

Kgaogelo Nchaupe**LRC Oral History Project****30th July**

Int This is an interview with Kgaogelo Nchaupe and it's Wednesday the 30th of July. Kgaogelo, on behalf of SALS Foundation, Washington DC, we really want to thank you for agreeing to participate and give your time for an LRC Oral History interview. I wondered whether we could start the interview if you could talk about your early childhood memories, growing up in South Africa, where you were born, your parents, etc, and where your sense of social justice and injustice developed?

KN Oh, ok. My name it's Kgaogelo Nchaupe, I was born at Limpopo, Tzanini, Mujaji District. I grown up there, I started school there, I was head boy there, and I was born from the royal family. I just came to Jo'burg to further my studies after I completed my Matric. I was admitted at the University of Witwatersrand in 2002 and I obtained my LLB in 2006. It was a privilege for somebody like me, growing up at the deep rural, to come and further the studies at Johannesburg, particularly looking at the University of the Witwatersrand having a good reputation. I came to know the LRC while I was a student at the University...at the Wits University. While I was doing my third year I started to develop some interest in the Public Interest Law, and that is where I came about the LRC, see that it's a very dedicated organisation which support the struggle for justice, particularly looking at the marginalised people, those who have...affected by the apartheid regime. I get my degree, and I applied to LRC while I was doing my final year, and I was selected for an interview...I came for an interview, and as a result, I was successfully appointed, offered a position as a candidate attorney. I tried some other levels of field at law, like before I joined the LRC, I was working for Eskom, Megawatt Park. I was working at the Commercial Generation Department and I was part of the supply chain management that was the purely corporate. But, the way I saw, while I was working at Eskom and while I'm working at LRC, it's a different things and I think it has brought to my attention to distinguish what type of person I am, whether I'm someone who is willing to go for the corporate world, or someone who can support the Public Interest Law. As I mentioned that I grown up from the royal family, I grown up under the customary practice, and most of the Public Interest Law, I think it has to do with the way the custom changed, and the society and the people goes on, I think the custom and the tradition changed as you can see. For example, now, we've got the rescinded judgment ever since in South Africa regarding the case of Shilovane, where the rule of the primogeniture was declared unconstitutional, which was the rule discriminating women, not to become chiefs. So, I think that judgment it's also important for my understanding and for my people, particularly the elders at where I come from, because it's difficult the way, under these circumstances, the way I've grown up, to be led by a woman, because it was traditionally known that women are subjected like as minors who cannot entered into contract without the consent of their husband. So, I think the experience that I will develop and acquire at the LRC, I can bring something back to my community, not specifically my village, because I'm from Mujaji family, and Mujaji is the...like...Mujaji, the Rain Queen, is the person who is like, famous, even Queen Elizabeth at London, he once came to Mujaji because she was powerful in making the spiritual rain. So, I think it's going to be important for me to understand and see where the society shift, so that whenever we attend a meeting, back home, in my present, I can be able to share some ideas with some people, those who didn't have an

opportunity to understand the way the law operate in conjunction with the customary practice.

Int Ok, I'm going to take you right back. You said that you were born of the royal family, in terms of schooling, etc, your experiences of apartheid, how intense was that, did you have a sense of, black people were being treated differently, that the country was divided, did you have a sense of that when you were born?

KN Honestly, to be honest with you, it was indeed different. When I was doing my primary school, when you do, like, we called them standard by that time, we don't call...we...these new grades it's a new curriculum. It's like you will do, for example, physical science...we call it physical science and biology, before you go to high school, you call it general science. You will do a lot of, like, experience like...when you...it comes to animal reproduction where you have to, like, learn about, like maybe the function of the brain, the function of the stomach, the liver. You will do, like, the...how many part does the locust have, how many part...what...frog, the part of the frog, the part of a fish, the part of...it's like it's...you did...you do something which even if you are more experienced, unless if you get an opportunity to go further, you can become a zoologist and maybe specialised in animal. But, if you specialised in animal, for example, how are you going to contribute to the extent of explaining to people...to people like, how does the locust look like. So, to that extent, I think apartheid it did play a role to the extent that most people, those who managed to go to private school or boarding school or purely white school, they will do, like, even at their primary level, they will do like structures of a brain, structures of a stomach, a...you know, those things it's something practical, it's something you know that you need water to survive, you have to do...like a brain, how can it react? If...if you attended a school, like at the village, I'm not talking about a township...a township it was a combination of both the western and you'd see people from village, it's not like they don't do some civilised stuff, but, it's just...it's limited, based on the resources. But, if you attended a primary school of where I come from, you will do...you will know the function or...like you'll do these things of amphibians, and whatever, which even if you understand them very better, you don't have to use them when you go to another level.

Int So, when you...ok, so you, in terms of the schooling it was very different, ok. In terms of...when you lived...you lived in a rural area, I take it?

KN Yes.

