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Lawyers for Human Rights and the role of legal
mobilization in the realization of land and housing rights
in South Africa

A Research Paper presented by:

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(Germany)

in partial fulfilment of the requirements for obtaining the degree
of

MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

SJP

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The Hague, The Netherlands
November 2023

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List of acronyms

ANC	African National Congress
BLA	Black Lawyers Association
CA	Candidate attorney
CALS	Centre for Applied Legal Studies
CODESA	Convention for a Democratic South Africa
CRCL	Commission on Restitution of Land Rights
LCC	Lands Claim Court
LHR	Lawyers for Human Rights
LRC	Legal Resource Centre
NADEL	National Association of Democratic Lawyers
NGO	Non-governmental Organization
SERI	Socio-Economic Rights Institute
SPN	Socially Perceived Necessities
TRC	Truth and Reconciliation Commission

Abstract

This research paper focused on the ongoing issues of inequality in land and housing in South Africa. Over 20 years after end of Apartheid in South Africa, inequality along racial lines has continued, especially regarding land and housing rights. The purpose of this paper is to analyse how the legal mobilization tactics used by the land, housing, and property rights program of the public-interest NGO Lawyers for Human Rights has contributed to the realization of land and housing rights in the country. This was done through semi-structured interviews and observatory research over three weeks with the program. It has been concluded that the programs capacity allow it to contribute to the realisation of land and housing rights by holding not only the government but also other parties who have benefitted from the laws of Apartheid accountable and by empowering those whose rights have been infringed upon. Secondly, the program contributes to the realization of land and housing rights by translating the highly coded language of the South African legal system into a language that is understandable to their clients and by educating their clients and the general public on their rights and how to navigate the legal system. Lastly, the program contributes to the realization of land housing rights in the country by challenging several structural biases within the civil society space that allows more people to access the law.

Relevance to Development Studies

The right to land and housing in South Africa is of importance for Development Studies as it is not only vital for the eradication of homelessness. A lack of adequate land or housing has the potential to affect all areas of life, such as employment, health care, and education. Furthermore, is it important to learn and uncover the potential of legal mobilization strategies by a South African civil society organization in realising socio-economic rights for marginalized communities worldwide.

Chapter 1 Introduction

1.1 The nature of the problem

The main problem that will be addressed in this research is that in South Africa the allocation of space and especially land and housing has continued to be done in a pattern that leads to spatial apartheid. The main drivers of this continuing trend that have been identified are the neoliberal policies that have been implemented by the governments after the democratic transition (Albertyn, 2018). In order to create economic growth, they prioritized efficiency and economic growth over economic redistribution to reduce the country's inequality (Albertyn, 2018).

Neoliberal policies in South Africa often promote economic development in the centres of cities, while pushing marginalized and low-income communities out of the city centres to make these areas more attractive for investment and to create space for further economic development (Roeland, 2023). As a result, only little space in South Africa's city centres is allocated to social housing (Roeland, 2023). The country is also facing a general shortage of affordable and social housing causing illegal settlements to continue to rise in the outer parts of cities (Socio-Economic Rights Institute South Africa, 2018 pp. 5-7).

Trends of continuous spatial division among racial as well as economic lines have also endured, meaning residential areas are often divided along different income levels and the most affordable housing is still mainly located within

townships, which is continuing the segregation patterns created since 1910 (Ballard, Mosiane, Hamman, 2021). The little change in the level of spatial inequality that has been recorded since the end of apartheid and can be traced back to the policies of the successive South African governments that have mainly been focused on economic growth, to the principal benefit of the white minority, rather than the improvement of socio-economic rights for all (Shahaboonin, David, Van Wyk, 2023).

The post-1994 democratic governments created many different housing programs to promote and create accessible housing for low-income households and assist them in accessing these services (Socio-Economic Rights Institute of South Africa, 2018 p. 5). However, these programs have had limited success due to implementation issues such as lack of political will, insufficient capacity, lack of coordination, and poor planning (Socio-Economic Rights Institute of South Africa, 2018 p. 5). Due to this, data shows that in 2016 one in seven households was living in informal settlements, with this number rising to one in five households in metropolitan areas (Socio-Economic Rights Institute of South Africa, 2018 p. 6). The report published by the Decent Standard of Living project in 2023 reveals that those living in urban areas are most likely to have access to all socially perceived necessities (SPN) while those who live in rural areas have access to almost no SPN, highlighting the strong inequality between rural and urban areas (Social Policy Institute et. al. 2023, p. 3).

The Restitution of Land Rights Act 22 of 1994 was created to lay out the laws and procedure that were going to monitor the restitution of land to those who had lost their land during Apartheid (Republic of South Africa, 1994). The White Paper on Land Policy of 1997 provides three strategies to create a land reform that would address all land injustices of the past and followed the system of willing buyer – willing seller, meaning the government itself would not buy land but just assist in the process (Iyler and Ramaccio Calvino 2021, pp. 22-23). The three strategies were land redistribution, land restitution and tenure reform (Iyler and Ramaccio Calvino 2021, p. 22).

The process of redistribution and repossession is being overseen by two government bodies. The Commission on Restitution of Land Rights (CRLR) has the role of assisting those making a land claim, investigating those claims, and aiding the claimants with any other queries prior to a settlement or adjudication (Hall, 2010, pp. 34-35). The Lands Claim Court (LCC) was established in 1996 as a specialized court that would only deal with land claim matter and decide on whether restitution orders would be granted and solve any disputes between property owners that might arise (Hall, 2010, p.35). Several time frames were established in which the restitution matter addressed. People were given from 1995 until the end of 1998 to submit their land claim to the CRLR, then 5 years were allocated to the LCC to reach decisions on all the claims made and another ten years were estimated for the execution of all settlements and judgements (Hall 2010, p.25). However, due to poor management and increasing corruption the process of land restitution

has been incredibly slow (The Economist, 2018). The Land Audit report of 2017 by the Department for Rural Development & Land Reform shows that in 2017 72 per cent of all farms and agricultural holdings were owned by the white population and only four percent were owned by the black population (p.2).

However, several issues arose from the Restitution of Land Rights Act and the time limitations set. Only those who lost their land rights after 1913 were able to make land claims, leaving out many black Africans, especially in the Western Cape, who lost their land prior to 1913 during the initial colonial dispossession that started from Cape Town and over time moved further inland (Hall 2010, pp. 36-37). Data published by the CRLR in 2007 also revealed that most people who were dispossessed from 1913 to 1998 did not make a land claim due to either not being aware of the process or due to not trusting the land restitution procedure (Hall 2010, p. 37). Iyer and Ramaccio Calvino (2021, p. 19) also highlight that the inadequate budget allocated to land restitution, lack of capacity in multiple departments, and the long periods of time it takes to reach settlement have also hindered land restitution efforts.

The slow progress made within land restitution efforts caused a debate to arise whether Section 25 of the South African Constitution was in need of amendment to speed up land reform by allowing for expropriation without compensation (Iyer and Ramaccio Calvino 2021, p. 28). In 2018 the Constitutional Review Committee called for the amendment of Section 25 to allow for expropriation without compensation (Du Plessis, 2021). At the same

time a new Expropriation Bill was drafted to replace the Expropriation Bill of 1975 which also calls for compensation (Du Plessis, 2021). In December 2021, the Constitutional amendment did not gain the two-third majority in parliament that is needed for constitutional changes and was therefore not adopted. The New Expropriation Bill was passed by the National Assembly in September 2022 and is currently under consideration by the National Council of Provinces (Parliamentary Monitoring Group, 2023).

Overall, the land and housing issues that were caused through the discriminatory laws and policies of the ruling government prior to the democratic transition are still at the centre of South Africa's ongoing inequality issue's almost 30 years after the country's democratic transition.

1.2 Justification and relevance of this research

South Africa, several decades after the end of Apartheid and the introduction of a democratic system, is still the one of the most unequal countries in the world regarding wealth distribution (The World Bank, 2023). While there are many causes for this continuing perpetual inequality, issues around land and housing have become of particular importance, especially after a catastrophe in August 2023, where fires in an abandoned building occupied by squatters in the city centre of Johannesburg, caused 74 people to lose their lives (Boxerman, 2023).

During my research I learned that several debates around the South African constitution have been triggered in response to ongoing racial inequality in

the country, including on how effective or useful it is for the protection and promotion of socio-economic rights (Madlingozi, 2018; Klug, 2018; Davis, 2018; Modiri, 2018). The Constitution, which was created in 1996 during the country's democratic transition, has been praised for being one of the most progressive constitutions in the world as it also includes socio-economic rights within its bill of rights which allows for social but also political transformation (Ackerman, 1997; Heyns and Brand, 1998). However, the constitution has also been criticised, especially in the academic realm for allowing the continuation of strong racial inequality in the country (Madlingozi, 2017; Klug, 2018; Sibanda, 2020). Yet, most of the academic literature has analysed the constitution from an academic perspective and not from the perspective of legal practitioners who engage with the constitution through their work on a regular basis, such as the land, housing, and property rights program of Lawyers for Human Rights (LHR). The program has a long history of public interest litigation in the country and has played a significant role for land and housing rights since the country's democratic transition (Department of Justice and Constitutional Development, 2009), which is why this program was chosen to focus on during this research.

This topic is important in the field of human rights studies as land and housing rights issues are not only limited to the South African context. More than 1 billion people worldwide are facing eviction (Prindex, 2018), and by learning how legal mobilization tactics can contribute to providing security of tenure in different local context and how these tactics could be limited.

For personal and professional reasons, I have chosen this topic, as most of my research throughout my academic education has been focused on South Africa. Moreover, I have had the opportunity to work and live within a community in Cape Town myself for six months, which evolved to be a key experience in my life as it highlighted the position of power and privilege I hold, not just in South Africa but in a global context due to the fact that I am a white, European with a stable socio-economic background.

With this research I aim to add to the growing literature on legal mobilization and the constitution in South Africa and what role they play in realising land and housing rights.

1.3 Background to the Proposed Study

1.3.1 History of South Africa

South Africa has a long history of settler colonialism, imperialism, racial discrimination, and segregation. As a result, in present times the country's population is highly diverse with 81 percent of the population being black, 8 per cent being coloured, 2 per cent being of Asian or Indian descent and 7 per cent white (Statistics South Africa, 2023 p. 7)

The region was first seized by the Dutch in 1652 in order to create a settler colony and was later seized by the British empire in 1792 (Simpson 2022, p. 1). The settlers slowly migrated further inland until they were met with

resistance from several indigenous groups such as the Khoisan and Xhosa people who were resisting and limiting the expansion of the settlers (Simpson 2022, p. 1). Dutch as well as British settlers both moved further inwards, creating separate territories that were recognized by each other, for several reasons such as overpopulation, and the abolition of slavery which led to increasing labour costs (Simpson 2022, p. 1-2). After the discovery of natural resources such as diamonds, the British empire sought to create one large South African state that would be ruled by the white population and that would use the black population as cheap labour in order to create wealth for the white population and the British Empire (Simpson 2022, p. 2). Thus, the independent communities were annexed which resulted in the First and Second Anglo-Boer War after which the Boer communities were integrated into the British Empire as separate territories (Simpson 2022, pp. 3-4). In 1910 The Union of South Africa unified these separate British colonies and territories into one unified state that was still controlled by the British government with a goal of stronger unification of the white population and different territories (Simpson 2022, pp. 23-24). It was then, when the first laws were created that strongly limited the rights of the native population by only allowing people of European or British decent to become members of parliament and by limiting the amount of land available for ownership by the native population (Simpson 2022, pp. 24-26, 30). It was also during this time that debates about segregating the population by race emerged with some arguing that the cheap labour the native population provided caused poverty

among the white population who were struggling with cheap labour competition (Simpson 2022, p. 31).

This marked the beginning of what would later be called the system of Apartheid in South Africa. In 1948 elections the Nationalist Party came to power during which the term apartheid was first used by the party to argue for a segregation of cities according to race due to growing urbanization, especially by the native population (Simpson 2022, pp. 129-133). Following the rise of National Party more laws were enacted that aimed at racially segregating the South African society in every part of life while simultaneously suppressing and racially discriminating against people of colour (Government of South Africa, 2023).

In 1913 the Natives Land Act stated that the land would be divided along racial lines by allocating areas called *homelands* or *Bantustans* and only in these areas was the black population allowed to rent, lease, or buy a house (Hall, 2010 p.31).

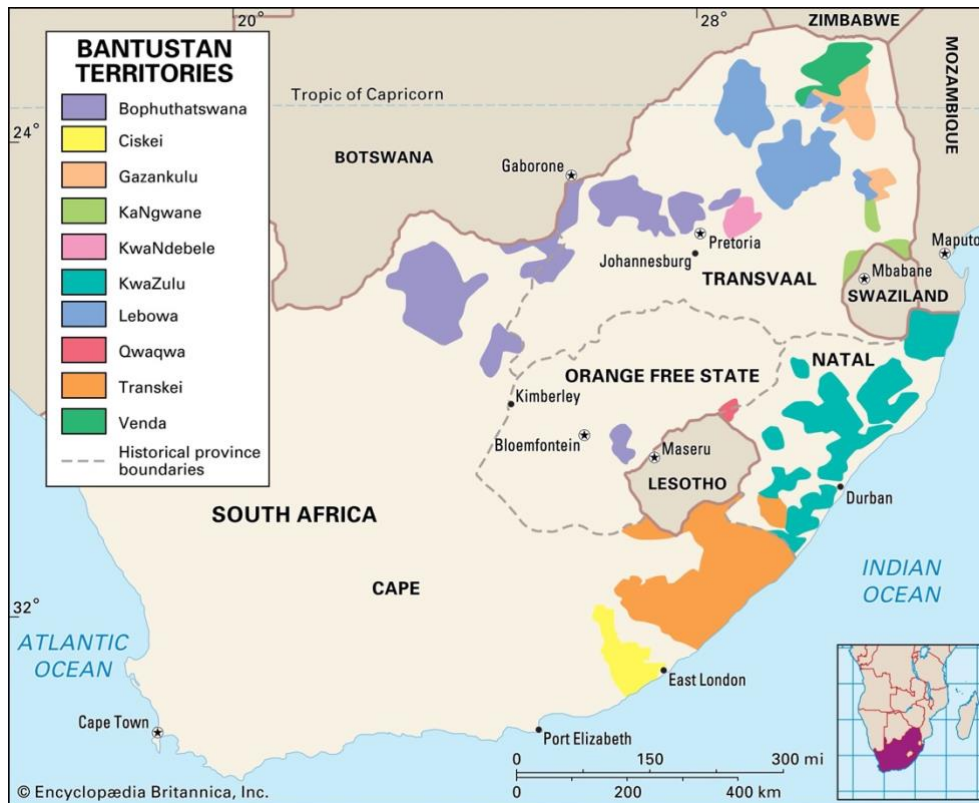


Figure 1: Bantustan territories in South Africa during the apartheid era. (Encyclopædia Britannica, 2023)

This started the practise of forced removals whereby the black population was forcibly removed from their homes and relocated into the different Bantustans (Hall, 2010, p.31). Those who owned land, such as farmers, lost the rights over their land and became tenants who were allowed to stay on the land in exchange for labour or were removed. Another method of removing indigenous people off their lands and into the allocated Bantustans was the creation of protected areas or national parks (Hall, 2010, p.31). In addition to the Natives Land Act, the *Group Areas Act 40 of 1950* was created to regulate and divide towns and cities along racial lines. Those who lived within the cities or towns were forcibly removed to either the racially divided townships

that were created on the outskirts of the cities or to the already established homelands (Hall, 2010, p.32). The result of these Acts was that by 1990 only 13 per cent of the country's land was allocated for the black majority population while the rest was allocated or reserved for the minority white population (Hall, 2010, p.32).

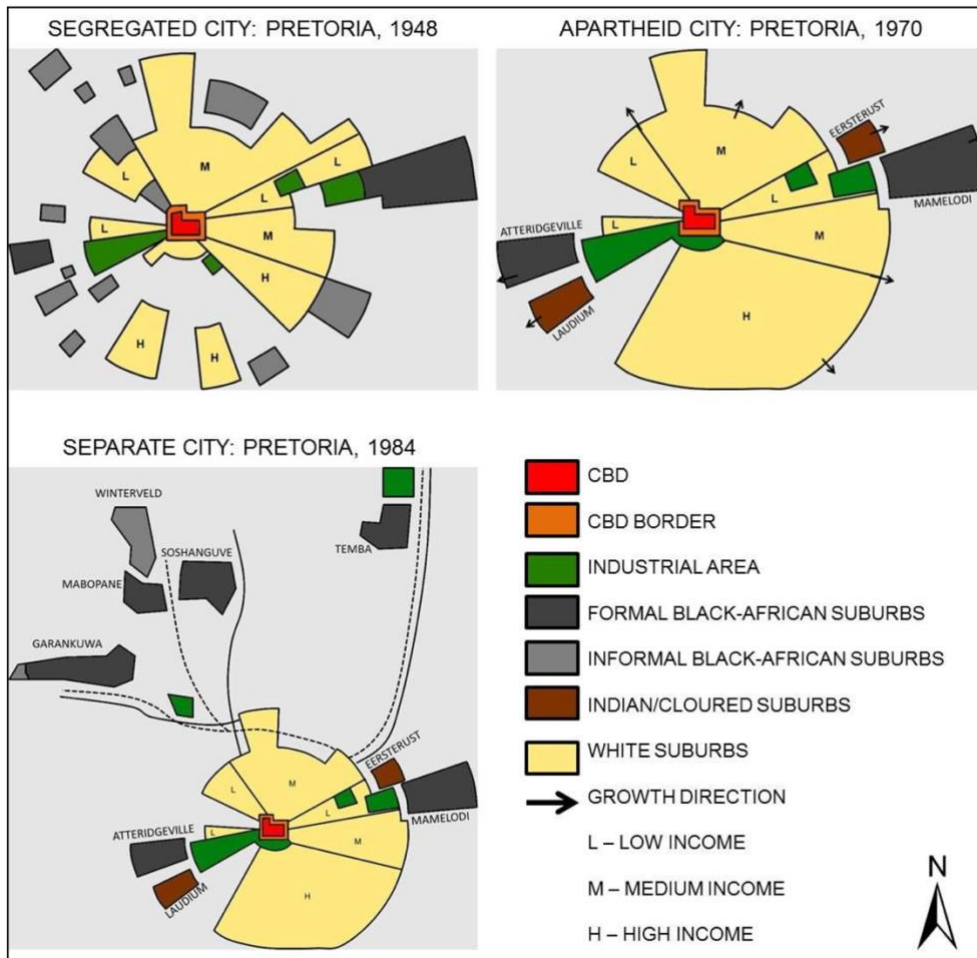


Figure 2: Spatial division in the city of Pretoria from 1948-1984 (Hamann, 2015, p.62)

Historically, in South Africa the law has been used by different actors for suppressing as well as liberating purposes, as was highlighted in the research by Richard Abel in 1995. Before its democratic transition, the South African

legal systems was centralised around parliamentary supremacy, which meant that the judiciary had no powers to order judicial reviews or investigations and the parliament was holding all the power (Abel 1995, p. 17).

