding comes from, I don't know what...therefore I don't know what the mandate is, because it seems that William (Kerfoot) has been tasked to deal with applications and status issues, and I must do detention and deportation, it seems. But I suppose. And we deal with land restitution, we deal with registering of non-profit organisations, we do evictions of large amounts of people that have been evicted illegally. And then there's the Constitutional Litigation Unit which is supposedly a catch-all of that one might argue any precedent-setting Constitutional argument.

Int And how many people are there, it's Achmed (Mayet) and George (Bizos)...?

NF Achmed (Mayet), George (Bizos), Adrian (Friedman), Sushila (Dhever). So, that is what we do. And, I mean, we do...the paralegals do a good amount of work in terms of the everyday stuff, which is not reported on really, and it should: getting people their pension, and their UIF and disputes, getting paid out from employers, and stuff, and Josephine (Mokwebo) and Bethuel (Mtshali) do good work there, even Workmen's Compensation, they get people paid out their R200,000 for pension, R300,000...it's the money that people will subsist on for life, you know, and it's an achievement.

Int Absolutely, absolutely.

NF And it seems to be pushed aside, I think.

Int There's always been this tension at the LRC between focus areas which emerged in the mid-1990s, and then your everyday case, you know, and then there's this tension, does the LRC then completely do...work on their strength in the focus areas, or do they also do the everyday, ordinary person who comes in, and you're saying ninety-five percent of the cases are referred away, so, how busy are you?

NF I'm busy because I am dealing with two very big water cases, the Lindela case, which is the refugee thing, I'm registering about three or four NPOs a week. I've got two big land matters that are supposedly going to go to court, and I've got two housing matters. So, from my point of view, the cases that I have, are the type of cases that I cannot...I cannot wind up in about a month, it's taken me, I mean, it's been over a year and a half that I've had most of it. But we should be able to do the case where we get it today, next week we're in court, and we're done, it gives us experience, it puts us out there, we are seen to be doing what we purport to do.



Int And you're not doing that, you say?

NF No.

Int Right. Hum.

NF And I think we should, simply because, I mean, I am busy, I walk in here and I'm busy till the time I leave, but there are things that I can defer till tomorrow. So, it shouldn't be that way, I think. And also, the LRC has a vision and it has a mission statement, and while I understand that we need to do the impact cases, in terms of socio-economic rights, most of it's been done, 'the' impact case, you know, there's not more that can be decided on those issues, so, if that is the case, we run the risk of becoming obsolete. Because we...how many impact cases are you going to run a year? Three, four, at most? How many are actually going to be researched, drafted, into court, argued and out, in one particular year? Not many. So we should be doing everyday cases to give effect to the very judgments that we've had a hand in...in being made, I think, and that's always been an argument, and I know George (Bizos) is a big proponent of this and he says: you know, if there's nobody else that can help this person and we have the time, we must do it, if there's something we can do to help this person, and we have the time, we must do it. And then there's the other argument that says: it's not our focus area we must refer it away, there are other institutions that do the same thing. But that is why those institutions have long lines, that is why those institutions have loads of funding, they can justify being there. I don't know how much longer we can do that.

Int So what happens, say a person comes off the street, hears about the LRC, through whatever means, I don't know, and then comes up here and then comes to the reception on the seventh floor, and then what happens, take me through the process?

NF Well, the person will either get referred to...by an institution, another NGO that cannot help them, which is most likely the case.

Int Oh, so they don't just walk off the street, having heard of the LRC?

NF Some do, but not many.

Int Right...

NF Some have...the majority have either been to a government department or another NGO for help and could not get assisted. And they come to us and they come to Connie and they'll explain to Connie (Mogorosi) in brief, what their problem is, and Connie (Mogorosi) has a very good idea, she's been there for years, she knows exactly what the focus areas are and what are not. And if she feels that it's a straight out labour case or a dismissal case that we cannot do, she will refer the person to

Wits. And we have a referral list of people that we refer clients to. If she's not sure she will tell the person to take a seat and they will be consulted with.