Int Was your experience like...did you have much contact with white people when you were growing up?

KN No, no, no, no, no. At where I was born, honestly we didn't have an opportunity to access the white people, although we were having some farms, our...my parent were working at the farms at that age, but, it was just like an employee who cannot just sit down and have a discussion, because of the way the system was operating. And to that extent, many people who we were regarding them as the most educated people,

were teachers and police officers. And a teacher it's going to be always, always a teacher, a police officer, of course, it's a police officer. We didn't have like some people who were encouraged to go and study, like do medicine, do engineering, do LLB, no, if we regard you as somebody who went further, it's either you are a police or you are a teacher.

Int Ok. So, what made you, as a young person, decide you wanted to do an LLB and to become a lawyer. Where do you think...what influenced you?

KN I got so many things that influenced me. The way I grown up and that...because the time when I was, like, approaching the age of thirteen, it was when we were about to reach the new democracy, and I started to understand the politics. I remember when Nelson Mandela was released in 1990...1990, in February, I couldn't understand but, I...it's like for those people who were associated with...it was...it was like a strong something for them to see Nelson Mandela released, and me, as a young comrade, I didn't...I didn't see it as like something which is going to make different, and I started to develop the historical political understanding, even though I was young. When I went to my Matric I did study history, and from my understanding and my surprising I was doing history in high grade, and I managed to get four hundred out of four hundred, I got total, and from the rural area, without any facility. And based on that, I saw that I understand history very better, because it was like...I remember when we went to Polokwane to get some result where they announced the best school, the best students in geography, the best students in whatever, I was the only...amongst the white, amongst whoever at Limpopo Province, I was the only person who got four hundred out of four hundred in history. And I thought: oh, history has to do with law, although there is a difference, but, as a lawyer, it's up to how you present your argument. That's political.

Int So, that's what made you decide to do law?

KN Yes.

Int That's one of the influences.

KN That's one of the influences.

Int What are the others?

KN The others is because of the way I grown up, as I said, I was born from the royal family, I wanted to give something back to my community, now, I understand if someone wanted to open an NGO or if we have to do a charitable trust, or we have to do something, I think based on the information, piece of information and education that I've acquired, if I have to go back, I can adjust here and there, but, I can be able to share some information. In fact, I wanted to do something, which I can bring back to the community, so, if I was like a chartered accountant, it's difficult for me to go

and open an auditing company or a chartered company at where I come from, because many people are poor. But, if I got the legal skills I can go and say: ok, you people who are working at farmers, come to the meeting, the communities will come to the meeting, we call it 'Kgoro', they will come there and you will say: how many people...how much are you getting, how many hours are you getting? And started to do some follow-up based on the law-related, like the labour relations, the basic condition...so, that is something, indirectly, you are contributing to someone and you are improving someone's life.

Int Ja, absolutely. So, you...what made you decide to go to Wits when you finished school?

KN Honestly, I didn't understand so many things when before I came to Wits, but, I know that I wanted to do LLB, and I came to Wits because I was, like, I didn't want to study at Turfloop, for example, because I regard Turf as still home, because from Turf to my place I can go home every weekend. So, I wanted to change the jurisdiction, I wanted to come to Jo'burg and because many friends of mine they were, like, studied at TNG, they used to call it Technikon of Northern Gauteng, before they called it TUT. I regard myself because I got these total in history, I thought, like, I was a superior, or a better or an intelligent candidate, so, I thought I should go to the best university, but, even beside understanding that there is some challenges at...like why I have to...I remember when after I get registered, it was for the first time I attended the same class with a white person, and an Indian and coloured, most distinguished people, and for me, I think it was a privilege. Because when I looked at Turf, University of the North, it's like it's most black there, you won't...even if you see white it's like they are few, few, few. If you go to TUT at Soshanguve, at Pretoria, there are few, and if by that time when I was enrolling, if you go to Tukkies or you go to RAU, it's purely racist, and I did also wanted to go to UCT but I thought it is going to be far and more costing and it's like, it's going to be far from my parent and everyone. So, that's why I came to Wits.

Int Ok, that's a good reason. So, during your LLB degree what sort of courses did you take? Did you take any Public Interest Law courses, did you get involved in the law clinic, what was your exposure to Public Interest Law?

KN I did many advanced courses in Public Interest Law. I did Constitutional Law, I did advanced Constitutional Law, I did Street Law. Street Law it's a law, which advocates the public. We used to go to juvenile prison at Leeukop, we used to go and try to give some prisoners some rights, explain them what their rights as prisoners. I used to attend the communities...for example, at Mpumalanga...explaining to them the distinction between child grant support, foster care, disability grant, tell them where to go to apply, who qualified. And, also people...those who are discriminated because of their HIV status, like you cannot...they refuse to employ someone based on that, that was the part of the Street Law, and it was a course which contributes to my degree. And that course was a community-based courses, you did it, like, in the form of advocacy and workshop.