Abel highlighted how not only was the entire rule of Apartheid based on racial segregation laws, but law was also used by several liberation movements who used different legal strategies and tactics such as advocacy and litigation as well as referring to international criminal laws and international human rights laws in order to hold the leaders of the Apartheid regime internationally accountable and to create public, international pressure on the government (Abel 1995, pp. 1-3). Using the law was often seen as one of the few paths where opposing the Apartheid regime was still possible (Abel 1995, p. 12). Political opposition was either outlawed or their powers were so limited that many black citizens stopped voting, public gatherings were most of the times forbidden and those ruling the homelands were seen as corrupt and unwilling to criticize the South African government due to their strong dependence on it (Abel 1995, p. 12). The South African military was too powerful to be seriously threatened by opposing forces, the media was strongly limited and controlled by the government (Abel 1995, p. 12). Furthermore, the renewal of the State of Emergency every five years gave the ruling government even more powers to limit the ways they could be opposed (Abel 1995, p. 12). The Apartheid government strongly believed in the rule of law as this was the basis of their oppressive segregation laws, however this also allowed human rights lawyers to use the rule of law to bring on victories against the apartheid

regime (Abel 1995, p. 13). However, these instances were also used by the Apartheid regime to argue and demonstrate the independence of law and politics (Abel 1995, p. 3).

It was only through the Rivonia trial (1963-1964), where Nelson Mandela and his colleagues were sentenced, that networks of lawyers strategizing around how law can be used to fight apartheid were created in the country (Gibbs, 2019). This early legal network was mainly highlighted by white liberal lawyers who had strong connections to the UK and were supported through networks and organizations in the UK as well as organizations who were supporting the civil rights movements in the USA (Gibbs, 2019). In 1979 the Legal Resource Centre (LRC) was established by Arthur Chaskalson as the first public interest litigation organization. Chaskalson was previously one of the lawyers who represented Mandela and others during the Rivonia Trial and indeed in many other trials challenging the laws of Apartheid; he who would later become the President of the Constitutional Court and Chief Justice of South Africa (Gibbs, 2019). At the same time, several other legal aid organizations started to emerge such as Lawyers for Human Rights (LHR) and the Centre of Applied Legal Studies (CALS) were created by a growing network of human rights lawyers (Gibbs, 2019). Next to this liberal network of human rights lawyers another network of black lawyers slowly emerged, including the Black Lawyers Association (BLA) who's focus was on the creation of rights and recognition (Gibbs, 2019). The two strands of lawyers were at first not of collaborative nature, however eventually the divisions

between the two stands reduced and a more general focus and lawyer group focusing on human rights emerged, especially through the creation of the National Association of Democratic Lawyers (NADEL) in 1987 (Gibbs, 2019). Nevertheless, different views on how South Africa should work towards guaranteeing positive rights for all were only merged through the creation and deliberation of the Bill of Rights and being guided by Nelson Mandela and the idea of transformative constitutionalism (Gibbs, 2019).

In the years of political transition from the Apartheid regime to a democracy, land restitution was a highly debated but also contested topic as the Apartheid regime already began restitution efforts by 1991, however these measures were highly limited to few specific instances which caused the African National Congress (ANC), one of the main liberation movements, and other non-governmental organizations, to reject this restitution attempt (Hall, 2010, p.33). In 1990 a turning point was reached. The white majority in the country was becoming more fragmented along political lines, the increasing international sanctions and pressure on the South African government to end the apartheid rule as well as the Cold War gave a sign to both the national government at the time as well as the liberation movements that military action and the use of violence could no longer be used to resolve this conflict (Simpson 2022, pp. 321-322). Additionally, there was also a change in leadership for the National Party. After the resignation of President Botha in 1989, de Klerk was elected leader of the National Party as well as president

of the country (Simpson 2022, pp. 311-312). De Klerk, unlike his predecessor was interested in a political and constitutional reform as well as showing interest in entering into negotiations with the opposition (Simpson, 2022, p. 319). However, the ANC had clear demands that had to be met for them to be willing to enter negotiations with the government. These demands were: the release of all political prisoners, the ending of the ongoing state of emergency, as well as ending the practice of sentencing people without a trial (Simpson 2022, p. 323).

After several negotiations the parties were able to agree on a set of pre-conditions for the upcoming negotiations. One of the main preconditions was the ending of violence on both sides, which never fully succeeded, but the negotiations were started nevertheless (Simpson 2022, pp. 330-331). In December 1991 the first official multi-party negotiations commenced in the Convention for a Democratic South Africa (CODESA) (Simpson 2022, p. 332). The aim of these meetings was the drafting of an interim constitution for a transitional government (Simpson 2022, pp. 335-336). In 1991 the *Upgrading of Land Tenure Rights Act* was put into place, which allowed black households to obtain title deeds, so ownership, for properties located within townships and it allowed native tribes to own their tribal land (South African Government, 2023). The National Party and the ANC also struggled to agree on the role of property rights within the constitution. While the ANC was willing to enshrine private property rights into the Bill of Rights, the National Party, as it was supported by many big mining companies and the

banking sector who were worried about losing their land and profit, were insisting on corporate property rights to also be enshrined in the Bill of Rights (Hall 2010, p.33). In 1993 the ANC conceded and property rights for all were first enshrined in the interim constitution and later in the final constitution (Hall 2010, p.33).

The second round of negotiations in May 1992 ended in a political deadlock where the different parties could not consent on several issues such as the protection of minority rights, how centralized the government should be, power-sharing disagreements, and reoccurring violence in townships throughout the country, which caused the negotiations to collapse (Simpson 2022, pp. 336). The negotiations eventually continued and concluded on a Government of National Unity to be elected in 1994, whose role it would be to lead the country's democratic transition until 1999 and was to be guided by an Interim Constitution that was adopted in December 1993 (Simpson 2022, p. 345 -347). The Interim Constitution was followed by the Constitution of South Africa in 1996 which to this day represents the legal foundation of South Africa (Simpson 2022, p. 366).

In attempts to heal the wounds and the societal divide the previous decades have caused in the country, the Truth and Reconciliation Commission (TRC) which had the goal of restorative justice by providing victims with the opportunity to tell their stories, for perpetrators to come forward with their crimes they had committed without the fear of punishment and allocating repairs in forms of monetary support for victims of the apartheid regime

(Government of South Africa, 2023). Nevertheless, although many additional policies have been created by the different South African governments over the years, the country has not improved on reducing the gap between the countries upper and lower class (The World Bank, 2023).

The right to adequate housing is highlighted not only within the United Nations Universal Declaration of Human Rights (UN General Assembly, 1948) which South Arica ratified in 1996 but also within the Constitution of the country (Republic of South Africa, 1996). Section 26 of the constitution prescribes not only the right of everybody to adequate housing, but also the role the state has in fulfilling this right and under which circumstances evictions are allowed (Republic of South Africa, 1996). Further, Section 25 protects the property rights of people, but allows for expropriation with compensation if it is in the public in interest (Republic of South Africa, 1996).

1.3.2 History of Lawyers for Human Rights

The South African non-governmental human rights organization *Lawyers for Human Rights* (LHR) was founded in 1979 by a group of activist lawyers and thus has its roots in exactly this long history of legal advocacy for equality and rights of the country (Lawyers for Human Rights, 2023a). LHR was founded shortly after the first International Conference on Human Rights was held in Cape Town (Department of Justice and Constitutional Development, 2009).

The purpose of why the organization was established was to use legal tactics to fight against human rights abuses that were being committed by the Apartheid government from 1948 to 1994, starting with advocating for the abolishing of the death penalty and later expanding to a wide variety of areas during the transition period. The organization also took part in negotiations surrounding the constitution as well as the Bill of Rights. LHR also played a key role during the first democratic elections through voter education as well as monitoring of the election process (Department of Justice and Constitutional Development, 2009).

Since the democratic transition the organization's aim shifted to the protection and advancement of human rights. LHR's objective has been to use the law as a tool to enact positive change within the country through different strategies such as impact litigation, rights advocacy and education as well as civil society and community coalition building (Lawyers for Human Rights, 2023a). The organization has focussed primarily on indigenous, vulnerable, and marginalized communities and individuals including refugees as well as migrants (Lawyers for Human Rights, 2023a).

During the time the research was conducted LHR was running six different programs which are separated into three main offices in Pretoria, Johannesburg, and Durban, with each program focusing on a specific area of human rights. Among these programs is the Land, Housing and Property Rights programme which focuses on different property rights issues, including large scale evictions and regularising land ownership (Lawyers for

Human Rights, 2023b). The land, housing and property rights program is located in the National Office in Pretoria and consists of attorneys, candidate attorneys and legal interns and allows for daily walk-in consultations through their legal clinic as well as consultations over the telephone and email (Lawyers for Human Rights, 2023b).

1.4 Research objective

The objective of this research is to understand and explain the potential and challenges of legal mobilization strategies and tactics by LHR in the realisation of the right to adequate housing in South Africa. This will be done by following the analytical framework for legal mobilization by Handmaker (2019). Through this framework I will analyse what capacity the program holds to challenge the state, what structural biases present in South Africa potentially limit the programs legal mobilization work. It will also be analysed what steps the program takes to overcome these biases and lastly how the program approaches their roles as translators as highlighted by Handmaker (2019) and Merry (2006).

1.5 Research question

1.5.1 The main question

How has legal mobilization by Lawyers for Human Rights contributed to the realization of the socio-economic right to housing and land in South Africa?

1.5.2 Sub-questions

- a) What capacities does the program hold to challenge the state and how does this contribute to the realisation of land and housing rights?
- b) What role does translation play within the programs work and how does this contribute to the realisation of land and housing rights?
- c) What structural biases does the program encounter and how does it challenge these?

1.6 Chapter overview

In the following section I will describe the different methods used for collecting data for this research as well as the method used for analysing the collected data. The section will also give insights into the security measures taken during the research and its limitations.

The third section of this paper will lay out the different conceptual and analytical frameworks used for this study. These include the concepts legal consciousness and legal culture, the different forms of constitutionalism as well as the theoretical and analytical framework of legal mobilization. The fourth section will present the finding and the analysis of those findings along the legal mobilization framework established by Handmaker (2019), before the research will be concluded in the final section of this paper.

Chapter 2 Methods and Research Design

The key methods for this research have been in-depth/ semi-structured interviews as well as observatory research of the land, housing and property rights unit of Lawyers for Human Rights from the 18th of July until the 7th of August. During my research I was located in Pretoria where the National Main Office of LHR is located, in which the land, housing and property rights program has its seat. Data from the interviews will be completed by other sources of data such as field notes, government and UN reports, media reports, and secondary research. Official judgements of cases by the land, housing and property rights unit by the Constitutional Court and the High Court of South Africa have also been used for this research.

2.1 Interviews

The participants who were interviewed were mainly current employees of the land housing and property rights program of LHR, and these interviews were conducted in person at the program's office itself. In total two attorneys, three candidate attorneys, one legal intern and one administrative assistance were working for the unit during the time this research was conducted. I was able to interview everybody working on the program except for the administrative assistance as they fully work from home and only engages with the program over What's App or email. Additionally, two former colleagues were recommended to me by word of mouth. One of these former colleagues used

to be an attorney for the program who was now working for an environmental rights NGO while the second former colleague is a professor at the Department of Sociology at Wits University who completed his practical legal training for one year in 2022. However, they do still work on the land housing and property rights program on some cases next to their work at Wits University. In total 8 interviews were conducted within the three-week time span (Appendix 1).

After reaching out to these contacts, the interviews were conducted over Microsoft Teams as both were living and working in Johannesburg and both expressed that they would prefer doing the interview online. Before beginning with the interviews, two questionnaire guides were developed. One interview guide was made for the current employees of the program (Appendix 2A), the other one was made for the former employees of the program (Appendix 2B). The questions for both questionnaires were divided into themes: personal information, current work/work at LHR, the constitution, and lastly any miscellaneous that might come up. With the personal background questions, I wanted to learn about the legal background of the participants, but also about their former legal education and previous work experiences to learn about the experiences that have shaped their legal consciousness and to learn about how South African legal culture is shaped through their education. The aim of the questions in the current work/work at LHR category was to learn about the specific legal mobilization tactics the program uses and why, but also what opportunities and challenges these tactics bring with them in their experience.

Through questions based around the country's constitution the aim was to explore what role the constitution plays within their work but also explore their legal consciousness in views of the constitution based on their experiences and what they were taught.

Before all interviews the purpose of the interview was explained to the participants and their consent was given to be interviewed and to record said interview. It was highlighted to all participants that these recordings would only be used for transcribing purposes and that if they wish to, their identity can be hidden.

2.2 Transcribing and Coding

After finishing the interviews, I started to transcribe the interviews. For the 6 interviews conducted in person I used the application otter.ai for an initial rough transcription, which was followed by manual transcription to ensure that the transcript is accurate to the interview recording. For the two interviews conducted over Microsoft Teams, I used the automatic transcription option available on Teams and then manually completed the transcriptions to also ensure their completeness and accuracy.

To analyse the data collected throughout the interviews the application atlas.ti was used in order to create and apply codes to the transcriptions. Throughout the coding process the guide provided by Linneberg and Korsgaard (2019)

was followed. Several rounds of coding were conducted, and an inductive coding approach was used to explore different themes within the data and to obtain a general overview of possible themes in the first round of coding (Linneberg and Korsgaard, 2019). In the second and third round of coding further codes were created to link the emerging patterns and themes to the analytical framework chosen for this research.

2.3 Observatory research

The observatory research conducted during my field work consisted of following and observing the members of the land housing and property rights program during their day-to-day work. This consisted of sitting in during walk-in consultations, meetings with clients at the office as well as driving out to clients and attending workshops for the staff. When sitting in during walk-in consultations, participants were informed of the research conducted by me and consent was given for me to take notes. During breaks as well as at the end of every day I compiled my field notes by noting down everything I had done or observed or researched that day (Appendix 3).

2.4 Security during fieldwork

Security of the researcher as well as the participants had to be considered when conducting field research (Mena and Hilhorst, 2022). The access to the

land, housing and property rights program of LHR came directly through a close contact who used to work as the National Director of LHR and is still working in close contact with the program. The same contact also provided assistance in finding appropriate housing by connecting me to former LHR employees who live in Pretoria and have still been active in the human rights sector. These contacts also offered several points of advice on how to travel and get around the city of Pretoria in a safe manner.

2.5 Limitations

One of the limitations I had to face during my field work was that due to my personal lack of knowledge and experience in the legal field I had to spend a considerable amount of time learning and understanding the legal language and different legal terms used which limited my understanding of certain processes such as litigation. Another limitation that I faced during my field work was that due to my limited time frame I was unable to attend any court proceeding with the program as for the three weeks I was with them no court appearances were scheduled. Because of this, I was not able to observe how legal arguments about land and housing issues were presented by the different sides and how the different sides interacted with each other during but also before and after the court hearing.

Furthermore, the six participants who were actively working for the land housing and property rights unit all had to opportunity to get to know me for several days prior to me interviewing them, which made the interviews feel

very relaxed. However, the two former employees who I interviewed over Microsoft Teams had very little prior contact with me. Only to discuss what the topic of my research was, if they were willing for me to interview them, and to agree on a time and date for the interview. This meant that these two interviews felt less relaxed.

Lastly, my implicit bias, meaning the different biases I hold unconsciously due to my privileged position as a white middle-class European who never had to worry about land or housing rights has also been a limitation, I had to be aware of at all times. In order to manage this bias, I was very mindful to not make any assumptions or conclusions, about the program and the people working for the program.

Chapter 3 Conceptual Framework

3.1 Legal mobilization

Commonly to the general public the law is seen as a universal truth; however, the way law is intended to work and the ways it actually works and is used does not always align (Handmaker and Taekema, 2023). Legal mobilization is the strategic use of legal mechanisms and tactics to advance one's social or political goals in order to foster greater social justice or equality and can be used as the tool that allow people to present a counterpower to dominant rule or when the law is more oppressive than supportive (Handmaker and Taekema, 2023). However, the law can also be used to further oppress groups or communities and undermine existing laws for personal gain or to sustain the existing power structures (Abel, 1995 p. 14-17). Using law in this sense is what scholars refer to as lawfare and it is highly debated whether this can be seen as a legitimate use of law (Handmaker and Taekema, 2023).

