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This is an interview with Refilwe Mathabathe and itâ\200\231s Saturday the 6th of September (2008). Refilwe, on behalf of SALS Foundation, we really want to thank you for agreeing to participate in LRC Oral History Project.

Ok.

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

Itâ\200\231s...ja, early childhood I grew up in a very, very small town...well, town, I donâ\200\231t know what itâ\200\231s called...in the Free State in QwaQwa, you know, it was back in the days of governing, and I suppose one did not feel so much the pinch of apartheid because it was a bit secluded, you know. It was...you knew there was...it was in South Africa, you knew there was a lot happening but you didnâ\200\231t really experience it because it was mostly black people living there and mostly black people, so you really didnâ\200\231t feel the differences. It was only after one had completed matric and gone to â\200\230varsity that you realised that thereâ\200\231s so much injustices, you know. I went to the University of Natal in Durban and I remember you would get, and in class, fine, weâ\200\231re good, weâ\200\231re talking, you know, across the racial groups, but when weâ\200\231re outside of class we didnâ\200\231t mix. You would find coloured students sitting there, Indian students sitting there, white students, and then black students, and...we never mixed. And you realised just how much we had been socialised to not mix. And still then the sense of injustice, one did not feel so much and it was really after I started my Articles at the LRC that I realised just the extent of the impact of the apartheid...

Really?

...on us...on us, black people, and as well as on my people. Because a whole lot of the other things that people do, itâ\200\231s the socialisation, itâ\200\231s not so much that theyâ\200\231re horrible people but itâ\200\231s just that they were brought up a certain way, and that comes up. So...

Iâ\200\231m also wondering, in terms of growing up in this isolated place and then at what point did you decide, you are going to study law, or was that not a conscious decision?

I think for some time now Iâ\200\231ve been trying to figure out what...when I...I donâ\200\231t think it was a conscious decision. I think it was again, I think itâ\200\231s just another result of apartheid, where...there were so many career moves that we were exposed to and we did not choose careers because thatâ\200\231s what you wanted to do, thatâ\200\231s what you

u had a
passion for. We chose because you were good at a certain subject, and thatâ\200\231s...you
know, people who were good at Science, thatâ\200\231s doctors, people who are good at

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History, which is what happened to me, now those are lawyers, and that's really how I got into law. I was very bad at Maths, horribly bad, and very good at History, so it just followed.

And where did you study then?

Tertiary? University of Natal in Durban.

Ok, alright, so what made you go from the Free State to the University of Natal?

I suppose...there's a university in QwaQwa, now the University of the Free State, QwaQwa Campus, it was then the University of the North at QwaQwa Campus. But I would not have gone there anyway, but there was no law. And the...I never even thought about the University of the Free State I suppose, because the Free State was always known to be a bit racist, you know, and I never really thought of going to the University of the Free State. The other options that I had was Wits and UCT. And Wits and UCT I would have had to do a BA Law before I do...they didn't have BProc, so it made sense just to go to the University of Natal, so I ended up there.

So what period were you at the University of Natal then?

From 196 to 199.

Ok. And in that period, in terms of law and lawyering, did you think specifically, that you wanted to do public interest law, were you involved in practical legal studies, the Street Law programme? What were some of the things that might have influenced you to kind of go down the route of the LRC and public interest law?

Um...at that point I just wanted to make money. And then I thought, money was in commercial law and that's what I wanted to do. But I was involved at the clinic and just deal, you know, got to see people who really needed legal aid, but I don't think at that point I cared much, just wanted to make money. But when I started applying for jobs, I got a job at the LRC, and thought, let me just see what they're about. It wasn't really a passion for public interest, and it was only when I started working at the LRC that I really established a passion for public interest, and...

But why LRC in particular and not a commercial law firm? And you've moved from Natal to Johannesburg so I was wondering what made you then move again and why not a commercial law firm, which, if you wanted to make money would that have been the...?

