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This is an interview with Adrian Vorster and itâ\200\231s the 7" of August (2008), Thursday .

Adrian, on behalf of SALS Foundation in the United States, we really want to thank you for taking the time to participate in the LRC Oral History Project. I wondered whether we could start the interview...if you could talk about your early childhood memories, growing up in South Africa, where you think your sense of social justice and injustice developed and what were some of the formative influences that may have led you down this particular career trajectory?

I was born to an Afrikaans family and a very conservative Afrikaans family; I grew up most of my life, on a farm.

Right, is this near Pretoria?

No, it was in what was then the South Eastern Transvaal which would...itâ\200\231s now Mpumalanga, itâ\200\231s a small town called Bethal. Ja, and from a very young age, obviously, I was part of the old National Party apartheid system, like, as you can imagine, growing up on a farm, there were farm labourers who were really, I mean, you did not really perceive them as people. And, ja, my family was quite conservative...well, very conservative, right-wing conservative, and I also became involved in writing politics at a very early age and was very involved in that by the end of my high school...at the end of high school. But obviously... (Interruption).

(Interview resumes)

Ja, but even though as a kid, you know, you lived a life of privilege, you didnâ\200\231t really consider that there was a completely different world, you know, there was a completely different society which we were never exposed to, being an Afrikaans kid in an Afrikaans house, an Afrikaans school, Afrikaans society, the only time you saw black people was in the kitchen or in the garden, and you hardly ever spoke to them.

Sure...

So, itâ\200\231s very difficult to say. After I left school, I also wasnâ\200\231t really exposed to that.

When I started working to pay for my studies, I worked for a company who did translations and they were involved in the...when the Green Papers, Green Paper workshops were done for the Department of Land Affairs, to write the White Paper on land reform and also when the Constitution was written in 1993, I travelled to a couple of remote areas; that was my first exposure really to black people on a different level, you know, not someone in your kitchen or your garden. And through that I became involved with people from the Department of Land Affairs and I was just basically looking for a job, so I was employed by the Department of Land Affairs in my fourth year at university, and obviously there, things changed completely because from thereon I only worked with communities and you realised that there was a very different South Africa, something to which I was never exposed.

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I wondered, Adrian, if I could take you a bit back?

Yes.

You spoke about growing up in a conservative family and your world was very much the Afrikaner world, and Iâ\200\231m wondering in terms of right-wing politics...you said you joined Nationalist politics, what drove you into that and what meaning did it give to you in terms of...?

You know, it wasnâ\200\231t only Nationalist, it was right-wing politics. My...incidentally, my parents passed away when I was about six months old...

Six months?

Yes. So I grew up with my uncle, my motherâ\200\231s brother who was an artisan. Now, what I realised only afterwards is that, you know, they competed directly, if you look at South Africa, I mean, competition still is at that level for jobs...

Labour?

Yes, for labour, and, I mean, where the Afrikaans privilege was most, you know, severely protected, was in that environment and there was a lot of rhetoric obviously, in those circles around the braais and, you know, at social gatherings about losing, you know, if you...if black people get any privilege and rights, obviously, you know, whites will lose it. And obviously, as a kid, youâ\200\231re very susceptible to that sort of thing because, you know, you donâ\200\231t...we were never exposed to the other side, what we...only...you know, what we heard was...and it was reinforced in school because we still had paramilitary training in high school and we were indoctrinated, you know, you were shown videos of white little, you know, young white boys in the border war being necklaced and burnt and, you know, I mean, and obviously you were never ex...well, never explained...it was never explained to you, as a kid, what the underlying reasons were, why that happened. So it was a very one-sided thing and, I mean, the stateâ\200\231s machinery of indoctrination worked very well on the majority of white kids and thatâ\200\231s something which they, you know, even today, with my peers, because most of my friends obviously are still friends from that era, although weâ\200\231ve got political differences now. I mean, that indoctrination still, you know, is as firmly entrenched as it used to be then.

Right, And so, growing up in that situation, you said that the only contact you had with black people were people who worked for you, and that the discourses were really around Nationalist right-wing politics, and so your involvement, what was that in? Was there a youth league?

Oh yes, yes. When there was the political party then, the Conservative Party, and they had a youth wing in Bethal, which was obviously run by very prominent businessmen



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there, and they used to recruit us and had...you know, we had, in those...in the late eighties, early nineties when the separate...what did they call it in those days? Ja, separate areas, you know, there is a specific term for...

Group Areas?

Ja, when the Groups Areas Act was abolished, you know, we protested and we burnt the White Paper, you know all sorts of things. Ja, luckily there was one aspect which I never became involved in because there was also a much more military, you know, wing to that, which...which...ja, fortunately, I never became involved in that. It was more protests and as I said, you know, what I think...ja, it's, you know, that sort of thing.

Did you get involved in...did you have to go to the military after you left school?

I was drafted but when I was drafted if you were enrolled at university, you know, you had a period where you could finish your degree first. So I was drafted, I would have gone to Grahamstown, but then I enrolled at University of Pretoria and when I finished my studies, you know, the national service was abolished.

Oh, really...

Yes, so I just missed it by a year.

Right, ok. And so it sounds to me...it seems that political consciousness and awareness really developed once you were at university?

Well, ja. When I started working.

Right...

And it was quite, you know, a coincidence because if I...it was quite a coincidence, one of my friends worked at this company who did the...were stenographers and, you know, provided translations and, ja, I mean, I was quite incidentally...I was exposed...coincidentally I was exposed to that and through that I was exposed to the Department of Land Affairs and I ended up in a directorate where, you know, where I was exposed on a very broad level. So, ja, my political consciousness is still very fresh, it's about...I started working there in 1996. Ja, so it's about twelve years.

Sure...I'm wondering, in terms of the degree you studied for, was that initially a legal degree?

Yes, I did a Bachelor of...Bachelors of Law and after that I did a Bachelor of Laws

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Did you do an LLB or BPROC?

A BA Law and then an LLB after that.

Right. And what was the reason for you to pursue that, given that you could have done many other things...â\200\235?

I started studying theology, which was part of...it was the highest calling for an Afrikaner boy...

Ok...

...to become a Dominee.

So you have a strong Christian background?

Yes, obviously, all of us had, but at university, ja thatâ\200\231s...I lost that quickly. You know, then, because...then also obviously, when I ended up at university, I started studying theology, and then all of a sudden you were exposed to books which have a completely different view of the world, which you never were exposed to at, you know, in the environment in which you grew up, and so thatâ\200\231s the first thing I lost before I started losing my political affiliations was...my affiliations to the church and which made it much easier, you know, for that transition to take place because very much of the political thinking in, you know, of Afrikaners was entrenched in the NG Kerk and the Gereformeerde Kerk of which I was a member in those days, and it was a random decision, very random. I mean, I realised, I mean, Iâ\200\231m not gonna, you know , I donâ\200\231t subscribe to the...to this, you know, Calvinistic, sort of, beliefs anymore , I had to decide to study something else and I already had a couple of BA subjects, so I decided to...you know, law would be the easiest to...So it was never really my intention to become a lawyer.

So, law was really by default?

Yes.

But you took it quite seriously because you went on to do the LLB, as well?

Yes, yes I did, I mean, the first degree was...when I started studying law I realised it came quite easily, you know, there was something, you know, I took to it like a fish to water, it was something which really was...I just understood it.

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Right, and in terms of university, it seems to me that youâ\200\231d probably have been at university when things were really changing...

Yes.

...politically?

Yes. When I...the first time I was allowed to vote was when there was a referendum in 1992 when we had to vote and whether we...the National Party should engage to the ANC or not. Um, ja, and obviously that was still a negative vote for me, because, I mean, it was unthinkable, you know, to where...where I came from.