Legal mobilization can take many shapes and is not limited to inside the court room, as it also includes strategies such as advocacy, protesting, or boycotting (Matthews, 2022). Overall, the study of legal mobilization has been divided into two different groups with different focuses (Handmaker, 2019). The first group has a focus on broad-based law-based advocacy taking many different forms by social movements while the second group is more focused on strategic as well as public interest litigation.

Litigation-tactics are generally seen as one of the most important tools within legal mobilization as even when the court proceedings might not rule in favour of those using legal mobilization, it could still lead to structural changes by changing the behaviours or views of the public or by creating alliances and connections with social movements or organizations working towards the same goal (Matthews, 2022; Dugard and Langford, 2011).

Handmaker (2019) has made a concrete distinction between legal mobilization and lawfare. While legal mobilization is the use of law, often by civil society, for a positive political claim that is often related to social justice and human rights, lawfare describes the use of law by different actors, such as the state or private actors, to further an illegitimate political claim often related to oppression and the reinforcement of the existing hegemony (Handmaker, 2019). However, it is important to notice that governments are not limited to only using lawfare and civil society is the same way not limited to using only legal mobilization (Handmaker, 2019).

Abel (1995, p.11) described this as using the law either as a sword used by activists and marginalized communities to empower those who are oppressed, or a shield, meaning using law to protect those in power. He also highlights how the law is often seen to be separated from politics and that the rule of law is independent from political values (Abel, 1995, p. 7). However, as Abel (1995, pp. 7-10) has also highlighted with several international examples how law has often been used to further certain political interests and views.

Handmaker (2019) highlighted three abilities of legal mobilization that allow for legal mobilization to become a legitimate political claim. Firstly, that civil society has “a capacity to challenge the state, which enhances their legitimacy to mobilise (international) law, derived from various normative developments in human rights “(Handmaker, 2019 p.12), but also the resource and the public support in order to make their legal claim. Secondly, that civil society who is engaging with legal mobilization is acting as a translator who brings international norms into a local context so it can be understood and adopted by the local communities (Handmaker, 2019). And thirdly, that the inherent liberal and normative structural-institutional biases that international human rights law hold have the potential to affect the effectiveness of different legal mobilization tactics that might be used by civil society (Handmaker, 2019). These 3 abilities make up the analytical lens of legal mobilization through which it is possible to analyse the opportunities as well as challenges NGO’s and social movements face when using litigation to further socio-economic justice and equality in the country (Handmaker, 2019).

Legal mobilization has often been linked to the realization of internationally recognized human rights. However, these are liberal, intentional norms and values that do not just fit in the context of every country and might even clash with local norms and values on rights and justice (Handmaker and Arts, 2019).

Sally Engle Merry (2006) pointed out the importance of translating international human rights norms into local context if these are supposed to be integrated into societies. Merry (2006) points towards civil society as having to take on the role of translators. Local and national NGOs have the ability to understand both the international human rights values and the values and norms of their community and are therefore in the best position to adapt and translate these international norms to fit the different regional contexts (Merry, 2006).

Nevertheless, some academics have been more critical of civil society and the legal mobilization tools used by them. In 2017, Madlingozi highlighted different structures within South Africa's contemporary civil society sector that reinforce historical continuation of white supremacy and do not allow for structural change within the country. Madlingozi (2017) highlighted, that most social justice civil society organizations are still dominated by the white population which also holds most of the key roles within the sector. He argues that this means it is still white people who get to decide who gets access to the law and the justice system and reinforces white supremacy and does not allow for a redistribution on power (Madlingozi, 2017). The author also highlights that through these structures the white population can still benefit from the past and present racial inequalities within the country (Madlingozi, 2017). The current civil society of South Africa also tends to only hold the government accountable instead of also holding others who have benefitted from structures of apartheid and colonialism (Madlingozi, 2017). Lastly, the

author argued that the white civil society due to their position get to shape the demands of the marginalized groups based on their views, instead of looking at the historical roots and the views of the communities themselves to shape their demands (Madlingozi, 2017). Madlingozi (2017) gives the example of eviction matters where it is often claimed that people must have access to a house instead of looking at the historical context of land repossessions and targeting the issue there.

Research specifically on Lawyers for Human Rights has previously been conducted by Cote and van Garderen in 2011 and focused on the different challenges public interest litigation face in the South African context.

Within their research the authors differentiated between external and internal challenges faced by LHR. External challenges faced by LHR in public interest litigation include resources and especially funding, maintaining support for ongoing litigation initiatives, as well as navigating within a frequently hostile political and legal environment (Cote and van Garderen, 2011). Public interest NGOs are generally reliant on donor funding which is often dependent of the state of the economy of the those providing donations, meaning a recession can often cause a smaller amount of funding being provided (Cote and van Garderen, 2011). However, the authors also point out that public interest litigation often attracts a large number of media reports which donors interpret as the organization being successful in work and additionally it also favourable exposure for the donors (Cote and van

Garderen, 2011). They also highlighted that the high amount of media coverage can also be used to educate the public about their rights as well as putting pressure on those who have infringed on the rights the NGO is defending (Cote and van Garderen, 2011). Another challenge often faced by LHR is that continuous litigation in sensitive topics such as migrant and refugee rights can lead to a rather hostile environment when engaging with government departments or government lawyers, which even have the possibility to become personal where the integrity of the lawyers themselves is being questioned (Cote and van Garderen, 2011). One of the reasons named by the authors as to why the legal and political environment has the potential to become hostile is that public interest litigation often interferes or contradicts with the strategic plans and policies the South African government creates after every election which are meant to guide them for their elected period (Cote and van Garderen, 2011).

Cote and van Garderen (2011) also highlight several internal challenges public interest NGOs face in South Africa which are often related to external challenges of barriers but also reflect on how lawyers assess whether a case is serving the public interest or not and what challenges come with this and can highlight internal systemic problems within the organization.

The challenges include the struggle of retaining high skilled labour, strategic planning of litigation diversity within the organization and the creation of social mobilization for rather contested topics (Cote and van Garderen, 2011).

The NGO sector in South Africa often faces the challenge that new, motivated

lawyers often want to work for NGOs in the beginnings of their careers, but often only to gain work experience to then pursue new avenues in their careers, especially also because public interest NGOs are limited in the amount of salary and benefits, they can hand out to their employees (Cote and van Garderen, 2011). This causes the challenge of NGOs having to constantly train new people and only retain little of their highly skilled labour (Cote and van Garderen, 2011). Another internal challenge often faced by public interest NGOs in South Africa is the issue of diversity. Public interest organizations are often seen by the public as not being connected to the issues and problems faced by the communities they are working with, as these organizations are often perceived as consisting of middle-class people who cannot relate to the issues of the poor and marginalized communities. Therefore, diversity within the organization can combat such stigma and make the organisations more attractive and inviting to those communities (Cote and van Garderen, 2011). In relation to this challenge the authors point towards a general lack of black representation among lawyers working in public interest organizations (Cote and van Garderen, 2011). The authors conclude that all of these factors play a role in how public interest lawyers evaluate what is in the public interest and what cases can they and should they take on. Because of this public interest lawyers working for NGOs step into a gatekeeping role in which their perception of public interest dictates who will get access to justice and who might not (Cote and van Garderen, 2011).

For the purpose of this research the analytical leans for legal mobilizations by Handmaker (2019) will be used to analyse how the land, housing, and property rights program of LHR and their legal mobilization tactics have contributed to the realization of socio-economic rights in South Africa.

It is highlighted by Handmaker and Taekema (2023) that legal mobilization is rooted in the legal consciousness of those using the law and those working with the law. Thus, in the following section the concepts of legal culture and legal consciousness will be explored.

3. 2 Legal culture and legal consciousness

3.2.1 Legal culture

When studying legal mobilization, it is very important to consider that not everyone has the same view on the law, how it operates and how they see and relate themselves to the law. Rather every country has a distinct legal culture (Friedman, 1969). Lawrence Friedman (1969) has defined legal culture as “the network of values and attitudes relating to law, which determine when and why and where people turn to law or government or turn away.” (Friedman, 1969 p. 34). This also includes the values and attitudes of legal professionals, but also of the general public and what place law itself carries within a society (Friedman, 1969). These values and attitudes of especially

legal practitioners but also the general public are also shaped through the education system (Čehulić, 2021).

Later, Merry (2010) divided the concept of legal culture into four dimensions: the practices of legal institutions, public attitudes and beliefs about the law, legal mobilization, and legal consciousness. The practices of legal institutions refers to how those working in the legal profession view the legal system and its rules as well as who uses it, public attitudes and beliefs about the law refers to how the general public perceives the legal system which is often shaped by personal experiences (Merry, 2010). Legal mobilization refers to the willingness of a person to define their problems in terms of the law and then engaging in legal strategies, and legal consciousness refers to how much an individual sees themselves in relation to the law, which is also strongly influenced by personal experiences. Merry (2010) also pointed out that in current times most legal cultures are of a pluralistic nature, meaning the legal system is often a unique mix of different legal systems that have been used in the country over the years or for specific purposes.

South African legal culture is of pluralistic nature as the country's legal systems was shaped through the country's history of colonialism and imperialism and therefore includes three different legal systems: Customary Law, Roman-Dutch Civil Law, and English Common Law (Mnisi Weeks 2020, p. 59). The country's legal culture is also widely seen as having both empowering qualities for the population as well as oppressive qualities which Mnisi Weeks (2020) calls the "dis/empowerment paradox" (p. 57), as the

country is still struggling with strong inequality along racial lines even though the Constitution and democratic transition had the goal of reducing the inequality within the country. This paradox is created through historical continuations within the country's legal culture that allow for people to use the law in order to create greater justice but also limitations set by the law (Mnisi Weeks 2020, pp. 67-68). Mnisi Weeks (2020, pp.67-68) points out, that prior to the country's democratic transition the disempowerment component of the country's legal culture was strongly visible while the opportunities the legal culture gave were rather hidden. Today, the author argues this is reversed, as the legal system appears very empowering with its Bill of Rights and constitutional supremacy, but hidden disempowerments could still be present in the current system (Mnisi Weeks 2020, pp. 68-69). However, Mnisi Weeks (2020, pp. 68-69) also underlines that it not only the country's legal system that is to blame for the current ongoing issue of racial inequality but rather that it might be complicit in this process which the author argues is mainly to be blamed on the government under the leadership of the ANC.

This concept of legal culture will be used to analyse how the South African legal culture has shaped the views of the participants on the constitution but also on what structural biases are limiting or challenging their work.

3.2.2 Legal consciousness

While the concept of legal culture explores the role and position of law within a society, legal consciousness explores how individuals and specific groups view the law and relate to the law and can be defined as “the ways in which people experience, understand, and act in relation to law” (Chua and Engel, 2019 p. 336). In their research Chua and Engel (2019) have identified three different schools of academics who use the concept of legal consciousness differently, to achieve different goals. These three schools of thought are: identity, hegemony and mobilization (Chua and Engel, 2019). The authors also point out three interrelated aspects of subjectivity that hold importance for all researchers regardless of school: worldview, perception, and decision (Chua and Engel, 2019). Worldview refers to how an individual sees their society, their position within that society and how this prescribes and informs certain social interactions and relationships and one’s worldview is shaped through lived experiences (Chua and Engle, 2019). Perception describes how one perceives and interprets events, to some an event could be interpreted as violating certain rights or laws while to others the same event could be interpreted as in line with existing laws and rights (Chua and Engel, 2019). Decision describes how an individual reacts to an event and is often informed by an individual’s worldview and perception of the events. These decisions could include the use or avoidance of law as a response to an event depending on the person’s worldview and perception (Chua and Engel, 2019).

Scholars of the identity school focus their research on how present law is in someone’s life and how this affects not only how they perceive themselves

but also their actions and views on society and the law itself (Chua and Engel, 2019). The school at the same time focuses on how people might resist the effects of law used by the ruling power.

The hegemony school of thought views that law a powerful tool used by the state to influence the every-day life of people directly or indirectly, specifically their actions and believes (Chua and Engel, 2019).

When analysing legal consciousness from a mobilizing perspective it can give insights into why and under which circumstances individuals or groups might be willing to use and engage with the law while others avoid it (Chua and Engel, 2019). This school of thought believes that law can be used to bring about social change and specifically improving social justice by using the law to protect marginalized groups (Chua and Engel, 2019).

Legal consciousness is also concerned with how people understand the difference of how law is practiced on a daily basis, especially by those in power, and what law ought to be according to the rule of law (Chua and Engel, 2019).

Research conducted by Li (2016) focuses on how external influences such as unequal power relations and hierarchy can affect the legal consciousness of legal practitioners when engaging in case screening, meaning identifying which cases have potential and which cases show little hope of being resolved in favour of the client.

For this paper the concept of legal consciousness according to the mobilization school will be used to analyse the experiences and views of the participants on land and housing rights to understand why they use legal mobilization tactics in the way they do.

3.3 Constitutionalism

Constitutionalism refers to the democratic belief that everybody, including the government and those ruling the country, should be limited in their actions and if these limits are not considered the government would lose its' legitimacy (Arts and Handmaker, 2010). By being binding to everyone within a country, this makes the constitution the highest source of law in many countries.

Over time, constitutions evolved and started to include not only the limitations of the government but also obligations, norms, and values (Arts and Handmaker, 2010). In many developing and post-conflict countries, constitutions marked a way of merging different legal cultures. This often included the merging of the legal systems inherited during colonialism with the legal systems and legal culture of the independence and post-independence movements and in the later years also international law (Arts and Handmaker, 2010). It is the popular belief that constitutions give the opportunity and possibility to citizens to create social transformation and

equality (Bond, 2014). Over the years different views on constitutionalism emerged in the academic arena.

Scholars from critical constitutionalism are generally more critical of the South African constitution and its transformative abilities. These authors have argued that the way the South African constitution is laid out and interpreted, and in the historical context it was created, meaning the wave of liberalism that flooded the world after the end of the cold war, the constitution is not as effective at creating justice and inequality for those who turn towards it (Wilson and Dugard 2011; Klug 2018; Madlingozi 2017).

In his research, Klug (2018) highlights how the historical context in which the constitution was created strongly limited the capacity of the South African constitution to transform South African society. In South Africa there is tendency to blame current policies or the issues of corruption in the country for the continuing social inequalities along racial lines (Klug 2018; Modiri, 2018a). However, Klug (2018) as well as Madlingozi (2017) argue that it is really the historical legacies of colonialism and apartheid as well as the national and international political and economic conditions during the transition period are the real causes that limited the constitution's transformative abilities. Overall, scholars seem to be in agreement that the South African constitution is not as transformative as claimed and the cause for this is not the lack of will or ongoing corruption within the government but rather the context in which the transition took place (Klug 2018, Sibanda 2020; Modiri 2018b; Madlingozi 2017). This context did not allow for the

empowerment of the black majority and the redistribution of power and instead continued to prioritize Eurocentric views and conceptions of development (Klug 2018, Sibanda 2020).

Additionally, it has been argued that the way South African Constitutional Court decides over legal claims related to socio-economic rights does not allow for the reduction or elimination of inequality within the country (Wilson and Dugard, 2011). Wilson and Dugard (2011) highlight how the constitutional court generally focuses more on how “reasonable” (p. 664) a policy change would be than on the needs of the claimant and what is needed to improve the situation for the individual or group that have initiated the litigation process. It is also highlighted how the court is very reluctant to give clear guidelines to the executive and legislative on how they have to fulfil a certain socio-economic right as it claims that the other are more democratic and have a better understanding of what is reasonable and what is not (Wilson and Dugard, 2011).

Madlingozi (2017), who is also highly critical of the constitution has argued that the constitution’s stronger focus on the Western idea of democracy than on equality has allowed the structural inequalities of colonialism and apartheid to continue into present times and calls this “Neo-apartheid constitutionalism” (Madlingozi 2017, p. 125).

Other scholars are less critical of the South African constitution and rather argue that the constitutions’ nature and does allow for social transformation the process of transformation does not lay in the hands of the judiciary but in

the hands of the legislative (Albertyn, 2018). Albertyn (2018) argues, that the constitution centres equality within its works which the author sees as a success considering the nature in which the document was created which included negotiations and settlements for both sides. The author also highlights that the within the constitution the concept of substantive equality was embedded over the formal equality (Albertyn, 2018). Substantive equality, unlike formal equality, takes historical as well as structural inequalities present within South Africa's society into account and focuses on the concepts of "recognition, redistribution and redress" (Albertyn 2018, p.442). However, it is also pointed out that substantive equality is a rather contested concept which is open to different interpretations, meaning the legislative might understand and approach substantive equality differently than how the judiciary views and approaches it (Albertyn, 2018).

Chapter 4 Findings and Analysis

4.1 Capacity to challenge the state

4.1.1 Capacity to mobilize resources

In order to understand how the land, housing, and property rights program of LHR and its legal mobilization has contributed to the realization of land and housing rights in South Africa, it is important to understand the resources the program has available as these determine how strong the programs capacity is to challenge the state (Handmaker, 2019). This section will analyse the different capacities of the program, how they are being used, where they face limitations, and how these capacities allow the program to contribute to the realization of land and housing rights.