Int Ok. So, after you finished your LLB, what did you do, you said you went to work for Eskom?

KN Ja, I will come to that. I also...just to go back...

Int Sure, sure.

KN ...I also did...when I was doing my final year at the...I was at the Refugee Unit, and I was assisting people applying for asylum, whatever there, representing them at the Standing Committee at the HR...

Int So, the Refugee Unit, is that part of Lawyers for Human Rights or is that at Wits itself?

KN It's at Wits itself, it's like a Wits Law Clinic, it's like LRC, it's got some project like yes, we got eviction cases, so they've got like labour...

Int ...refugee.

KN ...refugee, delict, criminal, whatever, general. So, me I was assigned on the refugee. Yes. After my degree, I worked for ALP, ALP it's AIDS Law Project. I worked for, like, four months, as a voluntary student there. And at the ALP, we were assisting people, those who are discriminated based on their HIV status. We were attending some workshop because I was working as a paralegal doing research, if there it's an area of law I would go and research, and if there it's like some client who called telephonically, tell us the problem, we'll advise them. I worked for ALP, from ALP I worked for Ashira Consulting Company. Ashira Consulting Company it's also a consulting company, which deals with Public Law, but it's advised in...most of its client is the government department, but, as far as the Public Law it's concerned. And I also worked for SAHA, SAHA is South African History Archive, I worked for one year. I was working with Kate Allan, she's from Australia, she was my supervisor and together with Piers Pigou. I worked with them for a year. SAHA it deals with the freedom of information, access to freedom...Access to Information Act, PAIA. Like if now you worked for LRC, you go and join Treasury Department, you wanted to access your files, how many leaves did you take, medical record, whatever, you use a PAIA Act. So, we were like, assisting some people, if there it's like some TRC hearing, amnesty for, credit for, we were doing those things. So, that it's part of SAHA, it's dedicated to support the struggle for justice, so I was based at the Cullen Library for a year. And from SAHA, I come for Leigh Day. Leigh Day it's just here, this silicosis there, it's a case of silicosis.

Int Yes...

KN It's running by LRC, but it's from Australia, it's where...it's run by Richard Meeran, who it's a consul...an agent from Australia. The case it's about people who contracted

silicosis while they were working at the mine, during the apartheid regime. Because they will say the silica dust caused silicosis, when they blast they didn't have...I worked there...I worked as a paralegal, I think some couple of months before I joined Eskom. And when I joined Eskom I said: ok, let me just get something different from Public Law, and see whether I can go for the corporate world or I can go for this. And then I saw that, at the end of the day, based on the way I've grown up and the way my interest and the way in the future where I want to see myself, I said: I want to see myself as the public law...public lawyer who can assist the marginalised. Obviously, you know, when you are a public lawyer, you have to go extra mile. I remember this year we were having a case...I was working with Richard Moultrie representing the refugee who were arrested at the Methodist Church. So, I was the one who was working with Richard, so, it was something work-related which has also put me where I am now.

Int Right. So, you did a number of things before you came to the LRC to do your Articles. I'm wondering why it took you so long to do Articles, was there...deliberate or was it because you'd applied and hadn't gotten Articles, what happened after your LLB?

KN I did get some offers for Articles, I get offers at the Swanepoel's Attorneys at Nelspruit, but, it was not specifically dealing with my things that I wanted to do. And the other difficulties while I was working...trying to do that, is to adjust a life at Jo'burg. I don't have any uncle, any brother, like my brothers are all staying at Tembisa squatter shack, so I thought at the level of where I am I cannot afford to go and stay there, because the lifestyle there is different. So the...all these sort of things I was doing it for the sake that I can get money to pay for my rent, and to buy for my food, and to just survive, until a right time arrive so that I can get an offer like the offer at LRC, so that I can do my Articles.

Int But, I'm curious, for example, when you were doing your LLB, did you apply to all the law firms for Articles?

KN Of course. As a matter of fact, at Wits, they will recruit some law firms at the...like, during O-week, or after we have just registered, but, what I've experienced is that most of the firms which are recruited to come and recruit the students, are the most big law firms based at Sandton, and from my academic performance, I didn't met their requirement because I think they're looking at the best amongst the best. I was the best when I was at the high school, but, ever since I entered at Wits, I have to adjust so many things and I...as a result I couldn't...I couldn't cope as the best. I will tell you a good practical example. I didn't know how to use a computer, and I was expected to submit assignment in computer writing, so, and it's like, for me, it's also something that I have to work around, because I have to learn how to use a computer, learn how to use so many things. And for someone who's from the privilege or someone who's benefited from the apartheid, even if you are a black person, not all the black were affected by the apartheid, but, it's just the most vast majority of blacks were affected. Like now, we got some black people, those who are rich, and you can never compare their children with the children of someone who is still struggling to

get an RDP houses. Although, on colour, and whatever, we are black, but, there is a gap between, so, I have to adjust, based on that.