Iâ\200\231m also curious, Adrian, it seems to me that you changed very rapidly, and what do you attribute that to, do you think its just exposure to...whatâ\200\231s your sense?

You know, I would...I remember as a kid our domestic servant, I mean, that was a real irony of the way we grew up, you know. The first four years of your life you would spend on a black womanâ\200\231s back, wrapped in a blanket, you know, and after that, I mean, you know, thatâ\200\231s the most intimate contact that you will have with anyone. So I think, deep down, you know, if one, sort of, looks at it, thereâ\200\231s always been a close contact, so I think itâ\200\231s latent, you know, itâ\200\231s always been there, itâ\200\231s just been suppressed by, as I said, a very effective propaganda machine and also what one must realise, if you live in a community like where I grew up, well, even now, it hasnâ\200\231t changed much, to have such different political views from your peers, you know, and when I say your peers, itâ\200\231s Afrikaans people I grew up with and, you know, we still have...we still watch rugby and...because I'm still an Afrikaans...

Of course...

...you know, thatâ\200\231s still exactly who I am. So itâ\200\231s difficult to have this..bit of a

divergent view. Ja, so, as I said, so, maybe the consciousness was always there but it was just suppressed and when the opportunity presented itself, it was just easy to, you know, to make that, sort of, switch in your head.

So you get involved in this Green Paper exercise, you go off into communities, and what did you experience then, what was your sense?

Well, first of all, I could...realised that you also...that black people are intelligent human beings, that they were, you know, that they could do more than, you know, work with a spade and that...you know, that people also had opinions and, you know, inevitably, especially when we did that work you were exposed to those opinions and that started, you know, all of a sudden there was a completely different take on South Africaâ\200\231s history, on the needs of people and obviously also something which I saw, as I said, which we were never exposed to, your domestic servant would come in and she

would, you know, leave again. You donâ\200\231t know whether sheâ\200\231s got kids, you know, itâ\200\231s

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just one of the tools, like taking the vacuum cleaner out of the cupboard and all of a sudden you see that these people, you know, these people have houses, they've got kids and in no way, you know, is it different from ours, the only difference is that people really struggle and, I mean, that sort of...if...I think if that doesn't touch you, you know, nothing will.

Right, you did that and then what happened thereafter, how long did you do that job for?

I did it for about two years and that was to pay my own way, because I paid for my own studies, and as I said, we were involved in the Green Paper workshops and I was just basically looking for a job, so, I applied to the Department of Land Affairs and up to this day, I don't know why I was appointed, because it was in the heyday of affirmative action when they were getting rid of, you know, whites trying to get, you know, the demographics more representative and I was appointed in a...and also in a directorate which made very key decisions, you know, regarding land reform. And, ja, I was basically the only white person in that directorate.

Really?

Yes. Well, there was...ja, the only line functioning person, so, you know, quite a big directorate, and that was where I was exposed to...that's where it completely changed obviously. I mean, that's also where I was exp...was then introduced to Louise (du Plessis)...

Ok.

...yes, who worked at the LRC.

How did that happen, was it because of her work on Land?

I worked...I was the...responsible for drafting policies and regulations, and legislation on...most of the land reform legislation I worked on, as a co-drafter or as a policy-maker, although I also still engaged with communities, you know, on a regular basis, so even though that was my job, I still assisted communities on an individual basis. So, I worked with the Richtersveld case, I set up the legal entity for the Richtersveld case and for Mr. Seremula...Kranspoort, I assisted in that, so I was involved in all of that, in the Baphiring case as well. So, ja, through the land work, which the LRC land unit did, I was, you know, was introduced to Kobus Pienaar and Henk Smith and Louise du Plessis, and specifically the Baphiring case we worked.

Ok. I'm going to ask you at some point in the interview to talk about those three cases, the Kranspoort, Baphiring and...what was the other one?

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Richtersveld.

Richtersveld, exactly. But you worked there for two years and then did you move to the LRC?

No, [ worked at the Department of Land Affairs for seven years.

Oh, really...

Yes, it was quite a long time, a long stint at Land Affairs.

Right. And what was your experience of that...This would have been from 196 onwards, or...?

It was from 1996 to 2001, ja.

Right, ok.

Well, I...it was a marvellous job to do...

Really?

...it was very challenging because, I mean, I think land reform, of all the legal disciplines in South Africa, land reform must be one of the most complicated because of all the over, you know, overlapping rights and the...just the sentiments involved, I mean, you know, obviously it's also about entrenched economic positions, it's a very challenging job. And as a...ja, I mean, I had lovely colleagues but it's, you know, as it is of a civil service, it's, you know, your scope for lateral thinking is obviously always restricted by what politicians decide.

Mm, absolutely...

And that, I found frustrating.

So there was the bureaucracy?

You know, where I worked there was very little bureaucracy and I had quite a bit of leeway to do, you know, what I thought was good, but obviously as far as the policies are concerned, I mean, at some stage, you know, I disagreed with...and...in an progressive way, I disagreed with the direction Land Reform was taking and that was basically when I decided to, you know, Iâ\200\231'm going to leave the department.

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So what was the direction of Land Reform that you found problematic?

Um, well, there were several...there were several issues. First of all itâ\200\231s...the department developed this obsession with transferring land to, you know, to historically disadvantaged people, but all that happened was, that it became poverty traps because, you know, millions of hectares were transferred without any post-settlement support.

Right. So no capacity-building, as such?

Nothing whatsoever. If you look at the Levubu case which was in the papers quite a lot, I mean, those were very productive farms which were...which were transferred without any, you know, post-settlement support, and there was an Act which was promulgated the...the Communal Property Associations Act, which made provision for the registration of legal entities to which, you know, land could be transferred when land was acquired as a group. And, [ mean, I did all the registrations and when I left there were about eight hundred of these registered, so it was eight hundred transfers took place into these entities and all of them collapsed.

Hmm...

All of them. I think one or two still had a semblance of, you know, that they might have operated, but the rest completely collapsed. And certain individuals within those groups took over the assets and, you know, it became a very...you know, itâ\200\231s...the groups of people who contributed their grants benefit, had absolutely nothing from these projects.

Really?

It changed a bit towards the end when the LRAD land distribution for agricultural development programme was adopted by the department, to say, you know, a contribution should be made and the department will then equal that contribution. But still the emphasis was just on the...you know, to get hectares transferred.

Iâ\200\231m just curious how you, as someone who grew up on a farm gets involved in this and...it is expropriation of white farmerâ\200\231s land... the land means something quite valuable to people who have grown up on it. â\200\231m wondering what your sense was...?

Ja, you know, what the interesting thing is that I realised one day, our farm meant a lot to us but we were not the only people living on that farm, you know, we had a Title Deed, it was the only difference between ourselves and some of the farm labourers who worked for my great-great-grandfather, you know, they were as part of that...that whole emotional set-up as I used to be. I remember something which upset me tremendously when I was a kid. There was an old man who used to work for my great-grandfather, I mean, he was very old when IL...when I was still very young, and

Int

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Int

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Int

AV

Int

he used to drive the tractor on the farm. And often we had these...these tiller machines and they were quite wide so sometimes you would misjudge when you take the tractor, you know, when you go through the gates and you would hook the pole and you would pull it over. Now, it happens and you just fix it, I mean, itâ\200\231s not a big issue.

And this old man used to work for my uncle for...as I said for my great-grandfather, and one day, the same happened to him. And my uncle came home from work, because he wasnâ\200\231t a full-time farmer, he was an artisan, and he summarily just told this old man, you know, if...when I get back from work tomorrow I donâ\200\231t want you here anymore. I mean they lived...itâ\200\231s the only place he ever lived, itâ\200\231s t he only place

he knew, he was born there and he was a very old man. And, I mean, I remember that was the impression that left on me. But obviously, as I said, as a kid, you know, you donâ\200\231t think: where does this man go to? You just know, you know, it wonâ\200\231t b e the

same without him and then afterwards you think of incidents like that and one realises, I mean, land shouldnâ\200\231t belong...it shouldnâ\200\231t belong to someone, i t shouldnâ\200\231t

belong to a single individual.