Int By whom?

NF A candidate attorney.

Int Right.

NF A candidate attorney takes a statement, if the candidate attorney feels comfortable enough to make a decision to take the case on or not, the candidate attorney will do so or come and ask the attorney for advice. So the statement is taken if it's a clear cut, for instance, incompetence by the police, which we don't do, we refer the person to the Independent Complaints Directorate or to the Wits Law Clinic and you make a note of it. If you're not sure what to advise the client to do, you speak to the attorney and if the attorney feels that you can help the person by just a 'phone call or a letter, that is done, if not, and it feels...you feel that the matter is going to be litigated, and a decision needs to be made, and there needs to be a budget allocated to this case, then you bring it to the Monday morning meeting, and basically the Director and all the other attorneys and staff discuss it, and a decision is made. That's the process. The majority of all cases are referred.

Int Ok, alright. In terms of the CLU, how much do you work with them...if at all, and what are they doing, what is some of the work that they're doing?

NF I haven't worked in the CLU, I've worked with Achmed (Mayet) when he was in charge of the Access to Justice project, haven't worked in the CLU. In terms of matters that they are doing at the moment, I know that they're dealing with investigating a matter about tribal levies that are being charged, you know, they're dealing with a matter regarding transgender and transsexual people getting ID documents, they've worked on adoption cases where people want to adopt children into other countries, what else are there...they worked on the NPA prosecution case. Recently they worked on the first woman chief case, I mean, doing good work. But those are again impact cases that do not take all of your time, every day, all day. So, ya. And then they get referred matters from the other office...offices, that need to go to the Constitutional Court and Achmed (Mayet) and the rest of the team will help them get their papers in order, help them serve a file, because of the twenty-eight copies that need to be made, all of that.

Int Ok, right. I am also...keen on this idea that...he LRC, you said that funding is now ok, I mean, in what way is it now ok, because there's been a period of where funding was really tough and I would say that's the mid 1990s or maybe from 2002 onwards?

NF Well, all I have to go on is what the fund-raising department tells us. And they tell us that they've got a lot of money from what...the last...I mean I don't remember the

figures, but there was a very positive report in the AGM, and that's all I have to go on, so...

Int Right, ok.

NF I mean, I think a lot of that has to do with Janet (Love). A lot of...she puts in a lot of time talking to funders, drafting proposals, wording them properly, meeting with people, having them come out to see our clients, to see us, ya, and I think if there is an improvement, it's definitely because of her.

Int How would an improvement in funding impact on your everyday work, as an attorney here?

NF I would have more money to do the cases that I'd want to do, I think.

Int Which are?

NF Refugee work, environmental law work, everyday type of work. Smaller cases, I mean, maybe a group of ten to thirty people that are affected by polluted water or that are not getting water, or that are affected by dust storms, or whatever, so, ya. And I think there'd be more scope to then expand the type of work that we're doing, and at present, because of the funding we had to really restrict in the last few years, and I hope that changes.

Int Ok. I'm also wondering whether in the past two and a half years you've been here, you've had a particular client, a case, that really moved you, that really felt rewarding, that really felt maybe even disappointing, I'd like...if you could reflect on either a successful, unsuccessful case?

NF I can tell you about one that was both, actually, if that makes sense. Last year I was approached by four men that had put up an informal structure on private property, and they were all unemployed, their entire worldly possessions were what was contained in that one shack, and they lived on this property. The landlord...the guy that owned the property threw them out and destroyed their shacks. They came to us for consultation and we said we would do an urgent application to get them restored to the property, as process wasn't followed, and while they were here, consulting with us till about midnight, in order for us to get this urgent application going, they were barred from going to the property when they went back, and their stuff was burnt. Everything they had ever owned, and just then a Supreme Court of Appeal judgment came out, saying that if people's shacks are removed, there was an order made, the person destroying the shacks to provide the money, or the means of rebuilding those shacks. And that was the order that we went with to court. We got the order hands down, but, and I felt great, thought: this is what I'm here to do and I'm finally making...I can see the difference I'm going to make, because these guys are going to rebuild their shacks, it was the middle of winter, these people are going to be fine.