Int Ok, alright Kgaogelo, that's fair enough. When you got to the LRC, when did you start here?

KN I joined the LRC on the 2nd of January 2008.

Int Oh, right, so it's been recent?

KN Yes. And the time when I joined the LRC I also get an offer at Sandton, so it's just that offer was purely corporate, and I said: no, if there is a second world, I will either fall within the second world if maybe I followed the Public Interest and I think after six years, seven years, maybe I regret, whatever. I said: let me try, because a wise person always, always try and not fail to try.

Int So, you started here, you started at the LRC, what did you do in the first six months rotation?

KN I was working with Richard Moultrie, he was the one giving me the job, and doing some most of researches...research. As I just indicated to you, or the nice quite experiences that the people at the Methodist Church were arrested on the 31st of January, and it was like a month when I was employed. And that was a famous case, which was like, went on the media, like now, if you talk about xenophobia, because the arrest was not specifically arrest based on the ground that you don't have a permit, it was because you are from Zimbabwe, and you have to just to go back home. So, I learnt so many things from that case. And the rest of the work I learnt some technicalities, you know, like, Richard is an advocate and he's not like an attorney, you know, like, advocate even if they see a qualified attorney, they think they are better than qualified attorney, so, you can imagine, me, as just a candidate attorney, I haven't even been an attorney, so, it was difficult. But, I worked with him very nicely until he leaved the LRC and now, I joined...I rotated to the land now.

Int So, you're working with Durkje Gilfillan?

KN I'm working with Durkje now. And I find it interesting because sometimes...me, I'm proudly an African, because I know how to speak Venda, I know how to speak Shangaan, I know how...I know all those language. If you are at Limpopo, I will tell you example. Venda, it's Limpopo, Shangaan, it's Limpopo, Pedi, it's Limpopo, so when you come to Jo'burg, of course you'll have to learn how to speak Zulu, English you cannot be...you cannot...you can talk...but not be fluent, you can talk and explain if that it's whatever you want to raise. So, now because I'm working with land, and when you work with land you work with the community. I have been working with the community for my past experience so it's not something different from what I just experienced.

Int So, in terms of working with Richard Moultrie, what's the level of sort of training and interaction did you get, what did you learn in the process?

KN I think I've learnt so many things. For example, when you answered your 'phone, or when you explain things to someone, don't just assume that the other person is knowing exactly what...you have to make it clear. I didn't even see as something important that when I call someone I have to...I thought that it's the work of receptionist, that I'm Kgaogelo, I'm calling you from the Legal Resources Centre, it is in connection of whatever, whatever. That is one thing I learnt. Personality as well, that you must dress proper at all the time, it's not because today we are going to consult so that you have to look...that it's something you can develop. It doesn't matter how many clothes you got, but whatever you got if you can just iron them, wash them, make them to look neat. Also attention to the work, you must make sure that you double-check, you don't have to put things until the last moment, because you don't have any time to have a look on them, irregardless of how many documents...like, if you prepare founding affidavit, you'll find that it's like a hundred and twenty. I will tell you a good example. Like if you paginate, let's say you are paginating a file, once you miss two pages, on the middle, you have to redo the whole thing, and it's difficult, and it's something you have to know where to start. It's like, you know, some basic, some basic.

Int Ok. I was also wondering, Kgaogelo, in terms of the kind of cases you've taken, besides the Methodist case, what else have you been involved with so far?

KN I was once approached by a minor who wanted to brought a protection order to resist against his father. The father alleged that the minor is not listening to him, and he is not taking his obedience...he's not obeying him, he's not taking his instruction, and as a result he wanted him to be out of the house. And the minor was nineteen years old, unemployed, and the father was not married to the mother of the minor. The mother was renting a room at Soweto, and she's not working, and at the age based on that minor, it's going to be difficult for the minor to go and stay with the...

Int ...mother.

KN ...mother, because he's like, nineteen going to turn twenty. And it's a boy, it's not a female. So, I brought a application on behalf of the minor, we went to court, I was representing the minor, as a result, I managed to reach a settlement agreement. The attorney who was representing the father and I, together with the minor and the father, we sit down and the father explains their side of the story and my client, my minor, also get a chance to represent, and then I ask my client what he want at the end of the day, and the father what he can do. And they agree, and then we just went to court to go and confirm it to the magistrate that the parties have agreed that he will stay there on condition of the whatever, whatever.

Int Ok, great. And that case came via the LRC?

KN Yes. It just came straight to...because we got a child project at the LRC, so, we took it on the basis of training the CA, and also to get in the court exposure, and also to get drafting of affidavit, and also, you know, to just go and represent the client. Because what I've realised is that most of the CA, particularly at the LRC, you'll find that they serve their entire period, two years, and you find that if they have been appeared it's like once or twice, because most of the cases which LRC took, is the case which involved counsels. And it means you prepare everything for counsels, you don't just prepare and go and say: oh, my God, whatever.