So, you did these land redistributions, as such, and thereâ\200\231s no capacity building, and thatâ\200\231s quite disillusioning, so you decided to leave, and then what did you go on t o do?

To the Legal Resources Centre. I resigned without having anywhere else to go, I just decided, you know, this is something if in twenty years time, when one looks back on Land Reform in South Africa, I wouldnâ\200\231t like to have my name attached to what was happening there. Ja, sorry, just to get back. ..

Sure.

The other thing in the department, there were these endless, endless, endless meetings without having any results and millions spent on workshops, where nothing was learnt, where people, you know...I used to do training on legal entities everywhere in the country, to officials from the Department of Land Affairs and private lawyers, on how to set up legal entities and how to properly do that. And the people from the private sector would actually go to these workshops and engage meaningfully, and the civil servants who go there would, you know, be there for the first one or two days and then theyâ\200\231ll just gallivant around wherever we went, you know, it was just an opportunity to get out of the office. So...and I just saw how the capacity within the department...they were obviously very dedicated people but how they just progressively deteriorated, and I just, ja, I just didnâ\200\231t want to be...have my name attached to something which I could clearly see was, you know, doomed for failure.

So, in the department you were in did you then work with Land...?

I was in the Department of Land Affairs.

You were in the department...but did you work with the Land Claims Court, etc?

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AV

10

I, in very few instances, except for the urban claims, land was always transferred to a legal entity to hold the land on behalf of the community, so, well, most of them, 99.9 percent of those entities, I was involved in setting up those entities, you know, to do the Constitutions, to see that the Constitution was still in line with what the Constitution of the countryâ\200\231s saying too. But, ja, and then, obviously I gave legal advice and legal assistance to the officials in the department.

So, the legal entity, what would...they have comprised of?

For example, the restitution case, all the claimants would be the members of the entity and then they will elect a committee, you know, to engage on behalf of the group. If itâ\200\231s redistribution beneficiaries, everyone who contributes money would then, you know, be a member of that entity and...because due to, ja, the size of these committees, itâ\200\231s difficult to register the property in co-ownership.

Okay. So thereâ\200\231s this legal entity thatâ\200\231s on behalf of the community?

Yes, itâ\200\231s like a trust or a company.

Sure.

It was an entity which was specifically created for purposes of holding land on behalf of land for beneficiaries, it was supposed to be a simple entity, simple to set up and inexpensive to operate.

And did they normally consist of someone who was a chief, or would that have not been the necessary criteria?

You see, there is also a big issue...when Derek Hanekom was still the minister of Land Affairs, there was a very anti-chief sentiment with Aninka Classens, you know, and so, all these legal entities were set up specifically excluding, because as I said, it was always...you always had to politic...you know, toe the political line and that...that time it was always the...we excluded the tribal authorities and weâ\200\231d set up a committee, and that would be a complete stuff up. Because, you know, you had to...in a specific...in tribal areas, most specifically, you had two entities operating, and there was always conflict between the two, and in many cases it led to very violent, you know, sort of, clashes within communities, especially in your bigger communities.

Iâ\200\231m curious, Derek Hanekom may have been the Minister but in terms of the people working in the department, did anyone raise an objection to the exclusion, marginalisation of tribal leaders, etc?

You know, what happens in a department like that? You get your foot soldiers, you know, the cannon fodder, who shift papers around, and then you always get the

Int

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Int

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Int

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Int

AV

11

people, the think tanks, now in Hanekom's day...Hanekom's days it was Aninka Classens, it was Ben Cousins, I don't know if you know Ben Cousins...

I've heard of him..

...he's from the University of the Western Cape, Aninka's Geoff Budlender's wife, there was Martin Adams who was a consultant from somewhere from the UK, I don't know who he works for. And I remember the day when the new cabinet was, you know, was announced, they were all huddled in Martin Adams's office, because they knew if, you know, if Hanekom's out, then they're also out. And that's exactly what happened.

Right...

You know, as soon as a new Minister comes in...

So this was the second elections we're talking about?

Yes, yes. And the whole department was purged of all Hanekom loyalists. I mean, there were a number of them. Jean de Villiers, Lala Steyn, Sue Lund, they were all the old, and, I mean, they were basically all white as well, you know, the old struggle, lefty liberals as they were seen in the department, and, um, ja, obviously they all toed the Hanekom line. And after them it was Sipho Sibanda and Glen Thomas and people who were also in the department, you know, black people who were in the department and they were on a lower level, obviously, and they could never go...you know, become part of this group within the department, and when they went out, obviously, they all immediately were raised to the prominent positions. And, obviously, also because they toed the political, you know, the party line.

Right. So has that ever been addressed, the exclusion of tribal leaders?

Yes. When Thoko Didiza became the minister, there was a complete shift, you know, to the other side, where the Communal Land Rights Acts, the whole thrust, I...when...I was involved in the drafting of the Act right from the inception, and what was interesting, I mean, to answer your question, when it was conceptualised, Ben Cousins was still the driving force behind the Communal Land Rights Act, and when he was, obviously now axed with the rest of the...with the...they used to call them the socks and sandals brigade. (Laughter). So when they went out, there was a complete...because the Bill was ready to be tabled, and that would have taken away almost all the power of, you know, the traditional leaders had in communities. There was a complete, you know, one hundred and eighty degree turn in the policy direction that the Bill took and, ja, that the whole thrust was then to transfer land to tribal authorities, you know, or to tribes, to give legal recognition to tribes as an entity, but to give the effect of control of land to tribal authorities.

Int

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Int

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Int

AV

Int

12

But that creates its own sets of problems, doesn't it, this unproblematic transfer?

Yes, no, of course. But, I mean, it's obvious why it happened. I believe it was a political ploy to gain support, you know, in areas...where the ANC really didn't have that much support.

Right...

Because, obviously, if one works with these communities, and I've worked with hundreds and hundreds of these tribal communities, tribal authorities have a lot of influence over, you know, what people in that area do. I mean, they are not only the, you know, the political administrative leaders, also cultural and religious leaders, so people still, you know, follow what they're saying. And if you've got the support of the tribal authorities, you know...And the interesting thing is...at some stage the civics were quite active, you know, and they were quite a good counterbalance for the tribal authorities, but most of them were recruited into, you know, local government, they became councillors and mayors and...so, I mean, the civics basically, you know, disintegrated.

Right...

And they...ja, so it really, you know, it definitely creates a set of problems because, you know, resources don't, you know, go down to the people who should benefit from it, it's very susceptible to corruption.

I can imagine. Before we move on to the Legal Resources Centre, I just wanted to find out...I hear different things from different people, but what, in your estimation, is the reason that Land Redistribution and Land Affairs and the Land Claims Court all have such a bad image or reputation?

You know, one of the things definitely is incompetence, that's...and I mean, I still know most of the people who are employed at the Department of Land Affairs, I've worked with them, it is just sheer incompetence, and callousness, you know?

You think people...don't have enough education, aren't trained well enough, what's going on?

No, they do, they do, but, as I said, you know, very few people when you go to any of the Land Affairs Departments, they're always out somewhere, you know, addressing meetings and whatever, and going to meetings...and if you go to any of the provincial offices, even now, the district office, there's never anyone there, in the offices,

theyâ\200\231re  
always, you know, on their way to a meeting or just back from a meeting.

Right...