And the day after the court order, our clients had disappeared. A while later I got hold of them and I said: why didn't you go back? He said: no, the owner came to the property after we had been next door to the property, and had thugs beat them up and they were too afraid, and they left. My order meant nothing. And for a long time, and I still have that sense of hopelessness about: what does the law really do? Because, you know, I came here in the sense, with the hope that I was going to make a difference to people, a positive difference, and I get court order upon court order and the law says many wonderful things, there's very few instances where it actually makes a difference on the ground. Look at the law in terms of what it says about refugees, the law is great, I mean, if you look at the law in terms of what it says, even about...comparatively to other countries, first world countries, our law's progressive, our law's sound, but try implementing it, try having it make a difference to the people that have been affected by xenophobic violence, and is languishing in Lindela for over a year. I cannot use the law to get those people out, I cannot use the law to get the person that's been affected by xenophobic violence, food, I cannot use the law to get him a job, I cannot use the law to get him to get medical treatment for his little daughter, I can't do it.

Int Why?

NF Because, I think, that there is a complete disregard for the law. There's a complete...you can get a judgment today, tomorrow, next week, government departments are not willing to adhere to court orders any more. They don't. They flat out ignore you, flat out. And you get a contempt judgment and you will be back and forth in court, but nothing gets done. Yes, it's shocking, yes, it sounds unbelievable, but that is what it is. The judgment I'm telling you about in terms of building the shacks that was...there was one given against the minister, because the department had actually evicted these people and they brought contempt proceedings, and now there is a judgment saying that you cannot bring contempt proceedings against any organs of state. So that gives them the right to ignore court orders. Because you cannot bring them to court for contempt.

Int So where would the change happen?

NF It won't! It won't happen. And we have all of these, you know, environmental law, mines that are, you know, polluting left, right and centre, you take the government department to court, you take the mine to court, there's a wonderful order, you cannot bring contempt proceedings against an organ of state any more, so, the court will issue a directive against the departments of environmental affairs to say: make sure the clean up happens by this date, make sure these directives are in place, and they don't do it. What do you do?

Int Is this a constitutional litigation issue?

NF Well, the contempt issue's apparently being appealed now in court, and I hope that it changes, but until then...

Int But even if it changes, what can a court order then achieve? Can you fine a government, an organ of state?

NF Arrest.

Int An arrest, right.

NF And I'm hoping that changes.

Int Is that being handled by the LRC?

NF No, it isn't. It's actually a private law firm that's handling it because it's a...an application against one of the big mining houses, so...ya, and I hope it works, I really do...

Int ...Earlier you said, Naseema, that there seems to be no regard...a disregard for the law, in terms of rule of law. Even during apartheid, ironically, that would have never happened, where if there was a court order, that was obeyed, by even the most repressive... department, whether it was the Education Department...what's happening, is this a political manoeuvre, is it part of the government...the ANC government's method of dealing with...where does the locus lie as such?

NF I don't know, tough. I think...I think it starts with the ANC. Then there's...there's a strange attitude within government, about what they can achieve, what they should achieve, and there's a strange...a strange attitude about who's responsible for doing things. It seems there's high...there's constant passing of the buck. Zimbabwe, same thing, state of migrants, environmental issues, you talk about water being polluted, Water Affairs will tell you it's Environmental Affairs' problem, Environmental Affairs tells you it's Minerals and Energies' problem, and that...it starts from the top and filters down right through. And when the xenophobic violence hit, we wanted to get social relief of distress for these people, and the documents...the policy clearly says that you must have some sort of documentation to be here, and I went to the Department of Social Welfare and I said: look, let's make an exception for this one class of people for this situation, they are in desperate need. And they said: look, send in the applications and we will see what we can do. Fine, went out, interviewed people for an entire day, got applications together, two days later I go back there. We're not giving social relief of distress any more to these people. Why? The decision's been made to give it to the police stations where these people are staying. Who's made this decision? Head Office. Who in Head Office? I don't know. When was this decision made? I don't know. Was it a written policy? No, I don't know. Has the money gone to the Police Stations? I don't know, 'phone Head Office. Phone Head Office, no, 'phone the office in Jo'burg. It's a nightmare. You deal with the same thing with Home Affairs, you deal with the same thing with Environmental Affairs, they don't even answer to letters, they do not answer to letters. You will not get a letter that says: I acknowledge receipt. Write to the minister, you will not get a response.