Int Sure. Kgaogelo, in terms of what you want to do after you finish your Articles, what are your plans?

KN I am not sure, it's not something you can obliged or mandate or force someone, but, it is my wish and my interest also, if LRC can retain me. But, if there is no office for me to...or maybe the space or based on the fund, I think I will have to go and join another organisation which will support the human rights, and which will fight what happens to those people who suffered the injustice, ja. I think to that extent I will also contribute.

Int So, one of the things that's said about the LRC is that they...there are people like George Bizos, who is amazing; have you had much contact with George?

KN I think I did, in fact I did, because I can give you an example that last year, when I was working at LRC, I was not a candidate attorney...

Int Oh, you were working here before you started...?

KN Yes, I was working for Leigh Day at ninth floor, so, we were attending training sessions with George (Bizos)...*(eish, sorry!)(cell phone ringing)*.

Int Ok, you were attending training sessions with George Bizos..?

KN We were training...we were attending training session chaired by George (Bizos)...

Int Leigh Day, how do you spell that?

KN Leigh Day. Yes. We were attending some training with George (Bizos), and now I got this case, I'm also working on it, it's a new case, but we haven't yet opened a file. It's Mashinini Trust family, if you can remember Tsietsi Mashinini, he was died while he was in exile.

Int Oh, right. Ok.

KN And then, as a result they opened a Trust for Mashinini families, and we were approached by Lichava it's also the direct descendant, but, he was not included on the Trust and he didn't benefit. And now, it's up to the LRC to decide whether they take the matter further in challenging the Trust...the Trustee, because the objective...the ends and objective of that Trust is to benefit the direct descendant of the Mashinini...Tsietsi's brothers and sisters, but, it's also one of his brothers, but it's not them. So, I once spoken to George (Bizos) regarding that, and I spoken to Adrian (Friedman) and I take some instruction, because from that Trust Deeds, there was like page four which was missing. I made attempt several times to get page four, and then I went to the Masters of the High Court, Pretoria, I get page four, I give the files to Naseema (Fakir), who is the attorney, because we thought it falls within the NPO, and then, ja, I'm still waiting for Naseema (Fakir) to come and give me further instruction as to the progress of the matter.

Int Ok, great. I know you've been here a very short time, but, if you had to compare your experiences to other people who've been through the LLB with you and are doing Articles, or have done Articles, where do you think you stand in terms of your experience?

KN I think you'll agree with me, I'm not sure about the other CA, but, particularly if I have to say to...like myself, I think, because I worked with Richard (Moultrie), which is an advocate, I also worked with Adrian (Friedman), now, which is an advocate, and I also sometimes...if when I see George (Bizos) and I...there is something very important which I'm not quite sure and I just need a quick answer, I find it from him. And also based on the other available LRC attorneys, I think I have done enough, even if it's not enough, but, at least it has given me some more understanding at the extent that if I have to compare myself with someone, I think I'm much better. I can regard myself as I'm much better.

Int Ok. I was wondering whether you...I've asked you lots of questions, I'm wondering whether there's something I haven't asked you, which you feel should be included in your interview?

KN I don't know, I don't know because I don't know how the interview is target...what is the...

Int Sure. I'm also wondering in terms of memories, insofar you've been here a short time, but do you have like a funny story, something to share about your experience here, whether it's with a client, or, an interesting case, or a lawyer, something you might have learnt, something you feel is very important?

KN It's very difficult because the problems of LRC is these things of, we work we apply the sniff test before we take the case. And you will find that there is some cases which is not a sniff test. I will tell you there is a case now I'm working on it, it's not yet the case. What happens to the cases that...three...two clients at Leratone, Roodepoort,

Florida Land, their shacks were demolished, and this guy who approached me, he worked as a contractor. At the times when the shacks were demolished he was at Durban, and he didn't know because he didn't leave someone there. So, the other person went and approached CALS and say: my shacks has been demolished by the municipality without a court order. The CALS brought an urgent application to compel the municipality to restore the shack. They did comply with the court order. My client, a weeks after, came back and find that the shacks of that other person it's like it was two shacks, the municipality alleges that it's where the passage and the sewerage should pass. But, they didn't provide...like show them another space...

Int ...alternative.