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Int

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Int

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Int

AV

Int

AV

13

So with the work, you know, the actual admin work, nothing happens. I've taken...I've taken the department to court on behalf of a number of farmers who've offered to sell their farms, you know, to the Commission, where claims have been approved, where it's just...where it's been dragging for two years. All the work's been done, we've done all the work which the department's supposed to do, they must just, you know, put a signature on it, and that's, so it's...one thing is incompetence and the other thing is...it's a very politicised department, you know, and, obviously, Land Reform is also a very powerful political tool. And if you look at the people, you know, who've been directors general in that department, you can clearly see, you know, the direction the wind is blowing. And every time, when, you know, there's a new political, sort of, shift, you get a new...you get a new director general, you get new, you know, people in management positions. So, you'd work on something for five years, and you'd get your systems and procedures in place, and as soon as it's in place, someone else comes in, you know, and just clears the table, and you have to start afresh. That's one of the issues. They never...I mean, they haven't developed this, you know, this consistency in policy making over the last fourteen or whatever years, and that's also a big problem, you know? Because no-one knows how long, you know, who's going to be the flavour of the month.

Right.

I mean, Glen Thomas was there for a couple of months or years, well, two years, and now, I mean, it's Thozì Gwanya, who's got a completely different approach to Glen Thomas.

Right...

And, obviously, the other thing is, I think the emphasis is wrong.

In what way?

You know, that's...an example I always use...there's always this thing that eighty-five percent of land is in the hands of white people and fifteen percent in the hands of whites...

...blacks...?

...ag, I mean blacks. So there was this obsession to transfer land. Now, what I always said, if you look at agricultural land in the Karoo, for example, or Namaqualand, you

can get that...by taking that area and transferring to black people, you can get that ratio to 70/30, the other way around. But, I mean, that land is absolutely worthless, and that's a big tract of land. I mean, the valuable agricultural land is in...you know, areas like KZN, Mpumalanga, Limpopo Province, so, first of all, if government can move away from that obsession of, you know, transferring hectares and rather looking

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14

at economic development, you know, economic upliftment, that would make a big change.

Iâ\200\231'm also wondering...I remember you saying that you met Louise...when you were working at the Land Affairs, and then how did that develop in terms of you then ending up at the Legal Resources Centre?

The LRC appointed consultants to do some of their research, and whatever, where they didnâ\200\231t have the capacity, so when I resigned I said to Louise: yes, if youâ\200\231ve got consultancy work, because Iâ\200\231'm now without a job. And she said sheâ\200\231s looking for someone to assist her on the Baphiring case, specifically, and if Iâ\200\231d be interested to start doing Articles, which I hadnâ\200\231t even considered. So, I said to her: yes, sure.

And so you started Articles at the Legal Resources Centre..."?

Ja, there was also a bit of a...there was a very big political backlash because I was appointed, obviously, because Iâ\200\231'm white.

Oh?

Ja, and thatâ\200\231s well documented.

Really? In what way is it well documented?

The correspondence in my personnel file between Vincent Saldanha, Charles Pillai, because I was appointed...who else...a lot of people...ja, a lot of the staff in the office was also very unhappy.

In the Pretoria office?

Yes, when I was appointed.

Who in particular would you say?

Um, Mathews Mojapelo who I remember was very unhappy, Mandla...what was his surname...Skosana was also very unhappy when I was appointed.

But these weren't lawyers were they?

Mathews was a lawyer, yes, Mandla was a paralegal. Ja, but in any event...

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And...did Charles have a problem with this?

He also had a problem, ja.

Right...

Ja, thatâ\200\231s also why I decided, after I completed my Articles, not to stay at the Legal Resources Centre, because I also saw the organisation as highly politicised. I donâ\200\231t know if itâ\200\231s still the same, but, it was...

Do you think the Pretoria office...particularly was different, maybe, or was it the organisation in general?

No, I think the organisation...you know what I found very strange and, I mean, this is now very candid, but at some stage when I was still at Land Affairs, before I spoke to Louise, I worked very closely with Kobus Pienaar and Henk Smith because I was chairperson of the steering committee, a joint steering committee which consisted of the Department of Land Affairs, the Legal Resources Centre, um, what was the other...there was some NGO, to deal with the old coloured reserves in the Western Cape and Northern Cape. And one day I approached Kobus and Henk and I said, you know: Iâ\200\231d really like to come and work for the Legal Resources Centre. And they said: thereâ\200\231s no chance because youâ\200\231re white. And I thought that was very strange for an organisation where, you know, like the Legal Resources Centre where it became...where the whites in the Legal Resources Centre became so concerned of being, you know, seen as...well, I donâ\200\231t know what they were worried about. But in any event...

Concerned about race?

Yes, but I donâ\200\231t think itâ\200\231s...theyâ\200\231re concerned about race per se, theyâ\200\231re concerned about their own positions within the organisation.

Right...

But in any event, so, ja, it was quite a shock to me when I...because I didnâ\200\231t even know that there was this big backlash, you know...

Considering your appointment?

Yes.

And...but what was the backlash, I don't understand, if Charles was a bit against y  
our  
appointment...

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No, no, what happened was Asmitha Thakor, Bethuel Mtshali, Ellem (Francis), Nicole and Louise (du Plessis) sat in the interview, and then Asmitha was Acting Director, Charles was...I don't know if he was Acting National Director, or what, but Charles wasn't there...um, I remember the letters I saw afterwards, Asmitha appointed me, and I signed the contract and I think Vincent Saldanha or Charles insisted that she withdraw the offer. Ja, and she refused to do that. Yes, great, absolutely formidable woman.

And it was purely on the basis of race?

Yes. Because I was white.

Gosh. Did they have other Article Clerks?

Yes, there were two others, I think. But, obviously they always had three in the office.

I'm very curious, considering your incredible experience at Land Affairs, that you wouldn't have been considered?

Yes, that's what Asmitha said, yes. Because, I mean, as far as exposure to Land Reform was concerned, I mean, I think there were very few people in the Legal Resources Centre with more experience.

Sure.

And that was also on the basis, you know, Louise (du Plessis) approached me.

So, anyway, you get the appointment...

...I get the appointment, yes...

...you go for two years, and what did you do?

What...what...I think what made it a bit different was when I arrived there, the other Article Clerks were, you know, running around doing things which I thought were silly.

Like photocopying?

Yes, nonsense. That's all they did and they were happy to do that. They got absolutely  
no litigation experience or exposure to litigation.

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And were they all black?

Yes.

Right.

Yes. And I just thought this is, you know, this is...you've got this incredible opportunity because you're, you know, all these amazing cases, you know, and these great resources, and no-one does anything, so I got a couple of people, because we had to, you know, had turns in...

Err...

screening clients...

Ok.

And then you would refer the cases to your principal and they would decide. And I would get these amazing cases and I would see that...and that's, if we get to what I'm doing now, that's where the foundations were laid. And I...

And this was the sniff test you're talking about?

Ja, yes, yes. And I would see these amazing cases, and I realised this is a quick win, you know, and I would read cases like Grootboom, the big LRC, you know, flagship cases, and I would see that, you know, it has yielded absolutely no results. It's made legal history, but nothing's happened, and then you see these people, and you realise, you know, you can make it...there's a direct intervention, a quick win, you know, an immediate result. And the LRC doesn't want to take those cases.

Why is that?

They also had this obsession with impact litigation, you know, not...but the way they saw impact litigation.

Right. Which is?