I think at that point there was a possibility of a law firm, but...it didn't go through, you know. The LRC then...because there was a law firm back home and...but, I

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didn't want to go back home. So Johannesburg sounded more fun then, so I decided to go to Johannesburg and go to the LRC.

And prior to starting at the LRC, had you heard about the Legal Resources Centre?

No. I heard of...learned about the Legal Resources Centre when I was applying, you know, you've got to look at the law firms, that's when I first heard about the LRC, just applied and afterwards only then started looking at what the LRC did and...ja...it was only after I started working at the LRC that I really understood what the LRC did and really enjoyed what I was doing.

So, I'm also wondering, at the LRC itself, who was your principal, what were your rotations, what was your experience of public interest law, and what motivated you to stay on as well?

Ok. The first six months it was Patrick Pringle, and it as Environmental Law. And what one learnt a lot from there was how black people were placed in those areas that were not environmentally good, you know. It was when he was busy with the mine dumps projects, of the effects of the mine dumps on the communities around them. And one started realising even the planning was so based on black people being less than white people, so let's put them there so that they, you know, we protect the other people from the effects. And the next six months I then was with Kameshni (Pillay), women's rights. I have always, always had a passion for women's rights. Some people even thought I was a feminist while at university, and enjoyed women's rights. It was maintenance, domestic violence, mainly domestic violence cases. And the next six months it was Achmed (Mayet), and it was a bit more general than, you know, the work that Achmed (Mayet) did was a bit more general than what Kameshni (Pillay) and Patrick (Pringle) did. And also, he was actually my principal I had signed with Achmed the contract. And I worked with Achmed, and the next six months was Jakes (Ellem Francis), but I think Jakes left before the six months were finished, then I went back to Achmed.

And when you worked with Achmed Mayet that was at the CLU?

No, no, no, it was while he was still at the Johannesburg office.

Right, ok. And in terms of...what sort of cases did you do during your rotations that you really enjoyed? Or that you felt were really rewarding?

Um...yes, I loved working with Kameshni (Pillay). What big cases did we do while I was working with Kameshni? I think we...it was mainly domestic violence cases and some maintenance cases. And...I'm trying to think when I was involved in the Bannatyne matter...no, I think it was after I got admitted. I think the one case that I was involved in while...I started being involved in it while I was doing Articles was the Jordan case. The sex work case. Enjoyed it.

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What was the case about?

It was about legalisation (decriminalisation) of sex work, and we were amicus representing the Commission on Gender Equality. And ja, we were arguing that sex work should be legalised so that the women who were involved in sex work can be protected if it's legalised, then the stigma attached to them firstly will be removed and secondly they will get the protection of the police. Because now with it being criminalised it opens them up more to abuse. So it was about legalising and protecting the women and giving them more choices, because our argument was that the assumption is that all women who are into sex work are forced into it, and that was failing to recognise that some women choose sex work over, say, domestic work, because it pays better. So give them that option to choose and let's not judge them, it's not for us to decide what is good for them, it's for them to make those choices for themselves. So that was the sex work case. And...what other case? There was the Walters case. It was a young boy that was shot by a farmer. I think it was somewhere in the Free State, inaudible, if I remember well. Because he thought this young boy was a baboon. Shot him in the...this boy was twelve...shot him at the back, while he was running away, and he then relied on Section 49 of the Criminal Procedure Act which allowed police to shoot and kill a criminal who was running away. And we were arguing that that section is unconstitutional because it was after the inaudible judgment and the Constitution guaranteeing people the right to life. So it was that case, I also enjoyed that case.

Sounds like you did quite an array of work. You'd said earlier that you really wanted to do commercial work, so when you were at the Legal Resources Centre did you feel that in some ways you were missing out on a range of experience?

No, no. I actually, once I started working at the LRC I realised that that was just where I was meant to be. Commercial work I would have made money but I would not have been as fulfilled as I was at the LRC. and I felt like it was better the fulfilment than the money. After I'd started with the LRC I was happy with how things had turned out.