KN ...ja, where they can go and put their shacks there. My client came and consult me. He went...he first went to CALS, at CALS they said: we have already worked on this matter, because we brought an urgent application for these things. It means if we have to take your matter, it's no longer an urgent one, because urgency has gone. But, as a result they said: ok, you can go to LRC. I think what they were doing, they were trying to make savings of the resources, because they've already helped the same client with the same matter, and this client has got the same problem, but, he hasn't been assisted. He came to us and I approached the people, those who were supposed to take decision and they said: ok, you know what, this is not an urgent matter, and based on the sniff test, we cannot take the matter, it's going to take time, because you have to start ordinary applications, sending whatever. But, I thought: yes, but, it's a matter which falls within the mandate that we assist people who have been evicted. This person has been evicted, and it means if a person it's being evicted, staying at shacks, it means that person cannot afford...it's not like we are talking about private eviction, where someone it's living at the flat, cannot afford the rent. So, as a result, there was nothing I can do to that client, I feel shame for that client, and that's some of the challenges you will face one day. And the other...one day there was this other person, its father was staying with the fiancée at Nigel, and then the father passed away, and they didn't know, and the mother of the client, the client was the father's son, was at KZN, and the fiancée wanted to bury the deceased, the father of my client, without even informing the families, the brothers, whatever, whoever available, for the deceased. And the deceased was even father, was even mother, even wife, a legally married wife together with the children. So, it was on Friday, in the afternoon, this time, it was just a matter of bringing an urgent application. So, we couldn't take the case because they said: unless if it...the sniff test it...that case, it won't change the law. But, with regards to that, I can understand, but, it was not about changing the law, it was about stopping the burial. And...which is not expensive, rather than to go and remove the burial, if you want to remove someone from Cape Town to be buried here. And I think it was some matters, if the discretion has to be exercised, it should be like...be flexible, so that we can assist...So, many cases...it's just some of the cases they are just not serious to that extent, but, I can recall those two.

Int That's the problem, Kgaogelo, is that in a Public Interest Law organisation like the LRC, where funding is strapped, you're going to get this tension between the every-day person who comes through the door, and his or her concern is very important to

them. And then you get the kind of focus areas, and having to fit into higher impact cases, test cases that can change legislation. What do you think about that?

KN I think, you know, that is good, because obviously, when the funders they give you money, they dictate, or you have to go and use this money for whatever. But, we, as LRC, we sit here, we come to work every day in order to assist the public, and we can understand that we don't assist every public. Let's say it's a labour matter, but, it's not labour as the labour-related, it's just includes some discrimination, or some form of unfair whatever. I think discretion or exception it's something, which is applicable to every rule. A rule it's a rule, but it has to be with exception. Like...I will tell you why. There are some cases which even if it didn't happen, but, because if the LRC can assist that particular client at that particular time, LRC will have been contributed to someone's life, rather than sitting here, maybe spend the whole month without a new cases is coming, saying: no, this doesn't fall within our scope, this doesn't fall within...We understand that, and we understand that we work on project, but, we have to look at each case which comes before us. Because some cases, it doesn't fall within our competence, but, it's a case, which, if you can assist that client, you will make a difference, by making a 'phone call, by writing a letter, without conceding that you are assisting him further. Because...let me give you a practical example. When you come as a client, you got this problem, and I said: ok, where are you working? Let's say it's a UIF, or it's a Provident Fund, which maybe LRC does assist. You give me the particulars of the company of who you are working for, I call the employer: eh, I've been consulted with this person, he's having a problem, he's working for you for this long period and he's now been dismissed and he wanted to claim his Provident Fund. The employer said: oh, no, I know...whatever...we will process it. Weeks pass, weeks pass and I have to make another second 'phone call. To what extent are we contributing if you make some 'phone call, you write some letters, at the end of the day, you don't litigate because you write letters of demand, you said: kindly furnish payment to this guy within seven days, failure, which we will issue, summon. You make it letters of demand. You fax it, or you post it. Seven days passed and you come back. When you say: what's the next move? They said: no, this is a case, which we cannot do. It means we are just, you know, spreading the names of LRC everywhere to other offices, and by not litigating, taking proper action against them, it means we are jeopardising the reputation of LRC. So, if it is a case, which we cannot take, we don't have...even have to make a 'phone call, we don't have even to write a letter, we have to just say to a client: sorry, we can't assist you. And how does that can help the LRC? For sending every single client...I'm not saying we must assist, but, there are some cases...there are some cases which you can also use them to provide training to both attorneys and candidate attorneys. You can imagine, when last did you heard that an attorney at LRC, I'm not sure whether it's Durban, it's Grahamstown, has been at court, himself, not instructing someone, himself, being at court, working on LRC matter? If you can find that, come and give me a proper answer and I will....

Int I think you should...you should get in touch with the Cape Town office, they do a lot of litigation. (*Laughs*).

KN It's because...yes, it's because they say...the Law Society, the Cape Law Society, the Law Society of Northern Province and the Cape Law Society, their rules are not the

same, so, the one at Cape Town, the CA, they work some cases like candidate attorney work for Legal Aid Board, like Public Defender, that's why they do a lot of cases. But, here, the Law Society of Northern Province, it doesn't allow that, and as a result, it's a disadvantage.

Int Ok, fair enough. You were saying that the LRC shouldn't refer clients out, they should just tell the client they can't help them?

KN Yes. Because...