You know, you know how our law operates, itâ\200\231s...we donâ\200\231t have a codified system of law, so, obviously the law is developed through case law and lower courts are bound by the higher courts, so they wanted to take these cases to the Constitutional Court and the SCAs Supreme Court of Appeal to say this is the law, you know, in line with

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what they believe the law should be. But you get these cases, and, I mean, today itâ\200\231s still the same, you get these magnificent cases on, you know, on gender equality, on racial discrimination, on how Land Reform should be influenced, you can think of any, you know, public interest law, but, I mean, you know, on the ground, nothing happens, because no-one takes these cases to court. And what I realised it would have a bigger impact and thatâ\200\231s something I did, thatâ\200\231s the first case I did at the Legal Resources Centre, without my principals knowing it, I realised there were large scale evictions in Schubert Park, which was in the news now.

What is it called, the Park?

Schubert Park, it was in the news where they evicted people, the City Council evicted people...

Oh, is that that building which...was on fire?

Yes.

Gosh, right.

But what happened was, the municipality started evicting these people.

Without informing them?

Well, without following proper procedures and without having alternative land available. But itâ\200\231s not as if there was a law in place which prohibited me from doing that, these people didnâ\200\231t have access to the courts, they couldnâ\200\231t, you know, so, what I realised was instead of bringing a big case, you know, on what peopleâ\200\231s rights are, to say, letâ\200\231s start opposing these individual eviction applications. Which...I had...a friend of mine, an old varsity friend whoâ\200\231s an advocate, so we started doing these cases without obviously, the...my Principal being involved.

And your Principal was?

Was Louise (du Plessis )at some stage and Helen, or Asmitha, I never knew who it was. I did the photocopying, you know, as quickly as I could then I was back at my cases. And what we did was, I saw it was so effective, after five or six cases which we

opposed successfully, they halted the evictions.

So how did you do that, what was the mechanism?

Well, weâ\200\23111 just oppose the applications.

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19

On the basis of?

It would be, one of the basis would be that the process wasn't followed, you know, there's a specific Act which prescribes a process, or that alternative land is not available, and there is an obligation in terms of the Constitution and in terms of the Prevention of Illegal Eviction Act on government to provide alternative accommodation, which they didn't do. Now if it's not raised by a defendant, the court's not going to raise it, you know, and most of those defendants never got to court. When they got home their property was, you know, out on the pavement.

I wondered as well...you'd been involved in Richtersveld at the Land Affairs, if I'm not mistaken, and then you were involved in Baphiring, as well...?

Yes, and I was involved in both of them when I joined the Legal Resources Centre as well.

Right and Kranspoort as well?

Yes.

And I wondered whether you could talk about these cases and your involvement and some of the aspects of public interest law issues that emerge?

Ok. Well, the Richtersveld case I could never understand the big hype about Richtersveld.

What is the big hype? I know it's one of the longest running cases.

Yes, well, the resources spent on that case, because I think it was an emotional issue, you know, these people were always referred to as 'the forgotten people' or whatever, but, I mean, there's absolutely no difference between this group of people and any other rural community in South Africa. Exactly the same issues that, you know...because if you think about Richtersveld, what were the issues there? These people were never formally dispossessed of land, they had the original rights, you know, on the land, it was just a slow process of...you know, almost a war of attrition against these people. You know, it's a fascinating story, and then, obviously, the resources were just, you know, appropriated by government and successive companies. But, as I said, I mean, there's very little difference between Richtersveld and countless other communities in South Africa. But, ja, the...as I said, the principles there was...is not very unique, in a South African context. It's a restitution claim. What made the case very interesting was...it was the whole issue about aboriginal title, you know, the Restitution Act says if you've been dispossessed of rights and

lands, youâ\200\231re entitled to have those rights restored. And the...it was always seen as a title deed, you had to have a title deed, or, you know, some sort of permission, written

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permission, which these people never had, they were just, you know, they just occupied the land since time immemorial.

Where do you think the emotion comes in for the LRC, because itâ\200\231s one of the cases thatâ\200\231s utilised lots of resources and itâ\200\231s had Henk Smith involved in that one case for a very long time?

You know what I always...I mean, Iâ\200\231ll answer that by a similar question.

Sure.

There...obviously with, you know, with separate development and, you know, different race groups living in different areas and the black spot removals, in the Northern Cape, Western Cape, Free State and Eastern Cape, there are about twenty-three, what they called, coloured reserves, I donâ\200\231t know if youâ\200\231ve ever heard of it, but...

Iâ\200\231ve heard of reserves, coloured reserves.

Yes, it was labour pools basically, you know, parcels of land where people lived, you know, they were allowed to live there, and from there they provided labour to surrounding areas. Now this is also similar to thousands and thousands and thousands of similar areas where black people lived. They were labour pools, you know. But these twenty-three areas were primarily occupied by coloured people. When the...and the Act which was written to assist these communities is basically...almost tribal communities, was the Communal Land Rights Act. Now, that Act wasnâ\200\231t a priority until...well, when was it...â\200\23199, 2000, just, as I said, after Derek Hanekom left. But a specific Act was written for these communities, for these twenty-three, just twenty-three areas, a specific Act was written for them. A whole directorate was set up to do that, and Iâ\200\231ve never been able to understand why such preferential treatment was given, you know, to these specific communities. And, I mean, quite incidentally, Kobus Pienaar was one of the big driving forces behind that specific legislation being written for these coloured reserves. And, I mean, the Legal Resources Centre also...

To set up the coloured reserves?

No.

To...?

To get the legislation to, sort of, normalise it, to get the land transferred, but...and they also spent a lot of money...I donâ\200\231t know if itâ\200\231s just because the Western Cape has

been...you know, the Cape Town office has been prominent in the Land Litigation Unit...

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Itâ\200\231s also a big office, isnâ\200\231t it?

Yes, yes. And that...you know, there are a lot of coloured people living in the Western Cape, and the majority perhaps. I donâ\200\231t know if thatâ\200\231s the reason, but, you see, and thatâ\200\231s where I differ again from the Legal Resources Centre. I donâ\200\231t think...I think that money, the immense resources spent on Richtersveld could have better been spent on, you know, as I said, individual clients, individual access to housing, where a personâ\200\231s going to be evicted from his house, you know?

So instead of going for an impact case?

Yes, you know, ja, itâ\200\231s not a very densely populated area, itâ\200\231s not as if those people are the poorest of the poor people in the country, you get much, you know, worse impoverished communities than the Richtersveld case. As I said, I think it was more about emotions than anything else.

Whose emotions?

Oh, that...that I donâ\200\231t know, maybe Henkâ\200\231s (Smith) emotions, I donâ\200\231t know.

(Laughs) Well, speaking of Henkâ\200\231s emotions, that case has been taken...

By Lawyers for Human Rights, yes, and weâ\200\231re involved with it again, now, because...

As Louise and Vorster?

Yes, because we work closely with Lawyers for Human Rights, so that case, sort of, tags along, it follows us around.

Well, speaking of tagging along, why do you think the case has been transferred to the Lawyers for Human Rights, whatâ\200\231s happened?

I really donâ\200\231t know. I really donâ\200\231t know, I mean, I wouldnâ\200\231t even want to speculate on

why itâ\200\231s been taken away.

Ok...

But, you know what the interesting thing is about, specifically that area, itâ\200\231s a difficult...those are difficult communities, you know, there is a lot of...well, actually itâ\200\231s quite interesting...an interesting thing about what happens in that area, or i  
n many  
of those areas. In the old days there were...well, very old days, late 1800s, there were

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22

tribal factions within those communities, and, you know, the communities split along those factions, and then, obviously, the Lutheran Church came and the, you know, the different missionaries came, and then this was split, you know, along those lines. And then there was the NG Sendingkerk in those...specifically those old coloured reserves, the NG Sendingkerk and still German and...missionaries, and the community remained split along those lines, so you couldn't, you know, if you looked at it, you couldn't see the split was along tribal lines, but it was now along church lines, and now it's along Democratic Alliance and ANC Alliance. So, you'll always get a faction within that community who differs from the other faction, it's always just scramble, you know, for control and power, and, I mean, it's also not unique to that community.