With the exception of Louise du Plessis, a South African attorney who has been working in public litigation for land and housing rights for over twenty years and is the head of the program (Interview 1, 2023), most of the people who were working for the land, housing and property rights program at that time had limited experience and knowledge in the field as a candidate attorneys' practical training lasts no more than two years (Field Notes, 26 July 2023). This means their time at the land and housing program has been limited and whether the CA wants to continue working there and whether there are sufficient resources for them to be hired back is generally not certain. One interviewee pointed out: "Remember, a lot of people come to LHR not because they're particularly interested in human rights, but [...] they want to

be a lawyer and they need that experience.” (Interview 7, 2023). The experience of the second lawyer that was working for the program, Nothando Shongwe, also showed that even when candidate attorneys want to stay and continue to work for the program this is not always possible. Nothando was moved around between different programs within LHR due to changes in the funding for the land and housing program (Interview 3, 2023). This shows that retaining people who have long-term experience and knowledge on land and housing laws and litigation is rather challenging for the land, housing, and property rights program which aligns with the findings of Cote and van Garderen (2011). This can limit the programs capacity to challenge the state as the program has only limited long-term experience on land and housing rights. Funding and time also influence the program’s capacity to challenge the state.

Litigation is very time consuming and often takes several years to be resolved; this also includes a lot of costs. The organization work on a non-profit basis and relies on funding by donors to provide free services (Lawyers for Human Rights, 2023a; Interview 3, 2023), this can have the effect that the program must adjust their strategies and their resources based on the amount of funding they receive. This became particularly clear when I was told that in the previous years the program organized trainings for communities on a regular basis but had not done so in 2023 due to budget cuts (Interview 5, 2023).

As litigation is a time-consuming process this also limits the capacity of the program to engage in other forms of legal mobilization. Louise pointed out

that the program, differently to other programs within LHR does not engage in much advocacy or lobbying with the government: "...we don't do a lot of submissions and so on. You know, for example, at Parliament. Yeah, I think this is because we are so busy with litigation." (Interview 1, 2023).

Additionally, international advocacy seem to be not of importance for the program either. During the last United Nations Periodic Review of South Africa in 2022 the program did not participate in any submissions, while other programs of the organization did (United Nations Human Rights Council, 2023). However, it was pointed out by a participant that the program does partake in advocacy "I mean, LHR was big on advocacy, but I think advocacy, not in the same way that maybe other public interest organizations do, but. Just like advocacy in terms of community awareness of their rights." (Interview 8, 2023). This shows that although the programs capacity does not allow for forms of traditional advocacy at the government level, it does allow for advocacy with the general public through education.

In August 2022 the program, in collaboration with one of their donors, published *Urban living in Tshwane: a handbook on access to housing, property related rights and service delivery in the city of Tshwane* which is a handbook designed for practitioners, community activists and anyone else working with or for marginalized communities who face issues related to their housing or property with the Tshwane municipality (Lawyers for Human Rights, 2022). The handbook allows people to learn about the different laws and understand what steps to take without the need of going to LHR. At the

same time the handbook also contains a list of different law clinics where they can get help if needed, but the main aim of the handbook is to allow people to understand the issue at hand, understand the legal terms used, what rights people have, and what steps have to be taken next. However, the textbook is only available in English, which means not everybody will have the ability to read and learn from the handbook and the programs capacity to advocate and educate the general public on urban housing rights could be limited through this.

The program has also had a stronger litigation focus than many other NGOs who work in land and housing rights such as the Socio-Economic Rights Institute (SERI) and LRC who also have a research focus (Interview 8, 2023). However as one of the participants pointed out that the program can use this to their advantage during litigation: “But you'll also note that not all of them also litigate to the extent in which maybe LHR does, and I think LHR really leads on that aspect. Others might have more of a policy view to their work and that helps us should they come in as amici because they bring that different perspective.” (Interview 8, 2023). Thus, the program can use the expertise knowledge, research, and advocacy of other organizations for their litigation to increase their capacity to challenge the state through litigation.

Drawing on the analytical legal mobilization framework by Handmaker (2019), the limited resources of the program restrain its' capacity to challenge the state on land and housing issues, as the South African government but also private corporations are seen as having a significantly larger resource

capacity, especially their financial capacities: “Tshwane municipality has unlimited funds to throw lawyers against us and private developers similarly.” (Interview 7, 2023). Additionally, the time-consuming process of litigation limits the programs capacity to engage in other forms of legal mobilization outside of litigation such as advocacy and lobbying. However, while advocacy is limited, the program’s capacity does allow it to engage in different forms of community education and training through the daily walk-in consultations, workshops and handbooks made available to the public. Additionally, the program can use other organizations within the field who focus stronger on advocacy to use their expertise knowledge and research to strengthen their capacity to challenge the state through litigation by using them as *amicus curiae* (Latin for friend of the court) in their litigation.

4.1.2 Capacity to gain public support

The program also has the capacity to create public support and engagement with their work through the use of social media (Interview 1, 2023), but also by engaging with more traditional forms of media such as newspapers (Mafata, 2023) and tv-shows (Carte Blache, 2023, 11:29). For example, the judgement *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41 (hereafter referred to as the Maledu judgement) achieved by the program in 2018 which focused on the land rights of traditional communities facing eviction due to a mining company created a lot of public support through different newspaper articles that reported on

the judgement and the positive effects the judgement had on the mining community but also how this judgement can positively affect other communities dealing with large mining cooperation (Reynolds, 2018; Mavhinga 2018; Claassens 2018; at the Bar 2018). The articles highlight the positive effects the judgement had and its importance of the judgement for land restitution and informal land rights (Reynolds, 2018; Mavhinga 2018; Claassens 2018; at the Bar 2018). This shows that the program has the capacity to gain public support by engaging with different forms of media to inform the general public on their work and their successes but also failures. However, during my research I also observed that engaging with media to create public support is not always successful. One participant pointed this out “whenever we're working on something that has the potential to, you know assist foreign nationals then Xenophobia becomes a big thing.” (Interview 4, 2023). The protection of illegal occupants also seems to harbour rather negative public sentiment “I know last week with our Rabie Ridge mass eviction there was doxing of some of LHR's employees online. And when we were working with the refugees, when I initially started, a lot of people were really hating on the refugees and LHR for helping the refugees” (Interview 4. 2023).

This observation could be seen in the public reaction but also the governments' reaction to the fires in an illegally occupied building in Johannesburg in August 2023 which killed many people including children but also foreign nationals. The immediate reaction of city officials was to

blame NGOs like Lawyers for Human Rights and SERI for the fire and the amount of people that had to die as these organization resist and stop many evictions that the city was planning (Njilo, 2023). On social media platforms like X the public response also shows that issues around illegal occupiers and immigrants and their rights are challenged in gaining public support, some were agreeing with the city's response of blaming NOGs for the many lives lost while others defended the actions taken by NGOs (Bulelani Mqolweni, 2023).

Overall, this shows that while the program has the capacity to engage with the public and gain their support through different forms of media, some issue such as the protection of the rights of illegal occupiers or migrants obtain less public support. This can have an effect on the programs capacity to challenge the state (Handmaker, 2019), as public support for litigation can put additional public pressure on governments but also private corporations who are being challenged while simultaneously educating the public on current issues and improving the status of the organization (Cote and van Garderen, 2011).

4.1.3 Legal standing of the program

Part of the programs capacity to challenge the state on land and housing related issues emanates from the legal standing the organization has to bring about their claims (Handmaker, 2019). This legal standing can come from

international as well as national law and policies, but also from the emergence of the international human rights regime (Handmaker, 2019).

The legal standing the program uses for all their litigation is the constitution as all other laws, regardless of when they were created, have to align with the constitution and its Bill of Rights: “The constitution is the foundation because everything stems from the Constitution. Like I was saying that most of the unfair laws were made before the Constitution, so they are not in line. So hence, now when we try to change policies, we're gonna use the constitution to make sure that they laws they are in line with the Constitution. So, the Constitution is the big part, it's the foundation. So, everything that we do stems from the Constitution.” (Interview 3, 2023).

However, as Handmaker (2019) has pointed out, the emergence of international human rights and their popularization also caused the role of the government in protecting human rights to decrease. One participant told me the South African government does not inspect if legislation is in line with the constitution but that “It's up to us lawyers to see the loophole and try and go back and fix it.” (Interview 3, 2023).

This legal standing and the county's pluralistic legal culture of common and civil law (Msini Weeks, 2020, p. 59) additionally allows for the program to achieve landmark judgements without the need to change existing or create new legislation. An example of such a case would be the Maledu judgement. The judgement was able to empower rural communities against large mining corporations without the need of creating new rights or changing old

legislation: “So that's why Maledu is a very good example of, [...] we didn't make new law. [...] But if you go practically and see what's going on out there in the mining world, you will see the impact is massive.” (Interview 1, 2023). This shows that the pluralistic nature of the country enables achieving greater social justice in land and housing matters without having to change legislation or create new one.

What was rather surprising was that not once during any interviews or the three weeks I spend with the program were any international laws or treaties mentioned (Field Notes, 26 July 2023), although Section 39 of the South African Constitution allows for international human rights law and standards to be considered by courts (Republic of South Africa, 1996). The program could therefore improve their legal standing and strengthen their legal argument by including international human rights policies and treaties into their legal standing.

Overall, the program shows a strong capacity of resources which are needed to not only challenge the South African government but also other private actors accountable. The program's strong engagement with the public through different forms of media allows them to harbour public support for their work which increases and strengthens the program's capacity to challenge the state by creating public pressure on the government. This work also has a strong legal standing through the Constitution and its Bill of Rights as all other legislation has to align with the rights and provisions laid out in the Constitution.

The program could improve their legal standing, so their capacity to bring forth a legitimate legal claim and strengthen their legal argument by including international human rights policies and treaties into their legal standing instead of just basing their legal claim on the country's constitution.

The programs capacity is also limited by the amount of time and money the program has available as well as the ability to retain experienced and trained labour. Due to the program's strong focus on litigation, they have limited capacity to engage in other forms of legal mobilization such as advocacy and lobbying.

The programs' ability to gain public support is also limited depending on the nature of the case. More controversial issues such illegal occupation and land and housing right of foreign nationals seems to harbour less support and even negative sentiment for the programs work. The program could improve their legal standing, so their capacity to bring forth a legitimate legal claim and strengthen their legal argument by including international human rights policies and treaties into their legal standing instead of just basing their legal claim on the country's constitution.

4.2 The role of translation

An intrinsic role of civic actors who engage in legal mobilization is the translation of international human rights and their norms into a local or national context so they can be understood and adopted in that context (Handmaker, 2019; Merry, 2010). This section will analyse how the program engages with their role as translators of international human rights norms and how this allows the program to contribute to the realization of land and housing rights in South Africa.

The land housing and property rights program of LHR does engage in a translation process however, not on an international level. Rather the translation the program engages with is translating the legal laws and policies from a highly legal language into a language that can be better understood by the South African population.

English is the only language allowed within the judiciary system of South Africa, however according to the country's latest census only 8 per cent of the country's population speak English as their first language (Statistics South Africa 2022, p.22) which means only very few can actually read and understand the countries legislation. Several participants pointed this out during their interviews, saying "So the people have the Constitution, but they don't understand the Constitution. They don't understand their right." (Interview 2, 2023) and "I think the other issues are if you are served, for example, with an eviction notice. You wouldn't necessarily understand the language like what does it mean that you have 15 days to file, like a week?"

A legal week is not the same as a calendar week, right?” (Interview 6, 2023). Through the daily walk-in consultations, the program engaged in forms of education and advocacy as most consultations I joined always included not only advising the clients on what they should do next but also explain their rights to them as well as legal documents and answer any other questions that might come up (Field Notes, 4 August 2023). During the consultations clients would also ask the staff to use a simpler language as they could not follow if many legal terms and codes were named (Field Notes, 4 August 2023). I also encountered instances where the staff would speak to their clients in a different language, which allowed clients to better voice their concerns and the legal process, and instances where the community members would translate the information given by LHR into the locally used language (Field Notes, 24 July 2023).

Overall, this shows that an essential part of the programs role is the translation of national laws and policies into a less exclusionary and coded language so those affected by those rights can understand them. While the translation process the program engages in is not of international nature, as described by Handmaker (2019) and Merry (2006), it still shows a translator role from the national legal language into a language that can be understood by those whose rights need protection. This translation role is just as essential as it allows people whose first language is not English to understand the laws and proceedings related to their case and therefore allows people who might not

have been able to access the law otherwise to engage with the law through the program.

4.3 Structural Biases

The structural bias within a legal system can present several challenges to legal mobilization by civic actors as the system generally favour the elites of the countries and their interests (Handmaker, 2019). Thus, this section will analyse what structural biases the program has identified based on their legal consciousness and the country's legal culture and what limitations arise for these biases for the program's contribution to the realisation of land and housing rights through legal mobilization.

4.3.1 The Constitution of South Africa

One of the structural biases often pointed out in literature is the country's constitution (Madlingozi 2017, Wilson and Dugard 2011; Klug 2018; Sibanda 2020). However, this was not identified as a structural bias by the participants of this research.

In several instances when I asked the participant for their view on the constitution and if it is in need of some amendments from their perspective, the participants had to take a long thinking break (Interview 5, 2023) or they expressed "I've never really thought much about it" (Interview 3, 2023). But overall, the constitution was seen as a useful tool which can be used to ensure that other legislation is in line with the constitution "I think the Constitution is very strong. And [...] it's a good tool to use to push other legislation, even new legislation." (Interview 1, 2023). This view on the constitution that most participants displayed gives not only insight into the legal consciousness of

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the participants through their experiences but also into the country's legal culture.

As one participant pointed out "Well, I think it's almost impossible to do a law degree in South Africa now and not like have to centre human rights." (Interview 6, 2023) which show the central role that human rights and the constitution play in the country's legal education and why most participants have not questioned the constitution and its effectiveness. This shows how the South African legal culture is strongly shaped by the centrality of the constitution within the country's legal education.

However, another participant also highlighted that her interest in human rights and the constitution were already present before she attended university (Interview 8, 2023). She then argued that the personal experiences also shape how one sees the constitution and its importance "So, what's the right to education means to someone who either went to a good government school or private school and then went to one of the top universities. Their understanding of section 27 of the Constitution differs from someone who comes from the rural areas, who had to really be the best of the best to be able to then have access to some of the best universities in the country and what's that right means." (Interview 8, 2023).

This became especially apparent through the response of one participant (David Dickinson), who unlike the other research participants was much more critical of the country's constitution and its effectiveness as he sees the constitution as not being considered by those in power and no longer in line

with the current politics and legislation in place “I mean, it’s an extremely powerful weapon for human rights, but of course it is largely subverted.” (Interview 7, 2023). Unlike the other research participants David is a professor working for the Sociology Department Wits University and is therefore less involved but also shaped by the country’s legal culture of constitutional supremacy.

Specifically, this highlights the view of the legal profession on the legal system which is the first dimension of legal culture according to Merry (2010) as it shows that those working in the legal profession, view the constitution as an effective tool and generally most see the limitations of the legal system as framed by the political will of the ruling government within the country (Interview 1, Interview 3, Interview 4). It also highlights the legal consciousness of the participants, and specifically their perception (Chua and Engel, 2019) on the constitution and its effectiveness. As highlighted by Chua and Engel (2019), perception is shaped by the experiences of a person, meaning the constant experience at the program of using the constitution as the basis for all their litigation work means that to them the constitution is seen as an essential and effective tool to protect and improve the land and housing rights in South Africa and not as a structural bias with the countries legal system.

However, several participants while believing that the constitution plays a key role within their work, also highlighted that the constitution does not pay enough attention to certain population groups, such as farmworkers, limiting

their rights and limiting the amount of work the program can do on these issues (Interview 1, 2023; Interview 5, 2023). “But I think there's certain areas where people just did not think about, and, unfortunately, the Constitution cannot be used to assist.” (Interview 1, 2023). It was also pointed out “I think that the constitution is fine. I just worry about my interpretation and the city's interpretation of the Constitution.” (Interview 5, 2023).

These statements and reactions on the constitution and its effectiveness highlight how the program is not as critical of the constitution as academics like Madlingozi (2017) or Sibanda (2020). Rather, the program aligns with the arguments made by Albertyn (2018) who points out that interpretations of the Constitution and can differ between the legislative and executive. Albertyn (2018) also highlighted that although the South African legal system allows for social transformation through the law these actual transformative processes are the role of the government. This aligns once again with the legal consciousness of several research participants who pointed towards a lack of political will they have continuously encountered as a challenge to their work (Interview 1,5,8, 2023) as a limitation to their work “...we can take 1000 cases to court on evictions, and the law can look so beautiful, but if you don't have a government that's putting in place housing plans, right, accessible housing plans, we're just going to keep going to court.” (Interview 6, 2023).

The legal consciousness of the participants shows that unlike many academics the program does not see the constitution as a structural bias that favours the

elites of the country but rather as an effective tool for social transformation that is limited through the lack of political will and the legislative interpretation of the constitution. The program rather identifies the governments' interpretation of the constitution and the general lack of political will as a structural bias.

4.3.2 The Civil Society Space of South Africa

Another structural bias that can have an effect on legal mobilization on land and housing rights is neo-colonial apartheid structure present in South Africa according to Madlingozi (2017). Madlingozi (2017) highlights how the structure of civil society organizations and the way they operate assist in upholding the structural inequalities from the apartheid and colonial era within the country. However, LHR does not fit many of the claims made by the author.

Firstly, the organization is not mainly run by people from the white-middle class. This is also the case for the land, housing and property rights program where Louise was the only white person. However, she is the head of the program and is therefore in charge of many final decisions (Interview 7, 2023). Nevertheless, other key roles within the program but also the organization at large are held by black people such as the National Director and the entire board of the organization (Lawyers for Human Rights, 2023a). This shows that in this case, unlike the claim made by Madlingozi (2017) the

majority of LHR's leadership roles are not run by white people who cannot relate to the issues of the clients they are representing.