Int But, what happens then to the client?

KN That's the worry, that's the most crucial worry, because a client, when it comes to LRC, he has been referred or he has been...he has been heard by someone that go there, he'll go and be assisted. I understand that, we cannot assist every single door...every client who is knocking on our door. But, I will tell you why...there will be some cases, a purely criminal case which you can see that LRC doesn't deal with criminal cases, but, the client wanted to be assisted. Like for example, let's say, this guy it's physically, emotionally, abusing this woman, and she's, like, wanted to open a case although it's going to be the state against the accused. And if she opens the case, it's like she's going to be represented by the state attorney, the prosecutors, LRC's attorneys are not involved there. But, what if the police are the people who is abusing her, I'm talking in a criminal perspective, they go there, they take bribe, they do these things, they do these things, and from the instruction from the client, you can see that there is a prima facie case against the police, for example. That's a criminal matter, you can't assist the client. I once write a letter to the Station Commander saying: kindly investigate the matter of this person, whatever, whatever. He hasn't come back to me, what I have to do now?

Int That brings me to the next question. I'm wondering, you've obviously heard and read about how the judiciary's under crisis, under attack, Constitutional Court, Constitutional Court judges, etc, as a very young lawyer, what's your sense of what's happening, in terms of the rule of law in this country, and what's your concern?

KN There it's some cases which happens in Eastern Cape, I think it happens somewhere in 1996, '97, after the new Constitution been implemented. It is very clear that the separation of powers must be there in order for society, democratic society to run smoothly. The moment when we started to involve judiciary with politicians, it undermines the democracy, the due process of the democracy. Because, what will happen is that now, the party, which is the ruling party, is the party which elect the president, and the president is the person who elect the judges, even if they are purely independent, as it said, but they're appointed via the Judicial Service Commission and get a recommendation and last appointment of the president. If now, what happens in South Africa, because of some other issues or pending cases, people will have to start to say, the judges themselves they are...they are not all...they are responsible for some other conduct, and as a result which means there must be a way to try...for the state to try to control the judiciary. I think the democracy will not be runned as the preamble

of the Constitution State, because, the president it's part of the executive and the judiciary, it's something else. So...

Int Ok, yeah.

KN ...you cannot...you cannot...you cannot, like, distinguish the two, because at the end of the day, the police must go out, go and arrest someone, that person must be given to the correctional services for supervision, but before that person go to the correctional service for supervision, must go to court, and the Constitution it's very clear that everyone is presumed innocent. It's up to the magistrate to see, based on fact, beyond a reasonable doubt or on balance of probability, whether that person it's guilty or not guilty. And, that means, it's a function of three organs of state, because it's a police which he has to go and make arrest and investigate the case, the police has to bring the accused to court, the magistrate and the prosecutor, as the part of the judiciary, must look at the facts of the case and it's up to the magistrate, and up to the prosecutor to argue, or convince, or disagree, even if it's limited, that's the magistrate's decision is concerned. If the prosecutor is not agreeing with the magistrate, there are some other forms of relief, take the matter to review, appeal or whatever. But, you can never, ever, if you wanted the democracy to be uphold, try to interfere, or inter...do anythings with the judiciary, because the court say the judiciary must apply the law without fear or favour.

Int Ok. That's a good question...Do you have any concerns for the future of a Public Interest Law organisation like the LRC, which has to take government to court by the very nature of the fact that a lot of the cases are against government?

KN I think it does, it's going to happen. If you can look now, we got...I'm telling you practically, it's theoretically, but, it's practice, but, it's just...it has been...not been practically, as such. ANC is divided into two component, and the divisions that at the time when they campaign for presidency before they went to...In fact, it started after Zuma was dismissed from the office as the alleged rape case. And after alleged rape case it went to the corruption case, and as a result, that thing started to divide the parties into two groups. Those who support Zuma, those who support Mbeki, and obviously, those who support Mbeki, they will be the people, those who are there, at that time when these things happen. And those who support Zuma, they are those who didn't get an opportunity to be there, and they feel that they are not there because that person, like the president, is not...does not like them, for whatever reason. So, that thing, it make LRC to be cautious, as because the LRC it's intended to protect the rights of the society to the extent that, politicians and how the rule of law works, they should not be confused, because irregardless whether you are a president, you are a minister, if you commit a conduct which is punishable by law, you are responsible to go to court, go and tested or trialled by...like any ordinary per...citizens and get a fair trial, and found guilty or be acquitted. So, LRC, I think, has got a lot of way...a lot of role to play in upholding the democracy to the extent that now...Another good example is the disbanding of the Scorpion, and the case which the LRC it's working now against them...I mean, the Director of National Public Protection Authority, they credit for, because what the NPA has done there, they have implemented a new policy which says: those people who didn't get an exemption at the TRC hearing...

Int ...the amnesty.