Of course...

But what happens then is, you know, if one community, sort of, gets more support, you know, it's easy to be kicked out, if, you know, if you've been in favour with the other group.

Sure. Adrian, in terms of the Baphiring community, could you talk a bit about that case, because, from what I can understand, Richtersveld led to tensions...with Henk and the community, but that's sometimes an invariable outcome of a very long drawn out protracted litigation case?

Yes, it will always happen. You know, Baphiring, I believe, is one of the most important land cases and the issues decided in Baphiring, and it's not only because Louise (du Plessis) did it, but it's...what...in...I'm busy with a couple of cases now, for communities, where the issues which came up in Baphiring was of critical importance. The issue was, a lot of communities were dispossessed of land, you know, due to the black spot removals, and what often happened was that people were paid compensation here, a physical evaluation of a property was done and, I mean, this is how much money you get, and it was paid. But what Baphiring...the most important issue about Baphiring was, and, I mean, obviously Louise will be in a better position to explain that, but, what they tried to do and what they successfully did was to say, if you relocate a community, you can't just look at the physical, you know, value of the asset, you have to look at the social cost of relocation, which is very important. So, you can't just, you know, if you uproot a single farmer and you pay him what his farm's worth, like what happens now, he just takes that money and he's a cattle farmer, and he goes and buy, you know, he goes and buys another cattle farm and, you know, he can just fit into that again. But what happened with these communities was, there was no proper, you know, social impact study done, so they were taken from one area where they were cattle farmers to an area where they had to become maize or grain farmers...

Right...

...so they could never adapt and that impoverished these communities, so, to determine...because one of the requirements for a successful restitution claim is, that

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you didn't receive just and equitable compensation, so one of the important issues is, that you can't just look at the physical value of the property. And as I said, I'm involved now in a case, this is a case of Pomfret community, where government wants to relocate this community, and it has been shown in Baphiring that, you know, that just can't just simply happen.

And the Kranspoort case, I understand, having interviewed Louise du Plessis, is quite an important case because Mr Serumula really gave a very moving account, etc, I wondered whether you could talk a bit about that case in particular?

Ja, the interesting thing, I mean, you'll meet Mr Serumula, he's a very colourful character, you know. And what is important when one takes on these cases, one's always worried and it's all land cases that we do now, you know, with farm workers or labour tenants who are going to be evicted or, you know, where farmers, doesn't want to acknowledge their rights, you're always worried, as an attorney, to go to court to find documentary evidence.

Sure.

But what this case has shown, the Kranspoort case, is that that memory of the community, that collective memory, is amazing, it's sometimes, you know, it's even better than documentary evidence because, I mean, because the events are so traumatic, you know, it's imprinted on, as I said, on the group's collective memory because what happens Mr...it's not only Mr Serumula's, you know, recollection of events. The Kranspoort community still gathers, you know, once every now and again...

Really?

...and they always talk about what happened, they always talk about Kranspoort, they talk about their childhood, and they talk about dispossession. I suppose, as you would find of District Six, you know, or Soffiatown, or Lady Selborne, and they...I'm dealing with a labour tenant case now, where it's the same, I mean, these people have no documentary evidence, because obviously, most people are illiterate, you know, for many years, and they still are. But, I mean, the evidence they give in court is absolutely amazing.

Just to jump back a little bit, when you were at the LRC, you...of course you took on these eviction cases and won successfully...and then of course the Baphiring and then the Richtersveld and Kranspoort...

And, ja, and some environmental cases, because I worked with Ellem and Asmitha...

Ok, right.

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I worked with her basically the whole spread of all their cases but making copies and things like that. (Laughs).

Of course. But,...did you work with Durkje at that time?

No, she was in the Joâ\200\231burg office. I...she used to be my colleague at the Department of Land Affairs, same as Geoff Budlender.

Sure, right, so you did have that contact?

I had contact with Durkje but when she was the Land Claims Commissioner for Gauteng and North West, but not at the Legal Resources Centre, it was just, obviously, after that when...because we, you know, as I said, she also works with us again.

And in terms of... the actual workings of the office, from what I can understand, Pretoria office has a reputation for having done some incredible work around socio-economic rights, etc, but there were also lots of tensions in the office, and I wondered whether, as an Article Clerk, how that might have actually...a candidate attorney, how that might have affected you at all?

You know, it didnâ\200\231t really. Because after the initial tension, within a month or so, you know, attitudes changed and so, you know, and I had quite a good relationship with all the staff in the office, so I was never really part of the tensions, I knew it was there, and it was mostly between white lawyers and black staff.

You mean white lawyers and black admin staff?

Yes.

And what was that about, do you think?

You know, I...you know, I still donâ\200\231t know...I donâ\200\231t know.

If you had to guess, what would it be?

Thatâ\200\231s difficult to say.

But it sounds like a racial tension, but it might not be.

No, itâ\200\231s racial tension, it is.

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It's racial tension?

It is definitely.

Right.

You know, we...and if I say we, um, my experience has been a bit different, my exposure after, as I said, after I became exposed, was a bit different, more on a social level and on a different social level. Because a lot of whites still, you know, related or interacted with black people but in a different social strata.

So, socially they wouldn't mix really?

No. That's what I'm saying, you know, it would be, you know, I mean, I've only got, you know, white...social white friends, um, I don't know if it's a natural thing or if it's something...I don't know, you know, obviously, I've got a lot of, well, a number of people, good acquaintances, but...but what I'm saying is...so there are nuances, you know, in...and I see it in my office now, there are nuances between the different races, which you're not always aware of. So certain things would happen and...it's always obviously the easiest card to play, you know, if you don't do your job and someone starts, you know...but on the other side, people don't always know how to approach these things.

Right, absolutely.

And I also saw that at the Department of Land Affairs, the same tensions arose. Because, ja, as I said, you know, obviously, there are different social levels, and if you mix with people on that level, you know, of different races, it's not to say that the way in which you interact is also...that same interaction is going to work on a different level.

Of course. Now, the person who has been credited for being a brilliant lawyer is Nic de Villiers, did you get to work with him at all?

Yes, absolutely phenomenal legal brain, but absolutely bugger all social skills.

Ok.

I say him yesterday, quite incidentally in court, Nic is absolutely brilliant. But, you know, actually, it's unfair to say he doesn't have social skills. I've, sort of, experienced the Legal Resources Centre as in everyone had his little kingdom which he protected, you know, at all costs. And people were...

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You mean within an office?

...well, within the whole organisation.

Right, ok. So, what were the kingdoms?

You know, as I said, Henk had his Richtersveld, Kobus had his CP, Communal Property associations, which he laboured on for years and absolutely...I never saw a result, he just wrote these endless papers, and, you know, Louise had her land cases, Ellem had his...

...environment...?

...four or five environmental cases which he, you know...and the thing with Nic was, you know, he..what I know about all...what makes this firm successful from a commercial point of view now, I learnt from Nic. And thatâ\200\231s the whole thing, you know, he took cases to court, I mean, hundreds and hundreds and hundreds of cases.

So he litigated?

He litigated. And I think thatâ\200\231s what intimidated everyone else in the LRC because all of them were scared to go to court and, I mean, I donâ\200\231t think Ellem was ever, ever in court. I think Louise, the first time she went to court was when we started this firm. None of them litigated.

Why do you think that is?