Int      Alright.

NF      So, that is what you deal with, and then, you know, when you get that type of thing, you sort of get positive because you can see there's this complete disregard, you can...it's strong evidence to use in court, for incompetence and failure to act in...whatever. You get this great court order and you think you've got this legal stat and you get this court order...and that's all you've got...it's all you've got, you've got a piece of paper. And my client is still sitting in Lindela after a year and a half. So...

Int      Lindela is a refugee camp?

NF      Lindela is the only repatriation centre in the entire country, so people are kept there before they are deported.

Int      What are the conditions?

NF      Deplorable. They say it's not a prison, but they're treated much worse than people in correctional services. It's a nightmare. There's one doctor for, like, two thousand people, one nurse, cold water if you're lucky, soap if you're lucky, two meals a day, no recreation, no entertainment, no exercise programmes, no clear policies to visitors, no access to legal representatives, no access to immigration officials.

Int      You mean the access is barred?

NF      No, you can get...you can...for the inmates, in terms of...I mean if...somebody even knows that...for instance if an inmate...if somebody gets arrested, downtown Jo'burg that lives in Pretoria, he gets arrested for being an illegal foreigner, he is taken to Lindela, nobody knows where he is, nobody knows where he's ended up, so nobody will come and visit him. And the day he will get any access to an immigration official is to find out whether his status here has been verified or that he's being deported, good luck to him. Lindela is...ya...I've been doing research on Lindela for a year and a half, and I had hoped to be in court late last year or early this year, and I've consulted with so many people, and there was a High Court judgment about a month ago that came out, that said that the Home Affairs is allowed to keep these people for as long as they need to. The laws that...the Act says that they can't be kept longer than ninety days, charge interpreted really to mean a hundred and twenty days, that can be renewed over and over again.

Int      So this is, in a way, detention?

NF      It is detention, it is absolutely detention. And that judgment was supposed to have been appealed, but before it could be appealed the applicants were deported, the judgment stands. Cannot appeal it.

- Int So how would you be able to appeal it, until you get another case?
- NF I can't appeal it, **inaudible** bring a new application, and the idea for us at the LRC was to bring an application across the board, for all people in Lindela, and that's what we're working on, but it's going to be tough to get that order.
- Int I'm just curious, what levels of support you have here at the LRC, for the type of work, because it sounds to me.. to be very stressful. Do you have mentors, attorneys, advocates, whom you can go to discuss those...?
- NF I don't know, I suppose...because from my point of view I feel like I've been thrown in the deep end. I felt, you know, when I finished my Articles, I felt that I had enough experience to start off as an attorney, I didn't feel completely lost, but I don't feel equipped to be doing the type of cases I am, because they're huge. And pretty much, the support that I have is, I will have that support on an informal basis if I take the initiative.
- Int With whom?
- NF If I go and speak to Achmed (Mayet) if I go and speak to George (Bizos), ya, other than that it's pretty much my case, and I will sink or I will swim.
- Int What do you think needs to be done...what needs to be done differently at the LRC?
- NF I think the huge, the bigger cases should be taken on by a senior attorney with the support of a junior attorney. I don't think I should be the one running those types of cases, I'm glad for the opportunity, but most afraid of stuffing it up, and I think, until I've done at least one or two with a senior attorney, ya, but I'm trying. I understand it's a capacity issue, I do, and for some odd reason there seems to be a difficulty in the LRC carrying the services of experienced attorneys to come and work here.
- Int Why do you think that is?
- NF Money. Because somebody with ten years experience is not going to get the salary that they're getting elsewhere. It's a big problem. People that we're hiring have at least two to three years experience, so we are only hiring junior attorneys, we don't have experienced attorneys, the experienced attorneys we have are Achmed (Mayet) and George (Bizos). George (Bizos) is not going to be here forever and Achmed (Mayet) can't help all of us and he can't mentor all of us, and do his own caseload, and be the Director. So...it's a problem...it's a big problem.
- Int So, how do you cope...?