I'm also wondering, Refilwe, in terms of actually staying on at the LRC, what were some of the factors that motivated you to stay on?

Um...I enjoyed the work that the LRC was doing. I really enjoyed...you know, you would, at times, a person would come and all you would do would be just to make a call or write a letter, and the problem would be solved, and they would be so thankful, it would have changed their lives, and that was amazing, it was amazing. Because sometimes you are thinking really it's just such a minor thing but for that person that you assisted it's such a big thing and that was just amazing, so I enjoyed it, loved it.

I'm also wondering, in terms of, when you became an attorney at the Constitutional Litigation Unit, that's where you worked for how long...?"

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Three years.

Three years. Could you talk about your experiences in the CLU and the people you worked with and the type of cases that you undertook, that went before the Constitutional Court, if at all?

Ok, the cases...I worked at first with Kameshni (Pillay) before she left. Worked with George (Bizos). Worked with Geoff (Budlender), but just a little bit. And worked as well with Achmed (Mayet) again, because he also moved to the CLU. Worked with Ellem (Francis) just a little bit as well. And the kind of cases we did, the Bannatyne case which was a maintenance case. I also did a lot of other cases with other offices because we were the correspondent for the other offices outside of Johannesburg for constitutional case matters...court matters, sorry. And there was a bit involved in the rail commuters's case with the Cape Town office and I think it's the Zondi case, the in Parliament case in the case with the Durban office. But as the CLU it was the Bannatyne...what other case? Cases that were not in the Constitutional Court. There was a land claims case towards Dobsonville community, they lodged claims...

Where was Dobsonville?

It's...just close to Soweto.

Ok. So it's in Gauteng province.

Ja, it's in Gauteng, it's not far from Roodepoort. And the community lodged claims through the LRC. We lodged the claims together but some of the forms, the Land Claims Commission lost, and by the time we realised that they were lost, it was at the time when the claims had been closed and they were sending communication to the claimants, these people realised that everybody else got letters, we didn't, and when we phoned to inquire what had happened they didn't have them on their records. And we had acknowledgment of receipt, showed them, you guys, we brought these, you acknowledged receipt, what happened? And they didn't want to take responsibility for it. They insinuated that we fraudulently got the acknowledgment of receipt. And I left just before we were going to take the matter to court to get the court to force them to accept those...or at least to consider those claims, because they were filed before the closing date. I was working on that with Ellem and I left before it...while we were busy drafting papers.

And in terms of cases that actually went forward to the Constitutional Court, how were you involved, what were some of the hearings like, and what was the feedback from the Constitutional Court? Because the LRC from what I can understand, since quite early on, took major cases.

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Ja, ja. The Walters case, that Section was declared unconstitutional. And our involvement, it was more helping with the research, because I was a candidate attorney then, so it was more helping with the research, and we were successful. And the Jordan case I was an attorney by that time, and we were not successful, but I think this is now my personal view of the case, I think we...our arguments were stronger than the State's, but it was a reflection of people's views, you know, people's...ja...and I think it was, the majority of six to four, and I think some of the judges that were more women's rights activists, were on leave: Judge Mogoro was on leave. And I think had she been sitting it would have gone the other way, it could have easily gone the other way. And the Bannatyne matter we won, and I was an attorney as well when we did the Bannatyne matter, so...In both matters I was the attorney of record.

Ok, great. So I'm wondering, in terms of working at the Legal Resources Centre and then the CLU, who were the attorneys or advocates that you worked with that you really enjoyed working with and you felt that really shaped your experience of public interest law and helped you?

I suppose Kameshni (Pillay) will be the first one. I think from the minute I started at the LRC, my Articles, she sort of took me under her wing, you know, she took it upon herself to mentor me and really shaped my interest in public interest. I enjoyed working with Achmed (Mayet), he's a very strong attorney, very strong, and I think I'm very strong because of what I learned from him as well. Yes, so I'd say the two of them.

What was your experience working with George Bizos?