Phew, I donâ\200\231t know. Actually I do. You know, an NGO is a safe environment and itâ\200\231s very easy to tweak the results, you know, on a report, to look good for funders. In a firm like this, you know, you canâ\200\231t tweak results, you have to win cases for your clients in the first place if itâ\200\231s commercial clients, and if itâ\200\231s public interest clients, you donâ\200\231t get paid if you donâ\200\231t win a case. And thatâ\200\231s a safe environment; you donâ\200\231t have to go to court. I mean itâ\200\231s...itâ\200\231s, you know, Iâ\200\231m thirty-five and I always feel, you know, so close to a nervous breakdown, itâ\200\231s not even funny. Because you have to win cases, itâ\200\231s strenuous, to go to court, you know, and to litigate, because thatâ\200\231s what you do, if you take these cases youâ\200\231re not going to get weak opposition, youâ\200\231re

going to  
get the best, you know, and, I mean, that's...And if you can avoid it, now, you  
avoid  
it.

Right, fair enough.

But Nic wasn't like that. I mean, I think he had confidence in his ability, which I  
don't  
think all the other people necessarily had.

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27

So you were at the LRC...2002, 2003, would that be correct?

Ja, almost three years, ja.

Right And then you left, and where did you go?

I still had a couple of months Articles left, I asked Nic if they could extend my contract, because he was the Director at that stage. And he said to me: yes, I can, but Iâ\200\231m not going to. He said: because you donâ\200\231t belong in the LRC, you can do. ..But not in a bad sense. He said: you can do what you do now, so much better, outside. And I actually thought he was a bit cruel, because I was involved in a major motorcycle accident and I was still on crutches and, I mean, I just...I was just...for three months I was in a wheelchair and I just thought: this is a bad time to tell me to go out and spread my wings. And yes, I went to a private firm to finish my Articles and then...

Was it a commercial firm?

Yes. But, ja, itâ\200\231s an old varsity friend of mine, I was just looking for a place to finish my Articles and so I decided then Iâ\200\231ll go to the Bar to do my pupillage, and go to the Bar, and as soon as I was admitted I decided to start my own firm.

And so hence Vorster and du Plessis?

Ja, that was...I was on my own for a while and then when this office closed down, Louise joined.

Speaking of the closure of the Pretoria office, I know that you were there for a limited period, but do you...if you can reflect, do you think that it was a good reason...there was a good reason to close?

No, I would rather have closed the Joâ\200\231burg office than the Pretoria office.

Right...

Thereâ\200\231s so much...but as I said, you know, thatâ\200\231s because of what I believe the wrong

emphasis of the Legal Resource Centre.

Which is?

To do these big...

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...impact...7?

...cases, you know, and to keep the appearances up of this illus...you know, illustrious organisation which it used to be, and which I believe it still can be. But I mean, you know, itâ\200\231s lost a lot of its, you know, its effectiveness, now theyâ\200\231re in J oâ\200\231burg and, as

I said, they still packaged the deal for the funders, but, I mean, I donâ\200\231t see the results.

And this office youâ\200\231ll get massive results.

The office youâ\200\231re in now?

No...

The Pretoria office.

...the Pretoria office, as I said, what Nic (de Villiers) and Paula (Howell) did with, you know...

Workmens Compensation?

...and Beulah Rollnick, ja, I mean, that was amazing work they did. And this office was perfectly geared...if they just slightly changed direction, or we were allowed to change direction, because the issue is, this office could have been self-sustaining. Because actually what that office used...this is now...this is the...you know, this is what the Pretoria office and the Legal...because the only thing, you know, that happened was, everyone who went there, now comes to us. And we successfully...weâ\200\231re a successful, I mean, the only public interest law firm in the country, the only one.

Really?

Yes.

You mean the private public interest?

Private public interest, the only one in the country.

So how do you survive economically? Iâ\200\231m sure you must have to take some viable cases, commercially viable cases?

Well, two percent.

Two percent?

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Is viable commercial cases.

Really? And the rest is...how is it funded?

We win all our cases and we recover our costs from the...from, you know, from our opponents. That's how we work.

And so do you find that the people are actually coming to you?

Yes, in droves.

Gosh.

Yes, and the word has spread, you know...

...so obviously, there's a need in this area?

There is a massive, massive need, there's a massive need. I mean, there are large-scale evictions going on in the Lanseria area, close to Krugersdorp.

Right...

It's unlawful evictions. All they need...all those people need is an attorney who can just draft one affidavit and the case gets chucked out of court, but no-one does that, so these people all end up on the pavement.

Right...

I mean, not only that, you know, if you look at how many people don't get access to...I mean, Nic and...and then they did access to child support grants, you know, old age grants; how many people don't get access to those grants, they've got a bsolutely nowhere to go, they go to advice offices, you know, write a letter, but I mean, what you need to do is you need to bring an application to compel the government to allocate these grants, no-one does it, we don't have the capacity to do that now, we need more lawyers, but unfortunately it's difficult to get good lawyers who's prepared

to, you know, to work on that basis where you're not, you know, guaranteed your salary at the end of the month.

You were speaking of the Legal Resources Centre and one of the things that you said, that their wrong direction is the high impact cases that they concentrate on, but there's always been this tension, and if you speak to George Bizos for example, there's

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30

always been a tension between the person who comes off the street who has a concern thatâ\200\231s very important to them and then, of course, these test cases. Do you think theyâ\200\231ve done this and only focused on the high impact because of funding or do you think there are other reasons for this?

I donâ\200\231t know, but what Iâ\200\231ve read about the Legal Resources Centre, what I read about

when I read George Bizosâ\200\231 book and, you know, when you read about how the LRC started, thatâ\200\231s not what they did. They didnâ\200\231t do high impact cases, they did, you know...

...consumer law?

...all sorts of things, you know, and what do they, you know, what do they call these things again...itâ\200\231s been a long week...you know, like when the inquiries...when people...

...inquests...?

...inquests, you know, when people died in detention, that wasnâ\200\231t high impact cases, thatâ\200\231s what was needed at the time, to stop that, you know, the wave of people dying in detention. So, I donâ\200\231t see...and, I mean, thatâ\200\231s what made the Legal Resources Centre what it used to be, I donâ\200\231t see at what stage what necessitated this change, and actually I also...Iâ\200\231ve got an idea on that. You know, in 94 they always had this big ogre to fight, you know the National Party government. And then in â\200\23194, you get a government whose, you know, social responsibility or social goals are exactly the same as the Legal Resources Centreâ\200\231s, and all of a sudden they have to reposition themselves, what happened with all the NGOs. If you think of, you know, all the NGOs had to reposition themselves. So all of a sudden they take on these very nice cases, you know, which look good, but, ja, as I said, the issues in South Africa are still very much the same.

...in a post apartheid context, what are the issues around rule of law and compliance by government departments with court orders, etc, whatâ\200\231s your experience?

Iâ\200\231ll give you an example. I acted for a group of squatters in the Pretoria East, itâ\200\231s a very affluent area, very affluent part of Pretoria, and these people are, sort of, migrant labourers, they work on building sites in that area because itâ\200\231s, you know, itâ\200\231s developing quite rapidly. So, they basically...thereâ\200\231s an open piece of land where they sleep in make-shift shelters. So, in 2006, just after I started the practice, I was approached by a church group who said that the South African Police services demolished those shacks, burned down the shacks, and, you know, chased the people out. So, we brought an application for the...to order the police to reconstruct those shacks. Now, the first issue was, there was...and it was, I mean, it was so reminiscent

of the old...good old days, the police just denied that they took place, you know, that they were involved in this. Unfortunately this has a bit of a...you know, there's a bit of a precursor, so they denied that they were involved. We were unsuccessful in this

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31

court, even though the judge said: I donâ\200\231t believe you, just unsubstantiated now, so we went all the way to the Supreme Court of Appeal to appeal this judgment in this court, to force the police to go and rebuild those shelters. We got judgment in 2000...end of 2007, the government still hasnâ\200\231t complied.

Right...