Madlingozi (2017) also highlights how these organizations get to decide who gets access to justice and whose access will be denied, which aligns with the findings brought fore by Cote and van Garderen (2011) of the gatekeeper role. However, the land housing and property rights program of LHR is very aware of this structural bias and is actively working to allow access to justice for all. Louise du Plessis pointed out "We don't easily say no." (Interview 1, 2023) when I asked about their strategy for picking cases and another participant highlighted that there have been many instances where they have overworked themselves due to taking on too many cases (Interview 7, 2023). Additionally, although the program has several litigation strategies that they try to follow (Interview 7, 2023), the program is also very willing to deviate their strategy if a case is presented that shows potential for bringing about judgements that can have a wider effect on many people in the country (Interview 8, 2023).

Furthermore, LHR is the only organization that has daily walk-ins available for new clients and no other requirements for people to fulfil before they can become their clients. Legal Aid South Africa and the Wits University Law clinic, organizations who also provide free legal services to marginalized communities or people, both require possible new candidates to take a means test before admitting them as new clients (Wits Law Clinic, 2023; Legal Aid South Africa, 2023). The means test reviews the income and wealth of people to see if they fall within the requirements to organizations have created.

Meaning, if your income is too high you might be denied becoming a new client at these organizations. Furthermore, Socio-Economic Rights Institute (SERI), an NGO in Johannesburg that also engages in legal mobilization tactics and offers free legal services on land and housing issues, only allow new clients to come in for consultation on certain days of the week (Socio-Economic Rights Institute South Africa, 2023). This strongly limits who can access these services compared to LHR as they offer daily walk-ins for potential new clients and people looking for free legal advice.

Furthermore, in several interviews it was also highlighted how most other organizations have a more limited scope of land and housing issues that they focus on as well as that fact that LHR, compared to the other organisations working on land and housing rights, has a strong almost exclusive focus on litigation while most other organization also have a research or advocacy component (Interview 8, 2023).

During my field work I nevertheless encountered some instances in which the program was not able to help a walk-in consultation as the case either did not fit into the scope of work of the program (Field Notes, 27 July 2023) or the case was seen as not having potential to succeed (Field Notes, 4 August 2023). In these instances, the program nevertheless helped the clients out as much as they could by explaining to them as well why they are not able to take on the case and if possible, referring them to other legal organizations that are more likely to be able to assist them or to the Housing Tribunal, where no legal representation is needed. (Field Notes, 24 July 2023).

The program is strongly focused on shaping their cases based on the demands of the people, instead of shaping these demands themselves as Madlingozi (2017) claims about civil society organization who focus on social justice topics. This became apparent when Louise du Plessis told me that she does not believe that social housing is an effective solution to the countries housing crisis as their clients are often more interested in owning land than obtaining social housing from the government as this is seen as more stable (Field Notes, 19 July 2023).

Furthermore, the programs efforts to educate people affected by land and housing issues through their workshops, handbook, and consultations allow marginalized communities to understand the law and potentially access it without needing the help of the organizations. These efforts allow communities to be more empowered and challenges the argument by Madlingozi (2017) that the civil society organizations in South Africa do not allow for a redistribution of power. Lastly, Madlingozi (2017) also argued the civil society sector in South Africa tends to only hold the government accountable for their violation of rights and no other actors who have benefitted and continue to benefit from the former colonial and apartheid structures. This is once again not the case for the land, housing and property rights program of LHR which have worked cases not only against the government. For example, in 2018 the program was involved in the landmark case *Rahube v Rahube and Others (CCT319/17) [2018] ZACC 42*, which did not challenge the state but a private individual who had benefited from the

Upgrading of Land Tenure Rights Act 112 of 1991, as it only allowed men to gain tenure rights without informing anyone of their change in ownership and without allowing anyone else to claim ownership. The program challenged the Act on the basis that women were never given the opportunity to claim ownership of the houses they live in and therefore does not take into account the historical justices of women (Lawyers for Human Rights, 2017). The South African Constitutional Court decided that the Act does need amendment to allow women to obtain ownership of the houses they have been living in for years but were never able to claim ownership (*Rahube v Rahube and Others*).

In summary, while there are several structural biases within South Africa and especially in South Africa's civil society the land, housing and property rights program by LHR is aiming to challenge these biases by being an organization mainly run by the black population, by limiting the number of barriers people have to overcome before being able to access the law, by basing their arguments and litigation strategy on the demands of their clients instead of deciding for them, and by holding not only the government but also other parties responsible for the land and housing rights violations. Nevertheless, based on their legal consciousness the participants do see a limitation in the political will currently displayed in helping these communities and the differing interpretations of the constitution by the government and the program to how much their work can contribute to the realization of land and

housing rights as it is the task of the government to create new and improve old legislation and policies.

Chapter 5 Conclusion

Through this research paper the contributions of legal mobilization tactics used by the land, housing, and property rights program of Lawyers for Human Rights for the advancement of land and housing right in South Africa was explored, by analysing the capacity of the program to hold the state accountable, the role translation plays within their work, and the structural biases within South African society that can limit the work of the program. Through this research several conclusions were drawn.

Firstly, the programs capacity to hold the government but also other parties' accountable faces several limitations. The programs resources such as time, money and skilled labour are strongly limited due to the programs nature of being reliant on donor funding and focusing strongly on litigation compared to other forms of legal mobilization such as advocacy and lobbying. Nevertheless, the program has still found ways to engage in advocacy by education the public on their rights and current issues through their daily walk-in consultations, community workshops and training, and their handbook available to public. However, the programs capacity could be increased by engaging in advocacy on an international level of harbour greater support from international human rights bodies who also have the ability to put further pressure on the South African government. The program also holds limited capacity in creating public support for their cases. While

the programs engages with different forms of media to put greater public pressure on the government and successful judgement tend to lead to a large amount of media reporting on the effect of the judgements, some cases create rather mixed public reactions and even attacks on the program and their work such as cases involving illegal occupiers of land or foreign nationals. The programs holds strong capacity in terms of their legal claim and legal standing through the constitution and its bill of rights as they hold the highest level of authority in the country and all laws, policies, and act have to align with the constitution. Still, using international human rights laws and treaties could further strengthen the programs capacity to challenge the state.

Secondly, translation plays a key role within the programs work, although it is not the translation often referred to when talking about human right and civil society organizations. The program does not engage in translation international human rights and their norm into a South African context as this is not needed for their legal standing due to the country extensive Bill of Rights which includes land and housing rights. However, the program does engage in translation on a national level, translating the highly coded language used within South Africa's legal system into a language or words that are understandable to the general public of which the majority does not speak English as the first language and who do not even know what their rights are.

Thirdly, the program is actively working to challenge many structural biases that can be found within the South African legal system and the country's civil society sector.

A structural bias encountered by the program and identified through this research has been the legislatures' interpretations of the constitution and the general lack of political will as a structural bias that is limiting their work on land and housing rights. This differs from a large part of the academic literature on the South African constitution which sees the constitution, its interpretation and the nature of which it was constructed as a barrier to achieving structural change within the country.

Furthermore, the program is actively working to resist the structural biases that can be found within the South African civil society. Compared to other organization working in public interest litigation on land and housing rights who only allow walk-ins on certain days and use a means-test on potential new clients, the land housing and property rights program of LHR has little to no barriers that limit who and when they can access their services. This is due to the legal consciousness of the programs employees who are not only aware of their gatekeeping role within the legal system but are also willing to overload themselves before denying access to the law. The program is also not limiting their scope of litigation to challenging the government but also parties such as big corporations and private individuals who have benefitted from the structures of apartheid and colonialism and does not determine the

litigation strategy based on their interests and views, but rather on the interests and views of their clients.

Overall, this shows that legal mobilization by the land, housing and property rights program of LHR has contributed to the realization of land and housing rights by educating the communities whose rights have been infringed upon but also the general public, as well as empowering these communities through advocacy but also through litigation by reaching judgements that empower the most marginalized and groups and communities. The program has also contributed by holding different actors accountable such as the government, large mining corporations, and also private individuals who have benefitted from continuing structural inequalities. Lastly, the program is contributing to the realization of land and housing rights by widening the gap of who can access the law by having little to no barriers for potential new clients.

Future research on the role legal mobilization on the realization of land and housing rights in South Africa would be needed to learn more about what makes different parties, such as social movements and different communities, willing to engage with the law and use the law as an avenue.

16148 words

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Appendix

Appendix 1 – List of interviewees and dates

1. Louise du Plessis, head of the land housing and property rights program,
24th July 2023
2. Mpho Gerald Makhubela, legal intern, 25th July 2023
3. Nothando Shongwe, attorney, 25th July 2023
4. Phyllia Ngotaje, candidate attorney, 26th July 2023
5. Nthabiseng Ramosepele, candidate attorney, 27th July 2023
6. Adenike Fapohunda, candidate attorney, 31st July 2023
7. David Dickinson, former candidate attorney at the program and Professor
of sociology at Wits University, 1st August 2023
8. Tarisai Placedes Mugunyani, former attorney at the program and
currently working as an attorney for the Centre for Environmental Rights,
2nd August 2023

Appendix 2 - Interview guides

A) Interview guide – current LHR employees

Personal information/ professional background

- Name and age
- What is your role at LHR and how long have you worked here?
- Where did you work/ study before?
 - Is there a difference in how cases/ property and housing rights are being approached and viewed?

Current Work

- what are the common cases you see at LHR?
 - What are the demographics, what kind of people/ groups do you focus on, are most common?
 - why do you think these are the most common case (what makes these people more willing to use the law for housing/land cases?)
- How do people access your services?
 - Referred or come through the clinic, etc?
- What are the most common challenges you face?
 - Judges? Politicians/political climate? Police? Reaching the communities?
- What do you think/ have experienced are the most common barriers people may face in coming to you or other legal resources?
 - How do they find out about you? -> advocacy?
- Why stronger focus on land and property rights than housing rights?
- how do these cases translate to policy or law changes or impact everyday life of people

The Constitution

- What legal frameworks do you interact with? (What laws etc.)
- What role do you see the constitution playing in your work?
- Are some legal frameworks might be in need of revision?

- and how could such revisions potentially impact land/property/housing rights?

Misc.:

- What other support or structures do you rely on that helps in your work (non-legal support) for the legal work?
- Any other comment, or anything else they can add to this – as a finishing question!

B) Interview guide – former LHR employees

Personal information/ professional background

- Name and age
- Where did you study?
 - Were human rights centred within your study?
- How long have you worked at LHR?
- What was your role at LHR?
- Current workplace?
 - Still affiliated with LHR?
- Where do you currently work and what is your role there?
 - Is there a difference in how cases/ property and housing rights are being approached and viewed?

Work at LHR

- what were the most common cases you saw at LHR?
 - What are the demographics, what kind of people/ groups do you focus on, are most common?
 - why do you think these are the most common case (what makes these people more willing to use the law for housing/land cases?)
- How do you pick which cases you take on?
- What are the most common challenges you faced when working on cases?
 - How do you deal/ try to overcome these challenges?
- What do you think/ have experienced are the most common barriers people may face in coming to you or other legal resources?
- How does the work of LHR translate into structural changes?
 - Litigation strategy? / Strategic litigation?

- What other work next to litigation?
- What strategies are used to communicate legal information to the broader public/ educate broader public on housing and their rights?
- What other support or structures do you rely on that helps in your work (non-legal support and legal support) for the legal work?

The Constitution

- What legal frameworks do you interact with? (legislation etc.)
- What role do you see the constitution playing in your work?
- Are some legal frameworks might be in need of revision?
 - and how could such revisions potentially impact land/property/housing rights?

Misc.:

- Any other comment, or anything else they can add to this – as a finishing question!

Appendix 3 – Field Notes

A) Wednesday, 19th July 2023

After arriving in Pretoria, the night before I had agreed with Louise to meet at the LHR office at 10am for the first time so we could meet, and I could explain in more detail what I wanted to research and how I wanted to do so.

When I arrived at the office, I was greeted by three people. Louise, the head of the program, Nothando, the second attorney in the program and Phyllia, who introduced herself as one of the candidate attorneys. I was first short shown around by Louise and introduced to the different people working for LHR outside the program such as the National Director, Wayne, the finance team and people from the statelessness and refugee program which was on the ground floor of the building. The LHPP was on the first floor. When walking into LHR you would always walk in through the clinic, through which the walk-in consultations happened every day. After shortly introducing me to everyone and showing me around Louise suggested that we should go out for lunch to make somewhat of a plan for the next three weeks.

The offices of the LHPP consists of a large conference room, a large office room with four desk spaces where the candidate attorneys and legal-interns work, two separate offices for the attorneys, Louise and Nothando, and two small room, of which one was used for the walk-in consultations and the other one was used as the office by Nthabiseng, one of the candidate attorneys. It also had a small kitchen space and a couch and some armchairs in entrance of the first floor after coming up the stairs as a waiting room kind of.

Nothando joined while Phillya decided to stay back as there was a lot of work to be done. In the 20-30 minutes that I had been there since arriving there were constant phone calls Louise and the rest of the team had to take and it became quite clear to be quickly that they are very busy since they are handling several cases all at the same time.

Louise drove us to a café not far from the office. While in the car she showed me different buildings and suggested things I should do while being in Pretoria. She especially pointed out a big, modern building by the Department of Agriculture, Land Reform and Rural Development (DALRRD) that she said was just recently finished. She pointed out, with clear disapproval, that this building kind of represented one of the issues they face on a daily basis. The government was willing to give such large space and funds for government buildings in the city center while many people within the city of Pretoria are struggling to find land or housing for them. During lunch I explained to Louise and Nothando what my research was about and how I was hoping to follow them around as much as possible and that I also would like to interview as many as possible from the program and also others if they had any recommendations. When I mentioned that my research was focused on understanding how legal mobilization is being used by them specifically and what kind of change or development it can result in, both were very quick to say that the law and how they use the law most definitely has the capacity and capability to bring about structural change in land and housing issues.

When I brood up the constitution Louise said that the constitution used to be very helpful in the beginning stages but that it has become less helpful over the years. Nothando agreed with that statement and also added that the xenophobic attitudes of some of the Constitutional Court judges makes the constitution also less helpful especially for eviction cases.

What was also quickly pointed out as an issue that not only causes more and land and housing issues but also makes it harder for LHR to do their job is corruption. They pointed out that even when there have been law changes or they had won a case and the city was given obligations by the courts corruption sometimes stops the change from actually reaching those that it was meant to help, because of the high levels of corruption within the city and within the government. Louise also pointed out that while in the last years, the program was quite focused on evictions, they are now trying to go a bit further with that as the laws around how and when one can be evicted have

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been developed quite extensively already they are now working on some cases where they are planning on taking in a bit further by achieving judgements that might not only reverse illegal evictions but also force the city to develop long-term plans for those communities to be integrated and developed rather than destroying people's homes and evicting people off the land.

What was also made very clear by both was that they have little to no believe in the housing programs and strategies developed by the state (such as RDP houses), as it cannot keep up with the continuous demand for housing. Here they once again pointed to corruption that causes many people to be on the RDP housing lists for over 20 years. Both said that they also believe that land rights have the bigger capacity to bring about structural change than housing rights. Here they again pointed to RDP housing but also to the fact that many times their clients have said to them that they don't necessarily need a house but rather a piece of land where they can build a house themselves because if they own a property, they cannot be evicted. I also asked if they think it would be possible for me to join them in court and they said that while they would not have any court appearances in the next week or this week, they would most likely have some in the upcoming weeks that I could join.

Louise also offered me to join her and Phyllia on Saturday to drive up to a mining community where they were about to finish an important case. I obviously accepted her offer. After the lunch we drove back to LHR where I left from after a short while to sort out other things such as food, and a working sim-card. Before I left, Louise and I exchanged phone numbers so she could let me know what time I should be ready by on Saturday.

Overall, it felt like while they had strong confidence that using litigation can improve the conditions of not just their clients when it comes to housing but that they definitely do believe that using the law has the capacity to bring about structural change in regard to housing and land.

B) Friday, 21st July 2023

I had agreed with Jacob (van Garderen) to meet up for some breakfast, to see how I was settling in and if I needed any help. He picked me up from home and we went to a small café nearby. I told him about the plans I had on the weekend and how my first meeting with Louise and the LHR team went. When I mentioned that I was planning on interviewing everyone from the program, he suggested someone else to me, David Dickinson, he said David used to be a CA at the land and housing program but that he also is a professor at Wits university and would therefore be a great candidate to interview, so he gave me his number and said it would be fine for me to just message him, if I mentioned I got the number from Jacob. After breakfast we drove to Jacob house where he had to attend two short online meetings. Before his meetings he handed me a report that he had created in collaboration with others on refugees in South Africa and their rights. Within this report housing issues were also mentioned. He also added to it that this report was given to the corresponding ministry and that it would not be published as the ministry was not happy with the content of the report as it highlighted many shortcomings of the city regarding refugees and their rights especially in regard to housing. He also called Adenike, who turned out to be a current CA for the LHPP at LHR and working for Jacob part-time, to ask her if she would be free to show me around the city. Adenike then came to Jacob's home, picked me up and showed me different places around Pretoria. We first went to the Union Buildings, the official seat of South Africa's government and where the offices of the President are. The buildings similar to the ministry building that Louise showed me two days before were very big with a view over the entire city, under the building was a perfectly kept just as a massive garden where many people were working on the maintenance for the garden. Adenike also introduced me to the Khoisan King who has been protesting in the gardens of the Union Buildings, right next to the 9-meter-tall Nelson Mandela Statue, for over 4 years. He had several shacks, several vegetable plants growing, 4 chickens roaming free and many signs explaining what his protest was all

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about. We talked to him for 5 minutes to talk about his protest which was quite fitting as he pointed out that just a few days ago Xhosa language was officially declared an official language in South Africa while the most commonly used language of the Khoi, the first people within South Africa, is not recognized.

After that conversation we went to Freedom Park which is dedicated to the History of South Africa including several memorials for those who have died over the years through different wars and liberation struggles.