Ja, and then there's George (Bizos). The nice thing about George is his door is always open, you know. You go to George and you know you're going to get guidance, you might not get an answer but he will guide you. By the time you get out of his office, you have an idea of what you should be...or where you should be looking, type of thing. I enjoyed working with him. He's very good at that, at transferring skills, he's very good at guiding, so I enjoyed working with him.

And the other thing I was wondering, was what prompted you then to leave the Legal Resources Centre?

Oh, ja, money! (laughs) Ja, it was...I think around 2004/2005, funding became a bit challenging. Most donors felt there was no need for public interest law anymore, there was no need for organisations like the LRC anymore because we now had democracy and so the funding became a bit problematic, and that made it a bit challenging to stay on.

I'm also wondering in terms of some of the dynamics in the Johannesburg office, because at the time that you were there the National office hadn't merged with the Johannesburg office, they were separate, and I'm wondering what your sense is of

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what were some of the problems there and tensions that the LRC was facing as an organisation during the time you were there?

Oh, the tensions...I think the only tensions I remember was the gap between senior lawyers and junior lawyers. It was huge, and certain decisions would be made looking at the senior lawyers and not taking into consideration junior lawyers. For instance, I think one particular year it was decided that professional staff would not get their increments, only admin staff would get their increments. And we felt that was a bit unfair because they could afford to not get increments because their salaries were way higher than ours, our salaries were closer...

...you're talking about senior lawyers or Directors?

Senior lawyers, not Directors, senior lawyers. Our salaries were closer to admin staff but those dynamics were not taken into consideration, and I think it was done to bridge the gap and that was one of the biggest tensions I remember, the gap between junior lawyers and then senior lawyers.

I'm also wondering, in terms of gender issues in the office, racial tensions, what were some of the experiences that you or anyone else might have had that might have caused general challenges?

Um...I don't think there was so much, I don't remember any racial or gender tensions. I mean, there was a bit of...there were people who felt that some people were favoured more than others, but I don't think it was based on gender or race, it was just, you know, just humankind. Some people you click with more than other people, and...but I don't remember any tensions along racial lines or gender.

Ok. You say that your reason for leaving was more salary, was that in any way discussed as a way of keeping you on board, or did that not occur?

No, it never occurred. I don't think there was actually...no, it was never raised. It was just that it...the finances were challenging for the organisation and it just didn't occur to one to then raise it an issue when you know that there are challenges in so far as finances are concerned, so I just...but as much as I still enjoyed working at the LRC I actually don't regret having left because when I left the LRC I joined the Public Service. And I have since learnt more because our focus at the LRC was mainly on Chapter 2 on the Bill of Rights, and working in the Public Service has taught me more...there's more to the Constitution than just the Bill of Rights.

So that's where you left immediately for after the LRC?

Ja.

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And when you say Public Service, what...is it a government department?

Yes.

Ok, what do you do?

I now work for Parliament but when I left the LRC I worked for the Western Cape Department of the Premier. I was a legislative drafter.

Ok. And the Premier at the time was..."?

Ebrahim Rasool.

And how did your...do you think, if anything, your experience at the LRC given that youâ\200\231d been both a candidate attorney and an attorney there, how do you think that might have shaped the way you dealt with your subsequent work?

I think even today it still advises how I deal with my work. Because when I went to the province, when I went into the Public Service, my knowledge was really on the Bill of Rights, but that, I think, made it easier to understand other sections or other areas of the Constitution, because I have that background. You sort of speak to people who did not have the same background and how they would look at things, you realise that how I looked at things was advised by my previous experience at the LRC. And even today, you know, I work at Parliament and most of what we do is Constitutional Law, and I deal mostly with litigation against Parliament, and much as I do not go to court, in briefing the state attorney it still comes through, the Constitutional litigation experience that I gained from the LRC.

Iâ\200\231m also wondering in terms of subsequent work, you now work in Parliament, and Iâ\200\231'm wondering whether the fact that the LRC has continued to actually take on cases against government, does that in any way pose as a problem for you?