While we were on our way to the Supreme Court of Appeal, so, it was...we were still waiting for a day to be allocated, the police again went out and burned down shacks. So, we brought a second application where we forced the police to provide temporary shelter for these people. So we got our order which said it was unlawful and the police had to reconstruct those shacks; they havenâ\200\231t done that. After we got our judgment, the police again went out and burned down shacks...

Right...

...so we again brought an order to say: reconstruct the shacks in light of the SCA judgment. They didnâ\200\231t do that, it was against the Minister of Police, we brought a contempt application against the minister, to ask for his imprisonment and a fine to be imposed, because he didnâ\200\231t comply with the order, and we got an order in this court which ordered that he be detained and that he pays a fine until he purged his contempt, until the shacks would be erected. Now that order was also now appealed. So, basically, ja, the state uses, you know, the court mechanisms to drag out cases against people who canâ\200\231t afford it. You know, theyâ\200\231ll take every legal avenue not to comply with court orders. I donâ\200\231t really...it hasnâ\200\231t really been my experience that, you know, that if an order is...if all the avenues have been exhausted then, you know, government would comply, but, I mean, the approach to litigation...To give you an example, in our papers we submitted to court, we said, to rebuild these shacks would cost in the region of two thousand five hundred, two thousand eight hundred for all the shacks which were demolished, because it was rudimentary shelters. Now the cost of, you know, prosecuting this appeal, it cost the tax payer, four, five, six hundred thousand.

Really?

I mean, you know, itâ\200\231s just absurd.

Totally.

But, as I said, you know, as we can also see in many of the high profile cases now, you know, I think the government still respect the courts but...

They do?

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32

...yes, they still do, but they will use the...theyâ\200\231ll use the court to, you know, the institution itself to undermine the rule of law.

Well, from what I can understand, the Constitutional Court has now passed legislation that says that the State organs, their property can be attached. Is that...will that help you in any way?

You know, one of the basis...we are still waiting for an appeal date on this contempt application, because the state said, based on Section Three of the State Liability Act, which is the Act...itâ\200\231s an old, old, apartheid law, you know, piece of legislation which said: you canâ\200\231t attach property of the state in execution of a debt. So one must differentiate between, you know, to satisfy a debt, and the other issue is where a court forces a specific official to do something. Now, the way I understand the law, itâ\200\231s always been that the court may, you know, order someone to perform something specifically, but now, in the Dingaan Nyati case, the court also said you can attach the stateâ\200\231s, you know, assets, which I think is short-sighted, I donâ\200\231t think it â\200\231s a good idea.

Why?

Well, you can imagine the Road Accident Fund, you know, (laughs), who always pays late, now the sheriff pitches up and takes their equipment, I mean, then they canâ\200\231t process any claims.

Sure.

You know, I donâ\200\231t think itâ\200\231s a practical way of approaching it. It would, in my view, be better to say that specific officials should be ordered to do something, and if they donâ\200\231t do it, they, you know, be held in contempt, that they be fined specifically, that they...that cost orders, de bonis propriis, be given against specific officials who donâ\200\231t do their jobs.

Adrian, in terms of having come to South Africa, there have been all these attacks on the judiciary, the Constitutional Court judges are called counter revolutionaries, and there are lots of concerns. As a person who works in public interest law, what are your concerns about the kind of rhetoric thatâ\200\231s gone wrong?

You know, um...the courts are quite resilient in South Africa, you know, if one looks at judgments from Judge Bill Prinsloo in this Von Abo case, where he ordered the South African government to protect the interest of farmers in Zimbabwe, it was incidentally the same judge who ordered the minister to be held in...you know...to be arrested. The courts are quite resilient, you know, and what Iâ\200\231ve realised is that, you know, the courts in my experience...and, I mean, this has always...has always been

seen as one of the most conservative Benches is the TPD and I...my experience has been that theyâ\200\231ve been very pro-active in, you know, in enforcing the Constitution,

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you know, in...Iâ\200\231m not too worried about that, as I said, you know, itâ\200\231s a political game, that will also pass.

Ok.

Because, I mean, you know, whoever...whoever takes over would in the end, also need the courts.

..Ok..I've asked you a range of questions and I'm wondering whether thereâ\200\231s something Iâ\200\231ve neglected to ask you which you think ought to be included in your Oral History interview?

Well, L...the only thing...and itâ\200\231s a suggestion I would like to make to the LRC, is that they should really understand the unique position theyâ\200\231re in, you know. I mean, you know, it...when I walked in the corridors last week when I went to see...when I was there, you know, they could use that institution to make a real change, but they need lawyers who want to be lawyers, not anything else, report-writers or, you know, they need lawyers, they need hardy, you know, street-smart lawyers who can take on cases en masse, and who can, you know, who can enforce the Constitution for people where it really matters, for individuals who lose their houses and who donâ\200\231t get their pensions and, you know, who still get detained by police without, you know, any proper reason, and I mean, I think that will...because, obviously, you can see that the Legal Resources Centre is getting smaller and itâ\200\231s...ja.

In ending the interview I wondered whether there was a particular memory you have, whether itâ\200\231s working with Nic de Villiers, or Durkje Gilfillan at the Land Affairs or Geoff Budlender or Aninka Classens or Louise du Plessis or even a client such as the Baphiring community or Kranspoort, or any of the other cases that youâ\200\231ve done, that you actually treasure and think as very indicative and rewarding of doing the type of work you do, which is public interest law?

You know, I think all the cases as, ja, I mean, I canâ\200\231t single out a specific one, but what I do know is that the basis or the foundation which was laid at Legal Resources Centre, has made something possible which everyone said is impossible. The way you learnt to think at the LRC is just, you know, to see...to see cases, to see opportunities where no-one else sees that, has...ja...enabled us to establish a public interest law firm in South Africa where everyone thought, you know, which we operate on a for profit basis, which everyone thought is impossible. I had a discussion with Professor inaudible whoâ\200\231s from the United States whoâ\200\231s also from the Public Interest Alliance and, I mean, he found it completely amazing that one can do that, and basically, as I said, this is still an extension of the Legal Resources Centre.

Adrian, thank you very much...for a very thoughtful interview, I really appreciate it.

...thanks...

Name Index â\200\224 Adrian Vorster  
Adams, Martin, 11

Bizos, George, 29, 30  
Budlender, Geoff, 11, 24, 33  
Classens, Aninka, 10, 33  
Cousins, Ben, 11

De Villiers, Jean, 11

De Villiers, Nic, 25, 26, 27, 28, 29, 33  
Didiza, Thoko, 11

Du Plessis, Louise, 6, 14, 15, 16, 18, 22, 23, 26, 27, 33  
Francis, Ellem, 16, 23, 26  
Gilfillan, Durkje, 24, 33  
Gwanya, Thози, 13

Hanekom, Derek, 10, 20  
Howell, Paula, 28

Lund, Sue, 11

Mojapelo, Matthews, 14  
Mtshali, Bethuel, 16

Pienaar, Kobus, 6, 15, 20, 26  
Pillai, Charles, 14, 15, 16  
Prinsloo, Bill, 32

Rollnick, Beulah, 28  
Saldanha, Vincent, 14, 16  
Seremula, Mr., 6, 23  
Sibanda, Sipho, 11

Skosana, Mandla, 14

Smith, Henk, 6, 15, 20, 21, 26  
Steyn, Lala, 11

Thakor, Asmitha, 16, 23  
Thomas, Glen, 11, 13  
Nicole, 16

Helen, 18

#### Cases:

Baphiring, 6, 14, 19, 22, 23, 33  
Communal Property Associations, 26  
Grootboom, 17

Kraanspoort, 6, 19, 23, 33

Pretoria East Squatters, 30-31  
Richtersveld, 6, 19, 20, 21, 22, 23, 26  
Schubert Park, 18

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