C) Saturday, 22nd July 2023

At 8am I called an Uber to Louise's house from where we together drove to the Pretoria LHR offices to pick up Phyllia to make our way to the Lesetlheng community which was next to the Pilanesberg Games Reserve in the Northwest province of the country. The ride took about 2 ½ hours and we arrived around 11.15 in the morning. The day before Louise had sent me the judgment, settlement agreement and other documents related to the case and she further explained it to me during the ride to the community. The case was rather very important, and it showed me how long litigation really takes as the case itself started in 2014, the judgement by the constitutional court was handed down in 2018 and a settlement between the mining company and the community was only reached by 2020. The meeting now was to explain the settlement agreement to the community as well as answer any questions the community might have. On the way there Louise also told me that she was hoping that this would be the last meeting with the community as she hoped the case would be done now and their work is done. The settlement and the entire case apparently took so long because there were disputes within the community which split the community for a while. This is also why another legal team was involved that was also at the meeting to explain how they would be able to access the money, which is through a land committee and a Trust fund that they had to start creating now. Only through this committee would money be handed out. This process itself would also take at least until the end of the year.

Louise explained to me that the case is so important because it gave the community a stronger standing leg for the negotiations with the mining company which resulted in the sum of money allocated to the community for giving up their land and relocating was a lot higher after the constitutional court ruling than what was offered to the community at the beginning. Louise said it was also a sign within the general mining industry that they couldn't just remove people off their land with little to no negotiations and interaction

with the community and it also informed other mining communities about what rights they have when having to deal with big mining corporations.

While driving to the village the further we got into a more rural part of the country and away from Pretoria and Johannesburg Louise but even I noticed that among the mostly old or shack-like structures that most villages and small towns we passed consisted of, there were also several new modern houses were being build.

The meeting was held in a big community hall in the Lesetlheng village. We were the last to arrive and asked to sign an attendance sheet first. Louise then sat on a long table that was set up at the one end of the hall where what seemed to me the community leaders and the other legal team were sitting. Phyllia and I sat with the community. First one of the community leaders gave a short welcome to everyone and announced the agenda for this meeting. First Louise was going to go through the settlement agreement again and explain what exactly it says, and then people could ask her any questions they might have. Then, the other legal team was going to explain the Community Trust, how it was going to work, how it is structured, and what next steps will have to be taken in order for them to get the money the community was promised.

After Louise went through the settlement once while one of the community leaders was translating what Louise was saying into Setswana the floor was opened to everyone to ask any questions, they might have about the settlement agreement. People had a lot of questions about the mine and whether the mining itself was done right or if the mine was going outside of their boundaries. Some were concerned with the method of mining while other were concerned that the mining was spreading too far and outside of the area that was allocated to the mine Louise replied to those questions that she does not know the details of the mining rights the company was granted in 2008 and she is not specialized in this field. She suggested that they should contact the mine or an expert in the field of mining laws and rights for these questions.

Other questions were about whether the relocation of some of the families was done with the money from the settlement trust as it was meant to be paid by the mine. Louise said that this needs to be investigated as she agreed the money was not supposed to be taken from the settlement trust, but she had no knowledge at the moment. People seemed rather angry at some points when they voiced their concerns, but they also seemed pleased with the answers they were given. Throughout the meeting, as it took several hours, tea, coffee and sandwiches were provided.

This was followed by the Trust explanations by the other legal team present. We stayed until the end of those explanations but then left before people started asking their questions since the part of the LHR team was done and we had another 2,5 hours ride back ahead of us. On the way back we stopped for some lunch and Louise seemed a little frustrated that the case was not fully done yet as they had to investigate the concerns about the relocation matter. I think they were hoping to be done with the case as they have so many other new cases to focus on.

D) Monday, 24th July 2023

On Monday I came into the office at 9am and had to wait for a little bit for Louise to finish a meeting as we had agreed on Saturday for me to interview her on Monday morning. In the meantime, I had the chance to meet the third candidate attorney currently at the program, Nthabiseng. I was told that Mondays are always the most hectic days and that on Mondays most times everybody is working from the office. The candidate attorneys have the chance to work from a few days every week. However, one had to always be there at least for the walk-in consultations.

After Louise's meeting finished, we started the interview. We did the interview in her office, and it was a relaxed atmosphere. She asked me if it would be ok for her to eat during the interview, which was absolutely sine with me as I wanted her to be as comfortable and as relaxed as possible. During the interview Adenike walked in twice as she questions about a case in which Legal Aid South Africa brought forth an eviction for a man who was seeking help with LHR. This got Louise very angry and fired up as Legal Aid is the government organization that is supposed to help people who are facing evictions and not evict them.

During the interview it became very clear again that Louise did not have a positive relationship with at least the City of Tshwane and Johannesburg but also with other parts of the government.

Right after the interview Louise came back to me and said she would also like to point out that the access to the Constitutional Court is hard and very unequal as it is a lot easier for parties or a big cooperation that for poor people. She also said she wanted to mention that in her point of view the Constitutional Court has become more conservative over the year or that judges started to do cherry picking with what cases they allow into the court and which ones they deny. Louise said that she had three cases of which she was sure all would be accepted by the Constitutional Court based on her years of experience, yet all three were denied.

After the interview I decided to ask everyone who was working in the office today to ask them if they would be willing for me to interview them and what day (this week preferably) would work best for them. They all were first a bit skeptical and almost scared when they heard the work interview. But I explained to them that it would rather just be a conversation where I just want to learn as much as possible about their experiences and views as possible. This seemed to relax them, and all agreed for me to interview them, and we agreed on which days would work best for them.

In the afternoon Louise and Phyllia had a scheduled meeting with a group of potential new clients and were planning to meet them where they live. The group was a group of *Reclaimers/Waster recyclers*. I was told that they were living on an unused field of land on the outskirts of Pretoria near the defense airfield. Louise and Phyllia explained to me that they were contacted by them as they were fearing of being evicted as the field they were living on and where they were storing their waste trollies had been lined with heavy cement boulders by whoever owned that property. The boulders were not only lining the entire field but also some of the shacks the reclaimers were living in. When we arrived, it became clear that the way the cement blocks were positioned it was impossible for the reclaimers to push their trollies onto the area and to their homes. Louise and Phyllia both believed that the blocks were laid out like this on purpose to try and “bully” the reclaimers off the land. We walked over the field towards a group of shacks with at least 20 men standing around them. They were all friendly and excited to see Louise and Phyllia coming. At first Louise and Phyllia handed them some papers and explained to them that everybody here who wants to be represented by them had to sign their name on this form and they needed at least two people with phone numbers so they can always reach the group and get the mandate they need to represent them in court. Phyllia started talking in another language to them which made them feel even more comfortable and it probably also made it easier for them to understand the instructions they were given by Louise. Louise also asked Phyllia to take pictures of the boulders but also the outside

and inside of the shacks to have evidence in court about the cement blocks blocking them and that these shacks were their homes. They also showed Louise that in one corner of the field they had a small gap big enough where they could still push their trollies onto the land. Because of this Louise said that going to court right now would probably not do much. She suggested they should see if they can carefully (without damaging them) move one or two cement blocks to the side to make one of two more opening for them to push their trollies through. LHR was going to write an email including the pictures to who put the blocks there and inform them about what they are going to do.

On the way back to the LHR office Louise explained to me again how she is also trying to get these reclaimers to be integrated into the formal waste systems, so they do not have live in shacks near their workplace in fear of their waste being taken if they just leave it.

When we arrived back at LHR Louise was called into a consultation with an informal settlement who was facing eviction by a church. The community had many questions about the documents that the procedures which Louise explained to them including what rights they have. It also seemed that they were overall rather unsure about what they were meant to do next and how they could stop it from happening. Louise said she would take a closer look at their situation to see if she could include them in another case where Louise is trying to force the city to come up with long term plans for certain informal settlements.

After the meeting I was able to meet the legal intern currently at the team, Mpho. What struck me at first was that he was the only male working at the LHPP. I introduced myself to him and also inquired for me to interview him in the coming days to which he agreed.

The team was rather busy with new cases coming in on a regular basis from the clinic as well as people calling for advice or existing clients calling for

some clarification. The team had a system in where every candidate attorney and the legal intern were assigned one day of the week each where they are doing most walk-ins from the clinic. Others will jump in if several clients walk in at the same time. If they had any question they would go to Louise and ask for her advice, and she would ultimately make the decision whether they would take the walk-ins as new clients or what the best next step would be. Generally, Louise tried to help as many as possible and when she had to say no, she generally tried to still refer them to other people or the Housing Tribunal and tell them what they should do next and how she things the outcome of the case will be. When not doing interviews or sitting in in meetings, I mainly sat in the big office room with the CA's and the legal intern working on my research paper or looking up certain laws and judgement names I kept on hearing throughout the day.

E) Tuesday, 25th July 2023

The day started with me sitting in a Zoom Meeting Louise had about an informal settlement that was evicted last week in Johannesburg called the Rabie Ridge community. The Johannesburg Metropolitan Police had destroyed and burned the self-constructed shacks of those living in the informal settlement. A plan was discussed about what goals they have for this case and what the situation is. It was decided that it was going to be a two-part plan. Part A was focusing on getting the people their things that were taken back and those that were destroyed should be compensated in some form. The second part was going to focus on forcing the city to create a long-term plan for the settlement so they would be upgraded to provide title deeds as well as access to services such as gas, electricity, and water.

After the meeting was over, Mpho had some spare time, so we decided to do his interview.

The interview was done in the room that is otherwise used for the walk-in consultation from the clinic. It was also a very relaxed interview.

In the afternoon, I asked Nothando if she had some time so do the interview to which she agreed. We sat down in her private office while she was having her lunch. I didn't know how much information I would get out of her since she had told me at first that she only started this job as attorney a few months ago. But through the interview I learned that she had worked at LHR previously to her current position in other programs and was basically moved around due to budget cuts and shifts.

I noticed two cases which were both mentioned in some way or another in all interviews so far: the Maledu judgement and the Mary Rahube case. Both were successful landmark cases of the program.

After that Mpho was asked to serve some papers to a law firm as well as to the City Courthouse. Since I had no more interviews planned for the day, I joined him.

F) Wednesday, 26th July 2023

Wednesday was by far the calmest day so far this week. New cases and consultations happen several times a day and many are eviction issues. I can also sense that everybody at the program is kind of tired of the many eviction cases they have to deal with, especially because the laws around that are quite clear. The Prevention of Illegal Evictions Act (PIE) lays out very clearly what steps had to be taken by those owning the property and the city for them to be allowed to evict the people off their land, yet somehow the city of Johannesburg and Pretoria both seem to not continuously conduct evictions that are illegal as either no notice was served or no alternative accommodation was provided and South African law is very clear about the fact that eviction cannot result in homelessness.

When I am not doing interviews or sitting in on walk-ins or meetings, I was always sitting in the main room on one of the tables of whoever was working from home that day working on my research paper and especially the first three days it was a lot of reading up on the different laws and acts that I kept on hearing. If I needed any clarification help with that everybody was always willing to help.

After some time, Phyllia had some time for the interview. Since there was a consultation currently going on, we asked Nothando if we could use her office for the interview to which she agreed. Before the interview, Phyllia was probably one of the most worried that she would not have adequate information for me since she had only joined LHR three months ago, which was not the case.

The interview once again had a very relaxed tone to it. I have been sitting in the same room chatting with her for most of the week and on Saturday so we both had grown comfortable around each.

What did become clear though is that almost everyone working at the program had rather limited work experience in land and housing litigation. Everybody, except for Louise, had been working in their current position for between

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three months and 1 ½ years. This kind of limits how much my research can compare now and then. And even though I am also going to interview Tarisai next week and she worked for LHR also several years the program, she does not offer the comparison to how it is now since she is no longer working for LHR. Only Louise can have observations such as the ones from the constitutional court she told me on Monday, because she is the only one with long-term experience. I also noticed that Phillya was the one focusing on mining cases from all the CAs the most, which made more sense when I learned about where she worked before LHR (see her interview).

What also slowly started to become clear that most of them, especially the candidate attorneys were very much so learning from Louise, and I feel like their legal consciousness is being very much influenced by Louise's legal consciousness.

Most of them also never really questioned the Constitution before the interviews. It feels a bit like the Constitution is the given basis that everything they do is built upon, so they also do not see any strong issues with the Constitution, which is very different to that what academics say who have since the 1990s become rather critical of the effectiveness of the Constitution. What was also surprising is that so far, no international treaties or laws were ever mentioned when I asked about the different types of legislation they interact with a lot or use for their cases. Because of this observation I decided to research the last UN Periodic Review of South Africa which took place at the end of 2022. I was curious if the land and housing issues the country is facing were mentioned. What I learned after reading through the questions submitted by different countries but also the different reports by the UN and the different stakeholders, is that land and housing were very barely discussed. From all submissions made by different NGOs and organizations in South Africa only one was co-written by Lawyers for Human Rights and it was not about land and housing but on refugee rights, and no other submission was talking about housing rights.

This could have several reasons. Firstly, I think the fact that the program has so many cases at all times, this might be caused by a lack of capacity. But it could also be that the land and housing unit does not see importance in educating the international arena about these issues. I think it is more likely the first reason.

At the end of the day Louise reminded everyone that on Friday there will be a training for all LHR employees, although Louise would not be there, on communication. I asked more about what would be discussed and I was told by the Phyllia and Adenike (two of the CA's) that it would be some kind of media training for them.

G) Thursday, 27th July 2023

The day started off quite similarly to all other days. When I arrived at the office around 9am Louise was currently discussing a case with Phyllia. The case was another eviction case on an informal settlement. The case is called the Wolwespruit case. In 2022 the community was served an eviction notice, which is when the community first reached out to the program. LHR appealed the eviction and won the case which allowed all who wanted to return to the piece of land. However, the case is not over yet as Louise has further plans. The City of Tshwane did offer another property to which the residents could relocate. But that offer was only extended to those who are citizens of South Africa. Louise does not agree with that and wants to achieve also which is why the case is still ongoing.

This would allow all people living in the settlement to get title deeds for their home/ property. Phyllia informed her that she heard from the city, and that they informed her they were willing to give title deeds to those in the settlement that are citizens but not to people who are not citizens of South Africa if they would relocate to the other land offered by the city. An online meeting with them would start at 12pm. Louise said that she did not agree with that offer as she wanted to secure a title deed for everyone in the community.

For the meeting Louise brought her computer to the big office room shared by all the CA's and we sat together waiting for the meeting to begin. However, the meeting ended up not happening as people from the city who were meant to be part of the meeting couldn't join so eventually the meeting was moved to another day.

Later in the day I asked Nthabiseng if she was free for us to do the interview and she agreed.

The interview was conducted in one of the small consultation rooms. The interview was once again very relaxed as we had the chance to get to know each other over the last week. During the interview what I noticed once again

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that when I asked if she believed the Constitution needed some amendments in relation to land and housing issues, she had to think about it for a while. This showed me again, similar to the interview in Nothando, that until now most of them have most likely never thought about this by themselves. To them the constitution lays the basis for all their work and because of this I don't think they had ever questioned the effectiveness of the Constitution as the basis of all their work.

I also learned that she had worked for the Socio-Economic Rights Institute (SERI) in Johannesburg. SERI has also done a lot of litigation and research work on housing issues, but they are limited to issues within the inner City of Johannesburg.

Another observation I had during this interview, which once again was a repetition from other interviews is that the land housing and property rights program not necessarily reaches out to many other organizations or NGOs that are focused on litigation around land and housing but that these organizations do reach out the program when they are looking for advice. Louise does seem to be the leading expert in land and housing rights litigation, and it was mentioned that Legal Aid South Africa reached out to Louise when they established their land and housing unit. Additionally, in every interview so far, the sentiment towards the government and specifically local governments was overall rather negative and most of them seem to feel like the cities have generally not interest in improving that land and housing conditions of their citizens and have no issue ignoring well established laws.

After my interview with Nthabiseng she came back to me to tell me that sometimes the city can be helpful to them. Specifically, she said that if they ask the city to come to court, they come, which she said while laughing. After the interview she also handed me a copy of the questionnaire all new clients have to fill out. The document includes the general information about the case and the clients. It is also asked if the household in question is run by a woman

or a man, which makes sense as one of the focuses of LHR work is women and housing.

The questionnaire made me curious about how other organizations such as SERI or Legal Aid South Africa, so I looked through their websites and learned that both organizations have certain requirements that potential new clients had to fulfill, which LHR did not have in the same sense. The requirements were mainly that income had to be under a certain threshold, and they were only allowed to be one-time homeowner, which the LHR program did not ask in their questionnaire. Similar to LHR, they also had the requirement that the case had to fall into their scope of work.

Throughout the day Mpho was doing the walk-in consultations as they had a system where everyone was assigned a day of the week where they are the main person responsible for the walk-ins. One person who came in through the walk-ins that day was an older man who had some issues with his housing, but they were not related the work that LHR was doing. But he needed help filling out a form, so Mpho spent quite a lot of time with him helping him out with filling out the form. This kind of confirmed to me what Louise had said during our interview about how they only very rarely send people away without helping them as they are aware that there will most likely be no other place they can go to.

H) Friday, 27th July 2023

Friday was so far the least eventful day. I spend the main part of the day working through different government reports and working on RP. I also used the time to look up different media articles of the different cases that I have learned about in the last 1 ½ weeks. At first, I was considering joining the communications training that was happening downstairs, so I asked everyone from the program if I should when they walked in to drop off their bags before the training. Most of them said I could if I wanted to but that I would probably be rather boring. So, I decided to stay upstairs and work. During the lunch break Adenike came upstairs to get me as there was tea, coffee and some snacks offered for everyone downstairs. I asked them how the training was going so far, and they seemed rather unimpressed overall and called it boring. The training ended around 1 pm after which lunch was provided to everyone. After lunch people stayed for a while to chat and catch up with people from different programs from within LHR after which everyone went home. Originally, Adenike and I had planned for us to do the interview after the training, but then decided to rather do it on Monday as she had some appointments in the afternoon.