No. It doesnâ\200\231t. Um...no, it doesnâ\200\231t, because I think as Parliament, what we should be aiming to do is to comply with the Constitution, and that the LRC is taking us on task to do that I think is a good idea, I think itâ\200\231s a great thing because thatâ\200\231s what we should be doing, you know, complying with the Constitution and at times itâ\200\231s easier to take shortcuts for certain people who make the decisions and you need organisations like the LRC to take them to task.

Iâ\200\231'm also wondering, currently thereâ\200\231s a lot of concern about the judiciary and attacks on the judiciary and the Constitutional Court itself, I'm wondering what your concerns are, if any, for public interest law organisations that need to be independent,

particularly the LRC?

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Um...look, at some point, last year, or earlier this year, we were doing...we had a study tour where we were looking at public participation and we went to some African countries to see how they undertake public participation. One of my colleagues kept...wherever we went, kept on repeating one question, that is, how do you trust that NGOs are speaking for the greater public and not for other organisations's interest? And look, my feeling is, at the end of the day some people have the means to go to Parliament on their own behalf and have Parliamentary reviews, some people don't. Some people don't have the voices and organisations, NGOs and your LRCs are very important in that respect in voicing out what other people don't have the voice to then say, or can't come to Parliament to say. And do I think the LRC still has place in South Africa in this democracy? Yes, very much so. I think more so than in the past because in the past, apartheid, everybody knew that it was a monster that we had, that needed to be fought. Now, everybody thinks because we have the government that we elected, that we put into power, they will need to be checked and I think that's when they need to be checked more. Because people are sort of relaxing, it's now we put them into power, they have our interests at heart, type of thing. So you still need...they're still relevant today, more so than ever.

One of the things that...and I think it's been borne out in terms of your circumstances as well...is the LRC's concern is that it's unable to attract young, black lawyers, largely due to funding constraints and especially since they are in demand in commercial law firms particularly, I'm wondering whether you think that's accurate and what your sense is of that situation?

Um...it's probably true, hey, because the reality of a lot of black people is that you grow up and your family gives up a lot to put you through varsity, and when you are done with varsity, there's a lot of responsibility that's waiting for you. there's a lot of other family members who are now looking at you to help them out. And it becomes very difficult for black, young lawyers to say, for the good of the country I will take the salary that the LRC offers and...because you have so many responsibilities and...ja...the law firms are now moving towards having pro bono divisions and they're taking these people, these lawyers who man the pro bono divisions from organisations like the LRC, and it's very difficult for them to compete with that because for some people who are really passionate about public interest law, it's...that is the best because you're still doing public interest law and getting paid very well for it, so it becomes very difficult for the LRC to compete with that...ja, I suppose that is true.

I've asked you a range of questions, Refilwe, I'm wondering whether there's something I've neglected to ask you, which you feel ought to be included as part of your LRC Oral History interview?

No, I think you've covered...ja...I think I've said...

I wondered whether we could end the interview if you could share a particular memory you might have of the Legal Resources Centre, or a client or an attorney that

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you worked with there, that you feel really symbolises public interest law work and work that the LRC does?

Hmm...

It could also be a funny story.

Let me think...I think...there was one case where...this woman had been living with this guy for a number of years as husband and wife, the family recognised her as the wife, treated her like a makoti (Madam) ; that happened until the husband died. The husband had taxis and I think some buses, had some money, and as soon as the husband died the family stopped recognising her because now if they recognised her sheâ\200\231s going to be the heir. And after the husbandâ\200\231s funeral they chased her away and took everything that the husband had, and we stepped in and got her to be appointed as the executor for the husbandâ\200\231s estate, and got her to benefit, you know, as a wife, common-law wife. And that, ja, I think it was a good thing because it happens a lot...it happens a lot where you find families will change the minute somebody dies, just because they want to benefit from the estate and exclude you from that. So that was one of a lot of cases that we had to deal with.

Refilwe, I really want to thank you very much for sharing your memories about the Legal Resources Centre.

A pleasure.

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