- NF Well, you just take it a day at a time and I tend to lean on Achmed (Mayet) more...a lot, and I also rely on counsel a lot, to help me through things.
- Int And whose counsel, it differs?
- NF It differs, ya. I speak to George (Bizos), I used to speak to Richard (Moultrie) a lot, now that Adrian's (Friedman's) here, I'll be speaking to him and...
- Int Adrian who...sorry?
- NF Friedman. And, ya, with the refugee stuff, I have a lot of support from Lawyers for Human Rights, David (Cote) and I work closely together, Tasneem Bhamjee at Wits as well, so if I'm a bit unsure about stuff I just usually give them a call, but they are outside of the organisation.
- Int Wow. Well, it's been very, in some ways, tough, listening to you and...I hear your despair.
- NF Ok.
- Int I was wondering, what are some of the good moments... for you to stay on?
- NF Ya. The hope that I will make a difference, the hope that this organisation can turn around and do the work it's meant to do, and I'd like to be a part of that. There are still...I mean, there are cases that are being won and there are cases...there is good work being done in terms of policy and legislation change, and whatever, I just think that in terms of...and my cases, I mean, I've become really attached to my cases, and as...I mean, I've been working on them for a year and a half and some of them haven't gone to court yet, but I'd like to think that I've got a shot at it and I want to make it work, I want them to be successful, and I want to help those people, I've become attached to my clients. I've become attached to the staff, I've made some of the best friends that I've ever had, at the LRC. Feels like home.
- Int That's great.
- NF One...because of the people...like I said the management and stuff makes me want to pull my hair out but...I have great friends here...ya. (*Laughs*)
- Int Naseema, I've asked you a lot of questions, I'm wondering whether I've neglected to ask you something, which you really think ought to be part of your Oral History interview?



NF Phew, I don't know. Probably...I'll probably think of it once I've...you know, had time to **inaudible**

Int Ok, well, we'll chat then.

NF Ok, ya.

Int But thank you very much, I really appreciated you being so candid and also... talking about these very difficult issues.

NF Well, ya, I guess I don't know if you'll get that from everybody else I...like I said there seems to be this tension about things, but from my point of view, I don't have a problem making my thoughts known, so, ya.

Int Thanks...

NF Ya, thanks.

**Naseema Fakir–Name Index**

Bhamjee, Tasneem, 24  
Bizos, George, 16, 17, 23, 24  
Cote, David, 24  
Dhever, Sushila, 13, 16  
Friedman, Adrian, 13, 16, 24  
Gilfillan, Durkje, 13, 14  
Kathrada, Ahmed, 2  
Kerfoot, William, 16  
Love, Janet, 11, 19  
Mayet, Achmed, 11, 13, 16, 18, 23, 24  
Mogorosi, Connie, 17  
Mokwebo, Josephine, 16  
Moultrie, Richard, 24  
Mtshali, Bethuel, 16

**Cases:**

Adoption cases (from abroad), 18  
Certification (Constitutional), 9  
Grootboom, 9  
Informal shack settlement case, 18  
Lindela, 16, 20, 22  
Makwanyane, 9  
NPA prosecution case, 18  
NPO, 16  
Shilubana, 18  
TAC, 9  
Transgender and transsexual ID discrimination, 18  
Tribal levies, 18

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