1) Monday, 31st July 2023

Monday morning started with the interview with Adenike. The meeting was done in the large consultation room in the office. Once again, the interview had a very relaxing atmosphere due to the fact that we had to get the chance to get to know and grow comfortable around each other during work but also outside of work as she and I had meet up during the weekend too.

During the interview I learned that constitutional rights are a strong component of the legal education in South Africa. Adenike also similarly to most others so far also did not see a need in amending the constitution but also highlighted that limitations of the work that they do as she believes that without the political will and active engagement in improving the current housing and land situation their work will not bring much progress but rather just prevent land and housing rights from regressing.

J) Tuesday, 01st August 2023

In the evening around 7pm I had my interview with David Dickinson over Zoom scheduled.

David Dickinson is a professor at the Sociology Department of Wits University and was working for LHR for one year as a CA during his sabbatical.

For the interview I was sitting in the office room of the house I was staying at, which gave me the privacy I needed. This interview was less relaxed as it was firstly over Zoom, and secondly it was also the first time that we had met.

Throughout the interview I learned that David is most definitely the most critical about the work of LHR. He does believe that LHR is doing great work but is also very critical about how much can be achieved through litigation and legal mobilization. His field of research and interest is more social mobilization and he only worked for LHR for one year but is still working on one or two cases with Phyllia and Nothando. He was also the most critical of the constitution as he believed that current politics do not follow the Constitution but rather ignore what it says. He was also only one of the few that said it was not necessarily the lack of political will that is a main challenge faced by LHR and LHPP but that it is the inability of the current government to make progress as the ruling party and its opposition cannot come to any consensus. As an example, he referred to the failure to amend section 25 of the constitution earlier this year to allow for expropriation without compensation. This was also the first time anyone had mentioned the attempt to amend the constitution. Since he does not come from a legal background, he seemed to be the most critical of the limitations of legal mobilization. He was also the only one not educated in South Africa which could also be a cause as to why he is more critical of the constitution.

K) Wednesday, 2nd August 2023

On Wednesday I started my day by interviewing the last person, Tarisai. The meeting was done in the morning at 9am over Zoom. I sat in the same office room at my accommodation that I had used for the interview the previous evening. Tarisai has next to Louise the longest experience at LHR. Her first position was as a candidate attorney for the land housing and property right program followed by an attorney position for the same program. In total Tarisai was working from 2013 until 2020 for LHR. The meeting was also rather relaxed and Tarisai was very open and welcoming. She also mentioned the current legislation created by the government of expropriation without compensation, but she specifically said that she does not believe that this is the right step forwards.

After the interview I drove to the office by Uber, as every morning. Two cases came in that day that showed very clearly what kind of cases and clients the program does take on compared to which cases that program does not take on. A mass eviction case (in Pretoria West) came in for a consultation. They had previously been in for a consultation before for the same eviction (some are illegal occupants, some stopped paying rent as their services had been cut off). At the time the LHPP told them to go to court by themselves as the case was being handled by the housing tribunal where people do not need legal representation. They had their case at the Housing Tribunal in the morning and were told to come back with legal representation. So, they came to LHR to ask if they could be their representation. All this information was told to Louise by one of the CAs who had handled the consultation. Louise was asked if they should take on the case, as she is the one who has to make that decision. Louise asked a few more details such as if most of them were employed. After learning that most of them did have a job Louise decided that they would most likely not take on the case as it will most likely result in them being evicted, and as they do have an income the city would not provide emergency or alternative accommodation. I could tell that Louise was not happy with the

fact that she had to send them away and told the CA that they would check all of the papers of the case first to make sure that Louise's theory is correct and then they would decide. But it would most likely be that they will not be helped by LHR since the budget is limited and they do not want to use it on cases that will most likely be unsuccessful.

In the afternoon another case came in through the phone. It was a land restitution matter. A family that used to own a farm and who were removed from said farm due to the discriminatory law in the apartheid era. The farm is located in what is now the Ruitersbos Nature Reserve. Their land Claim had been confirmed by the Land Claims Court and as they cannot return to their farm (because it is in a nature reserve) they were offered financial compensation. However, they believe that the amount they were offered is not enough and have therefore contacted LHR. Louise not only agreed with the view that their financial compensation was too small, but she was also very eager to take the case on as it would be perfect case to challenge a previous judgement of the Constitutional Court, they called it the Florence judgement. I was also told that the previous judgement was achieved by SERI. This was another point where it became clear to me that the LHPP program was not very close to SERI. I was told that the Florence judgement decided that the amount that should be compensated is in correlation to the market value the property had at the time when it was revoked from the family. Louise argued that the market value since then has increased tremendously and that they should be awarded the current market value. This showed me that Louise has most definitely a litigation strategy and specific judgements and laws she wants to challenge but has to wait until a case comes along that can be used for such purposes. Louise asked Phyllia to call the people back and tell them they the program would like to take on their case, but Louise also told Phyllia to make it clear to them that if they agree this will be a long process of at least 5 years and would not deliver quick results. Phyllia called the clients back and explained everything in detail and made them aware of the potential time frame and how they would want to approach the case. The

clients were still very interested so Phyllia started the procedure of taking them on as clients which includes getting the mandate that allows them to act as their legal representation.

That day Louise had also made soup and sandwiches for everyone in the office. While we were having the soups for lunch Louise said that she would plan a Braai (BBQ) for me this weekend as a small goodbye.

L) Thursday, 3rd August 2023

Thursday was very quiet. Most Candidate attorneys were working from home and Mpho, the legal intern, had left the day before with the migrants and refugee program that is located on the bottom floor of the office to do a workshop. The only people in the office that day were Louise, Nothando and Nthabiseng. They were also no new consultations that day.

M) Friday, 4th August 2023

Friday marked the last full day for me at the office. My flight back to the Netherlands is leaving in Monday evening so I planned that I would still go to the office on Monday morning to say thank you and goodbye to everyone. The day started out rather uneventful, but I was able to join a walk-in consultation around noon with Adenike. The consultation was around a family house issue. Two women were there who had received a letter from a lawyer that said they would be evicted from the house they currently lived in. The house had originally belonged to their grandmother who had signed over the house to an aunt for renovation purposes. After the grandmother died that house stayed in the name of the aunt, but after that aunt died their cousin (so the children of the aunt) brought an eviction order against the two women.

The women believe that they also have a claim to the house and wanted to get the opinion from the LHR team and ask if they could help them out.

Adenike first asked for as much details as possible to get as much of a full overview as possible. Adenike first explained to them that they would have to do, which is getting the title deed amended. The women then told Adenike that they did not understand all the legal terms she but also the letter that they received were using. Adenike then explained to them in less legal terms what the process would be. She looked up the current title deed holder since that was something the women wanted to check, and she could do it online. Adenike also explained to them what would make this case very hard. She told them that they basically had to prove that their grandmother only had the intention of renovation when signing over the title deed to one of their aunts which would be rather hard since both the aunt and the grandmother were dead. Adenike then further explained that this process would not be a short process and that it would most likely be around 1 ½ years Adenike was told that mediation was not likely going to happen as the cousin who is holding the title deed is refusing to meet.

Adenike noted down their contact information and asked them to send them a copy of the letter they received from their cousin. Then she told them that she has to discuss with her supervisor (Louise) about whether they would take on the case and that she would get back to them by Monday to let them know. In total the consultation took about 20-30 minutes. After the consultation Adenike went to Louise to ask for her opinion. Louise agreed that this would be a very difficult case to win but said she would look over the letter and other documents once they were sent to confirm.

Throughout the day the cleaning crew had been going from office to office to deep clean. Around 1 pm everybody inside the land, housing and property rights program office were asked to leave so the cleaning crew could do their work. Because of this Adenike asked Louise if they could go home early as their offices would not be available. Louise agreed so everyone left home to start their weekend early.

Looking back on my experience over the last three weeks I feel like I have learned a lot. Not only about how the program specifically operates but also about the legal field in general. As someone who has no prior experience in the legal field, I felt incredibly nervous and even scared to go and do research on an organization full of lawyers. I was also before my research rather critical of how effective the law can really be in helping the most marginalized. But I have really learned and seen that the law can be used not only by the powerful as a weapon but also by the oppressed. The program has really shown me, and I also think many people who come to the program for help that the legal sphere does not have to be intimidating. The program and team are very good at helping people understand law and legal procedures and their rights. Which in a sense is kind of translating law and their rights from a very coded legal language and very specific procedures into something more tangible that people can relate to.

Although I learned that they have not been doing as many workshops as they have in the previous years due to budget cuts, which I think is due to the pandemic as many organizations could probably afford to donate less as the entire world was experience an economic recession (and that can affect donor funding, see Cote and van Garderen, 2011) I think they still do a lot of educational work through their walk-in consultations. They do take their time in these consultations to explain any question the client might have and give them concrete information even about things that might not be fun to hear for the client such as the time frame most litigation has. And even if they cannot take on the case, they make sure to help the people as much as possible and refer them to other organizations. Inside the main office where all the candidate attorneys work and answer the phone, they have a list of different organizations they can refer people to in case they cannot help.

Prior to me coming to the unit I had also read a several different articles that had highlighted that public interest litigation NGOs like LHR often only employ white people which was seen rather critical as it often gives the perception that these NGOs are rather disconnected from the issues and the people they are representing. However, from what I not only saw from the land, housing, and property rights program but from generally the Pretoria office of LHR that the majority of people working for the organization are not white. The only white person I met that was working in the Pretoria office was Louise. I witnessed several times when someone from the program would talk to a client in a different language (not English or Afrikaans) to explain to them something more in detail, which also allows people to access their services who do not speak English well or at all.

During the interviews what stood out the most was probably the fact that no one person mentioned any international conventions or laws that they use or interact with in their work and that most, not all, needed some time to think about it or admitted that they have never thought about that before when I asked if in their opinion the constitution needed any amendments. The only person who was very clear about the fact that they did see the constitution in

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need of some changes was David Dickinson. He is firstly considerably older than all other candidate attorneys I had met and was also the only one did not have a legal background but rather sociology background. This might explain why he was more critical than the rest as he wasn't raised and educated within south Africa's legal culture. I also do think that the legal consciousness of those working for the LHPP is strongly shaped and affected by Louise and their experience at LHR.

The cases that were most mentioned:

Mary Rahube: women and housing rights, lead to the amendment of Section 2 (1) of the Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA) as it was seen as unconstitutional by Constitutional Court, judgement was handed down on 26th September 2017

- ➔ In Apartheid times black people were not allowed to own property. The ULTRA Act allowed for people who previously did not own their house to get the official title deed to their property. Before many of them used to only have a certificate that stated that they had the right to stay and live on this property. Under Apartheid rule women rights were seen as being under the custody of a man so women were not able have their names on any housing documents. So, when the ULTRA bill came into place, women were never notified that the owner of the property had changed and were also never given the change to state their own claim for the property. LHR argues that this is unconstitutional.
- ➔ With the ULTRA Act those certificates were changed into title deeds, but it never allowed for women to apply for the title deed as it only copied.
- ➔ The Act has been amended in 2021.

Maledu judgement: empowerment of mining community (judgement decided their consent as need to allow mining company to operate on their property, consent of traditional leader is not enough

- The judgement said that people whose land is directly affected by mining activities have to directly consent to them, it is no longer enough for just the traditional leader of the affected community to consent to the mining. If the community does not consent to mining or if they have to leave their land because of the mining, they must be compensated for the expropriated land. The judgement also decided that the money that they get for land being expropriated must go directly to them and not to the traditional leader.
- The Maledu judgement is a great example how even though no law changes were made in that sense the judgement still had a positive and empowering effect for the community but also for other mining communities who are affected or will be affected by mining activities.

Reclaimers: informal waste-pickers in South Africa

- Currently no case ongoing, but they do have plans to “force” city to integrate them into the formal waste system.
- There is a guideline out that was created by two departments of the south African government that is meant to help municipalities to manage the formal integration.
- LHR have worked with them in several instances before to either prevent their eviction or to make sure eviction were done according to the PIE Act.
- In 2020 they worked with Reclaimers to try and get them declared as essential workers so they could continue their work in limited amounts during the first initial Covid-19 lockdown
 - This was not successful as the Gauteng High Court declared it as economic activity and not essential work.
- While I was there, they were starting to work with a new community who was not facing eviction yet but who were kind of being pressured or intimidated (see field notes 24th July 2023) and Louise is very much so still pursuing the goal of getting them integrated into the formal waste system.

Appendix 4 – Interviews

A) Interview 1 – Louise du Plessis – 24th July 2023

Interviewer

First questions are more generally about you. So, what exactly is your role at LHR? And how long have you worked here? Okay, okay. And where did you study?

Louise du Plessis

I am the head of the Land, Housing and Property rights program. It's a new name for us. And I'm in full time at LHR, I'm not full time, I'm part-time, moved my office here in 2011. Before that, I was at Legal Resource Centre doing more or less the same work. Then I also have my own practice, doing a bit of private work. I studied at the University of Pretoria.

Interviewer

Okay. And do you feel like from where you work here to the places where you worked before that there is a difference in how property rights and housing rights are approached, or is it all very much the same?

Louise du Plessis

No, I think there's because of the development in the last few years. Yeah, there is a difference in a sense of, you know, we're moving on, hopefully, and making progress. Yeah, it's not the initial issues that we sorted out, like, straightforward eviction applications. I mean, everyone, I think all the NGOs all sort of start with big eviction applications that ended up in the Constitutional Court, and set them as precedent, but there are many more issues that we're working on, and specifically evictions are now.... like I spoke to you previously, where we're now really moving to looking at planning. There is this urgent matter that came in now. That will be the focus of that matter now. We will deal with the eviction, an unlawful eviction by JMPD. But we're also going to bring a separate section dealing with what's the long-term plan for people who stays in informal settlements for 30 years, 40 years. So, I think that's nice and exciting. And then there's the smaller issues where we cannot it's not smaller issues, not less important. But when we, for example, start to use other kinds of law to protect people's interest if we think about housing rights, and

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so well, we've got a matter now where we deal with the insolvency act. So, we, the person who has been sequestrated have a 25% share in the family house. But for the creditors to get hold of the 25% share they need to.... ehm the sequestrator to appointed liquidators. Now they need to sell the whole house. So, her mother's actually is the owner, you know, I'm saying "owner" like off the house, but not formally. She said the mother is going to lose her house because of the 25% share of the daughter. So, we must now tackle the Insolvency Act or otherwise create law there to say it won't be just and equitable for them... for the house to be sold. That the creditors have to... that 25% They must basically just forget about that. It's not going to... but it's a difficult field to do because the insolvency act is very strong. And it's the duty on the liquidators to go after any property that belongs to a sequestrated person. So, are we going to be successful or not? I don't know. But we also did it. I mentioned that to you with the Companies Act, where there's a section in the Companies Act, they say if a minority shareholder is oppressed by the majority shareholder, that the courts got the discretion to decide what must happens to the assets. So, it's a long, it's very nice case. I can send the papers to you, and you can read that. And it's got very much linked up with Apartheid, how these people were treated and then they become the owner of a property in terms of one of his schemes of government. It's supposed to be an empowerment scheme, but it's an absolute failure, because the white farmer use to keep the majority shareholder in... The program itself is that the white farmer teams up with the farm workers to buy a farm normally and the idea was to empower the farm workers on the input is but there is nothing that is empowering that's taking place. So, now because the white farmer has the majority shareholder he now claims that they owe him money and he wants to also liquidate this company. So we brought the counter application to them to referencing the Companies Act to say, "Now wait a minute, you oppressed us like you have done, when we were your farm workers, nothing has changed in the last seven years, we still call you boss, and you still treat us as if we are your farm workers despite that we're actually partners in this business and this property belongs to this business." So, it's using other law than a normal straightforward law. And of course, the Constitution, we always use the Constitution. But here we can use the Companies Act, to try to protect the interests that they have in this property. So, I think we are trying to be more creative in our approach.

Interviewer

That's very interesting. What are the most common cases you see here in your unit?

Louise du Plessis

The most common cases of we see is definitely evictions, threats of evictions. In town, it's cutting off water, cutting off electricity, denying access. And then, of course, this ongoing battles with local governments, this ongoing battle between people who are desperate for land, because they live in terrible circumstances, informal settlements, and something will spark it and they will jump out and move on to vacant land and then the municipalities will come and demolish and take away their property, their shacks with the content and it's not.... *Sigh of annoyance/frustration* There's, there's litigation around the issue, but we must actually, the cases that we normally do is to get them back onto the land, but we are looking at now saying: "Well, if you take somebody's shack or the content of the shack or you demolish it, or you burn it, like they many times do, the local government and that is actually a criminal activity, that is damage to property or theft. So, we're looking at that. And also, we're looking at what we as an office do, we've got a number of cases, where we're looking at what we call the Reclaimers. This is the informal waste pickers the people cleaning, I'm sure you've seen them around.

Interviewer

Yes, if you're just walk around, there's a lot of them everywhere.