KN ...the amnesty, they can re-apply for amnesty. And which means it diffused the sole purpose we attack it on the ground that, no, you cannot do that, because these people have been given a fair chance enough to come out, and come and say whatever, but, it's like now if you...the SARS min...the minister of...tax man, says you are supposed to submit your IRP5 within whatever, if you don't submit you...the law will bite. If that time lapses, it means you have to face the consequences, but you cannot...unless you extend it, and you have to extend it with some justifiable reasons. But, you cannot just put it and end it open, like for indefinite, that's what they wanted to do. So, it is the rule and the responsibility of LRC, in such cases, to ensure that the victim, those who have suffered a gross human rights violation, their rights are protected. So, it's going to be also for people, those who will be suffered a right, as a result of making some public statement that we are intended to kill and shoot for someone. Because by saying that, it's like you...you...although...although, the...the...Even if you look at the Constitution, everyone, every citizen, or everyone, has the right to freedom of expression, but, there are some limitation, you cannot express something which is hate speech, or something which will encourage war. So, by saying we are intended to shoot and kill, for someone, it's like you are encouraging war, and you are invoking or provoking those who are against...or invoking those who support you, to revolt against those who don't support you. Because, you can imagine of what is going to happen, presumably, if the ConCourt has to say that such and such a document and the diary must not be given to the...or must not be obtained, for whatever, the NDPP must...the NPA must get those documents and must use it to prosecute our president, Mr. Honourable JZ, on the corruption cases. And it means if they find him guilty, whatever, even if it's one year or it's six months, he has to go to jail, and we have to also go back to protocol C, the policy says: if you got a misconduct of being arrested for whatever, you don't qualify for president. And I cannot say because I support you even if there is a law, which specifically says: I have to put you there because I like you. You have to apply the law.

Int Right. What does...as a young lawyer, what are your concerns, if any, in terms of the rule of law?

KN I think they are threatening the judiciary by making that public comment and public statement, and the judiciary...we understand that their rule it's separate to politics and to other organs of the state, but, if it means it doesn't been dealt with properly in order to protect our judiciary, we will have a problems. Because if the judiciary system is not strong in a democratic society, it's where you'll find that there is some civil war, because it's going to be you and me fighting to each other, and when we go to court, the law says something else.

Int Right, ok. I want to actually thank you, because you've indicated such a love for the law and also a passion, and so I wish you all the best, as a candidate attorney, and I'm sure you're going to make a fine Public Interest Lawyer, I think South Africa needs more young, black lawyers who are interested in Public Interest Law.

KN Ok.

Int Thank you.

KN Yes, ok.
(*Interruption...Interview continues*). \

Int So, you were telling me that you wished that the LRC would...you realised that the LRC cannot take cases against government because it litigates against government. Cannot take funds, sorry.

KN ...It's litigate against government, yes, that's why we cannot get fund from the government. Because if now, we are talking about urban refurbishment and it's part of making the city...besides 2010, it's part of the strategy...because of the most people like from outside countries, from Nigeria, from Zimbabwe, DRC, they are situated inside the city, they cannot go to townships, they cannot go to squatter camp, because they will be treated differently to the city. And as a result, when most people are affected, when the government says we want to improve this building, the government will have to evict those people, and in normal cases, the government will not say: ok, we move you from this building to wherever, the government will just say: no, within two months, all of you you're supposed to be out. And we, as LRC, because we represent the interest and the need of those people who are poor, we have to bring an application to resist against the government. And to that extent, it's difficult, you cannot litigate against me, thereafter come back to me and ask money.

Int Exactly. So, what is your concern then, how does the LRC...you were saying something about how it should have a budget?

KN I think...I know it's difficult, based on resources, whatever, but, if there is a way that we can try to get some funds somewhere else, I don't know, because I think in the near future, most of the cases that we will be doing, is to litigate against the government. Because, now, you can...another practical example, the Land Claims, where we got the land projects, when we represent people, those who claims their land whatever, you are litigating against the Minister of Land Affairs, you see? That is like government, at its own, and we're still going to get some other more cases, I foreseen the way the...as the judiciary now are current under threat, we will have to...as times goes on, a case might come to LRC, which is a case against maybe, the president, for disbanding the Scorpion, for example, or maybe it's a case for complaining the Ministers of Social and Development even if there is a judgment against us, but we might, as times goes on, we might find some, you know, the facts of the case is now different and it allow LRC to litigate. So, it's different, it's difficult.

Int It is difficult, but I think that your passion speaks for itself, and I hope that you will be someone who makes changes, important changes.

KN I think if it was not a matter of based on resources, we will do well, like, you can imagine, if we were assisting people in labour and criminal, and like, it's going to be a very marvellous job, because most of the cases representing the majority, it's labour, and most of people, those who are affected are those people who worked for a temporary contract when the contract expire whatever. But, there is nothing we can do.

Int Well, I wish you all the best, Kgaogelo.

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