Louise du Plessis

That is very interesting indeed. So, demographics wise, is it mainly people within the city or outside the city or is it quite equal? Yes. So, we've got many cases around them, trying to support now that I think about it today we are supposed to go and meet with them. You can go with there. Anyways, so we are doing many cases around them to say: based on your right to food in terms of the Constitution and based on your right to work in terms of duties that South Africa has signed, that if this eviction if one of those groups... Because normally they're also... Well, also on private land, because they need to be in the area where they work. Yeah, that's their area where they clean the dust bins of people. So, if they use application to evict

them, the courts must recognize these rights, and for that fact it's not only housing or some kinds of shelter that has to be provided, it must be also land in that area to make it possible for them to continue to work. So we work on that and the design of the area. But the bigger problem with that is, and why this is a big issue in this office, is that this in terms from some national guidelines, there's supposed to be a policy in place by local government to integrate these guys into the formal waste management system. And we are now bringing an application to compel the City of Tshwane to put that policy in place because it's not in place. And that will stop this because many times these people have no interest in really staying where they work. They really trolley to where the recycled materials are. They don't want to stay. But the only reason why they stay there is to protect their stuff. So if there's a simple kind, there's a very simple design, if it's a simple area, and there's lots of land by Tshwane so they can easily do this, where these guys can look up their trolleys and leave their recycle materials, then they will go to one of informal settlements and go and stay there, but Tshwane is absolutely against it. So, we need to bring, and they don't have a policy in place. So, we need, that application is almost ready to fly as well. But we were, we've spent quite a lot of time in the last few years on this issue. We were successful everywhere, Amicus in one matter in Joburg we recorded, so if Joburg must provide land we they will continue to work as well. So, the common issues is this is definitely evictions, cutting off of water, and then of course generally with the other work that we're doing a lot of problems with communities whose ehm... host communities where there is mining activities is becoming more and more of an issue. We are doing a lot of work and spend a lot of time of our resources on assisting communities that are affected by mining, especially our focus is very much on the land rights and protecting the land rights that then have and well, our other program, the environmental rights program will more look at what we call the green issues. And also, of course, the kinds of deals that these communities get, if there is settlements with the mining companies, that it's fair and so on. So, we started to move... and there's also ERP (Environmental Rights Program) is working very much on this treaty that people are supporting, some countries are supporting it and others not on business and human rights. So, our ERP program is doing a lot of work on that. Going to Geneva to negotiate that and so on, so that's quite interesting. Well, in the cities, that's the funny thing with South Africa, because in the city, they always talk about the old white areas, that is now changing of course. There's a lot of problems

with the peri-urban areas, the old black townships. And that's specifically where we see the problem with women and housing issues. I mean we did the Mary Rahube case and we need to follow up on that. And that's quite an interesting case where there, you must actually talk to Tarisai. She was driving that case. In Apartheid black women weren't regarded as, they were regarded as minors, so they couldn't own property. So, when, in Apartheid, there was a fall, if I can broadly call it a fall system, where your name was on top, and you were the owner of the house, seen as the de facto owner, but it had to be a man. So, in many cases, like Mary Rahube's case is a perfect example. Her brother's name was on top of the fall, but he actually had his own house, but it was just to give her house use then wasn't. So, after Apartheid, when they started to give title deeds to these people, the government already use that name on the file. So, there's a double discrimination. So, there was no investigation, no nothing there was, what did they call it, ah you can read the Mary Rahube judgment and you will see, the township Register was opened. And then when they open it, and they gave recognition to those people, to give them a title deed, they used that name. So in Mary Rahube's case, her brother is actually a nasty little piece of work. So, he, he basically thought "I'm lucky enough, I got two houses." So, we had to challenge that to say: No, it's a game of discrimination. And off that matter, the Constitutional Court found in our favour. And we the parliament has now amended the law to make provision for those women who's in that situation to bring application to Court to declared that they're actually, that not only de facto, but they're really owner of the property. So that's the one issue, the other issue that we're putting a lot of work in, and we're going to do now again. And again, it's something that the recycling case is explaining quite well, is in South Africa, we have in the black communities, what we call family houses. I'm sure there must be quite a history behind it. And it's a house that's owned by the family and they see it as a family house. So, if you'd get married as a woman, you will normally move out to your husband's house. But if you get married to the man, or whatever and you move back to the family houses, it's a custom. Yeah. And we want that custom to be recognized. Because again, what local government was doing is to give it to transfer that house into somebody's name, even if it's an aunt or whatever, and then the fight starts with the aunt "Now see I've got property now, and I want evict everybody, and they must go." So, we want to develop the law to recognize first of all that custom as a customary law issue. It's mostly women that is protected by this and then to

register some caveats against the title deed, to say this house is a family house, so you know, it cannot be sold by one person. That's more or less what we're thinking about now. So, you can either put a house in a trust but it's just maybe cheaper and easier to raise the caveats against. And it's amazing, especially in Soweto there's huge number of cases. So that is also something ... There's so many, you can take any area almost, any old black Township and there is a different issue around housing. It's amazing there's different kinds of problems in every community, but it's big problems. There's, for example, we've got two big cases, where what we call double parking. So, the local government, the council's, the council's in South Africa is very corrupt, not all of them but generally they are, made promises to people well province maybe gave the house to somebody else. So, the title deed will be saying A has got the house but in essence, the council they gave the house to B, and we've got two areas like that, we're dealing with. I'm talking about hundreds of houses. So it must be regularized. And it's also, it's not done. So we had to go to court in both these cases. So there are regular investigations and try to sort it out. Well, the one case they are busy investigating, they tried to come up with a plan. The other matter is still pending in court. But if I think I'm just quickly thinking about that, you can take area by area, and they will be a different kind of issue. And then this thing of the informal settlements, the upgrading. You know, there's enough land, that's not the problem. The problem is now the political will, I think, to really come up with...

Interviewer

some it's not in the political interest of those in power?

Louise du Plessis

No, it is a political interest shortly before every election. All of a sudden, it's a massive issue. And they hang around at these informal settlements making big promises. So that it's also the conditions of the... we don't even get to that, but the conditions of the informal settlements are really really poor. We don't... service delivery issues that we see people weekly coming in here. It's issues that we just don't have the capacity to tackle. So, and then there's also within South Africa what you call the RDP housing issue. That's the kind of houses that where people would qualify for. And they just don't, nobody knows what's going on of the RDP list. Where is the RDP list, people can't find out where are they on the list, for 20 years

they are on that list and they see young people who get houses, while they don't get it. But that also is linked to corruption as well within the local government level. You see, many of those cases.

Interviewer

And how, the people that you work for, how do they access your services? is it they get referred to you or do they come into the clinic?

Louise du Plessis

Most of the people if they are referred, to us we never asked where they come from. But most of them, they'll just walk in. Some of the other programs in LHR tends to work more with other NGOs and other arrangements, our ERP programs quite good with that. But we have such a lot of clients that are flying in... It's not really possible. Now and then, somebody will refer. I mean, people do refer, the courts refer, and the police will refer, so parliament referred, but it's not a formal referral, or pitch up and sometimes they will say "the police say we must come here for help." Yeah, and otherwise, I think it's it's people telling people they can go to LHR. Because we are the only NGO in Pretoria dealing with these issues. In Joburg there is of course, a number of NGOs, LRC, CALS, SERI. But here in this area, it's only us.

Interviewer

So how do you pick which cases you take on in which cases you don't have the capacity to take on?

Louise du Plessis

You know, yeah, we definitely are very, very slack on that. We don't easily say no. But if we do have to say no, because it's sometimes it's really just a commercial case. Of course. If something comes in, that is where we can push the boundaries and develop the law. We will definitely take it even if we don't have the capacity, like this matter of Rabie Ridge. Where will want to go into planning issues. So, there's no, in our program, there's not really a strict going to formula that we follow. Just, we see people who will come in and then the junior lawyers will come and discuss the case with me, and then we decide whether we can take the case on or not. There is luckily for us with this, the inner-city problems with water, cutting off water, locks

out by apartment buildings and so on, by landlords. We can make use of the Housing Tribunal. That's a simple system. So, you don't need to go to the court. And the housing Tribunal finding is as good as a court order. And there you don't need a lawyer. So, we can, many of those guys we can send to the housing tribunal.

Interviewer

That's cool.

Louise du Plessis

Yeah, it's actually a cool system. But so far it works because we are keeping an eye on that Housing Tribunal.

Interviewer

And what do you think are the most common challenges you face in your cases?

Louise du Plessis

I think at the basis, it's corruption, and political will. Because even if these issues they are going to be resolved if there is political will. We don't need to go to court if we know, in Winnie Mandela Park and in then bisol there is a massive problem of double parking. Why? They know, the municipality knows it as good as us. If they want to, they could have easily resolved it. And of course, because of the corruption there is no resources, this unit has minimum resources, so if you talk to the local government lawyers and them, they will tell you "We don't have resources because everything has been stolen." So, corruption is definitely... But something like Mary Rahube, that's not a corruption issue. That is a well-known... I mean, anybody who is specializing in in that field working for the Department of Housing or whatever, was going to foresee that there's going to be a problem. So why didn't they just use their heads and write the law around it. So yeah, political will is definitely a massive, big problem.

Interviewer

Do you know what the challenges are for the people who come here? Or can't come here? There's groups of people who come here, and then there's probably groups of

people who don't come here, right? Is it because do you think they don't know about you? Or are you very well known in the city?

Louise du Plessis

Now many times we work with people like this morning, I think of Kuruman. It's amazing that hundreds of millions of rands are stolen by, by somebody from their trust. And they've never think about approaching the NGO. I think people are this... I don't know what the English word is. I don't think they think there is somebody who can help them. Because if you're that poor like the Kuruman case is now specific a good example, because it's in the Northern Cape. It's very rural, people are really poor, but they're very together when you meet them. But I think some barrier, that I think that poverty issues, make it not possible for people to think this can be sorted out, they just kind of accept this and then move on. Otherwise, I think it's an issue of resources. Lots of people, you know, living from SASSER grants and so they don't always have the resources to travel here. And we don't have clinics going out, like mobile clinics or something. Yeah, I know LHR, especially our program, is not well known for flaunting our work out. And that's why we also have a problem that we can do definitely better in. But we always so busy with all these court case, that we don't have a proper PR system.

Interviewer

Yeah, you don't have a full marketing scheme going on.

Louise du Plessis

No, our PR person is important, she is doing her best on social media and so on. But it is actually, I think the cases do get noticed at least more in academic world. You know, with some of the cases it will be discussed, and people will write about it and so on. But actually, we must be down here with the people with the problems, and they don't always seem to be so familiar. As I said, we are familiar in the sense that we are known in those communities.

Interviewer

And overall, is there a stronger focus on land and property rights or more on housing rights?

Louise du Plessis

Now, it's even.

Interviewer

Okay, so it depends on the case basically.

Louise du Plessis

Yes.

Interviewer

Okay. And how do your cases, if they do, but from what I heard they do, translate into policy or law changes like, how does that work?

Louise du Plessis

Well, what we do is, if I understand your question correctly. We litigate using mostly the Constitution, not always. Pushing for cases in the Constitutional Court that will make policy or make the law change, like Mary Rahube. Or just the Wolverspruit matter, that must be I think the biggest case this program has done, we shift the power. We host communities, they were quite powerless to engage with mining companies. They are often like in the Maledu matter. They're in such a good position, although they didn't get extra rights, it's just that their position is recognized. And it will be very difficult for anybody to get them off the land. So suddenly, it's not as easy. As I mentioned previously to you, it was before Maledu you could get, ehm, based on their mining right you could get an eviction order. After Maledu the government, there is a process that must be followed in terms of the Mineral and Petroleum Act. And if that process isn't successful, government will have to expropriate you, even if you don't have formal title to the land, so suddenly it puts the communities in a massive, good position to negotiate. Because the mine is, it's not as easy to get those communities off the land. And by the time the mine has a mining right they already spent quite a good sum of money. You don't get there unless you're respecting all the processes and engagement of government and so on. So, they're quite in a desperate position then to get those communities off the land. So that's why Maledu is a very good example of, so it was not, we didn't make new

law. Well, we did make new law, but if you look at it, you'll think "Oeff, what's the impact of this?" But if you go practically and see what's going on out there in the mining world, you will see the impact is massive. So that's quite interesting. You met the community now on Saturday, so yeah, so that's the way that we, that we deal. We're not as this program, but the rest of LHR is little bit with that, we don't do a lot of submissions and so on. You know, for example, at Parliament. Yeah, I think this is because we are so busy with litigation, so the focus is very much on litigation.

Interviewer

So, I feel like the legal framework you guys interact with the most is then the Constitution, right?

Louise du Plessis

That's right, yeah.

Interviewer

Okay. And what role does the Constitution play?

Louise du Plessis

Can you say that again, sorry?

Interviewer

Okay, my question is basically, you use the Constitution mainly. So, is the constitution basically, your main backing point?

Louise du Plessis

Yes, it is in most of the cases.

Interviewer

And do you feel like the Constitution as it is, is very helpful, or do you feel like there might be some changes needed?

Louise du Plessis

No, I think the Constitution is very strong. And it's a good, it's a good tool to use to push other legislation, even new legislation, after Apartheid the legislation for housing, insurance, and so on. We've used the Constitution significantly to push. But I think there's certain areas where people just did not think about, and, unfortunately, the Constitution cannot be used to assist... If I think about farm workers, farm workers were on property for a very long time. Those rights that they have is actually quite flimsy. Except there's exceptions. If you're what we call a long-term occupier, then you cannot be evicted. But in general terms, I think the Constitution, and ESTA that flew out of the Constitution, that's the act protecting the farmer worker did not recognize, they did not give enough recognition to the history farmworkers in South Africa. And why, they are in a peculiar position, because it is a bit of a weird position that there are in. So, there's definitely some groups where the history was not recognized enough in terms of the Constitution. Even if you look at PIE, the act dealing with evictions, I mean PIE is much more focused on a procedural fairness than the content or giving rights to people. There is one aspect, it must be just an equitable, but it's very difficult to get past that because you start to weigh out the rights of course, property owners as well. And normally, when you deal with PIE, you normally deal with PIE, but you deal with somebody who is unlawful on a property. So, there is that balance that you must get right to also give recognition to the owner's rights. *Knock on the door* Is it important? Cause we are busy here?

Candidate attorney

Yeah.

Interviewer

It's fine, go ahead.

Candidate attorney

Okay. So, somebody has been evicted. I just wanted to know if this qualifies as ESTA. It's on airplot 21 by Letroad in Krugersdorp. Does it qualify for ESTA?

Louise du Plessis

It sounds like it. If it's a plot that is agriculture, unless it is surrounded by a suburb, but a plot normally is ESTA.

Candidate attorney

And the landlord offered him 10,000 Rand to leave but he doesn't want that accept money. And he says he's been a victim of constant racial attacks for which he got a protection order, but he doesn't want to leave.

Louise du Plessis

How long has he been there?

Candidate attorney

I'll find out now. *leaves*

Interviewer

Okay, I'm also almost done. Do you have any non-legal or other legal support structures here in the city that you always like rely back on?

Louise du Plessis

We had a wonderful partnership that was funded by Comic Relief with TLF, Tshwane Leadership Foundation, they provide shelters.

Interviewer

TLF?

Louise du Plessis

Yeah, Tshwane Leadership Foundation. They provide, I think, the best shelters and it's only because Tshwane doesn't do shelters, except for that nonsense building I showed you. So, we had a very good partnership with them. And at the University of Pretoria at the theology department. There are, some people that are very much focused on homelessness. And that's their big thing. *CA walks back in*

Candidate attorney

He has been there since 1989.

Louise du Plessis

How old is he?

Candidate attorney

He's like really old. No, then he cannot be. Longer than 10 years on the property and he is older than 60, so he is a long-term occupier and he cannot be evicted. But if he dies, and he has got children, and so on, then he must just know that they can evict them. So, 10,000 doesn't seem fair to me. It doesn't seem fair. And he's in court on the 29th. They wanted me to go to as representation, must I just tell them to present themselves or what?

Louise du Plessis

Why can't you represent them?

Candidate attorney

In Krugersdorp? That's Devildorp. No, that's actually Deborah's area. I need to go to court against who were doing racial.... I'm scared!!

Louise du Plessis

Then take Mpho with you. But where is the application?

Candidate attorney

There's no application just a letter from Legal Aid saying that if they don't vacate by the 29th they are sending application to evict.

Louise du Plessis

Nike, wait a little bit. We need to finish here because don't tell me that Legal Aid is writing letters for eviction.

Candidate attorney

Oh, they are.

Louise du Plessis

But they are the people who are supposed to protect these people! I'm going to through such a tantrum now!

Candidate attorney

Okay, finish your thing. *CA leaves*

Interviewer

What is Legal Aid? From the government the legal aid?

Louise du Plessis

It's the government's legal aid. Sorry for finishing my lunch. But they're supposed to, they have got a Land Unit now. In terms of some judgment, the government must provide people who is facing eviction in rural areas, let's not even go to the urban areas. People just got a land claim with a lawyer, and it used to be a panel of private lawyers, that's funded by government. Now because government is running out of money, they took most of those cases and Legal Aid, LASA, Legal Aid South Africa took over that role now to give lawyers to people who face eviction. But now they are bringing applications to evict them! And this is why I said it's not going to work out especially in a case like this because now Legal Aid will not be able to provide them with a lawyer because already on record as the lawyer.

Interviewer

That doesn't make sense.

Louise du Plessis

That's why I'm suddenly very interested in this. You see that's not a nice you should tackle. The eviction is like hmmm, but this just crazy cause they are bringing the application even though they have an obligation. The UP have got wonderful people whose focus is very much on homelessness. Specifically, Professor Stephan de Beer. So, we had a partnership of them. That was really successful where we were litigating on homelessness but stretching it a bit further. Well, it depends on what's your definition of homelessness. You know, is it a guy who is living in like this little structure with his trolley next to him. Is he homeless? Or is it a guy that sleeping under the tree that's homeless, but that's another debate. But so we did the litigation, TLF provided the shelters, providing actual beds. And UP was doing the research and also writing up what we've done. And it was specific, extremely good timing,

because we were kind of just started with the project and then COVID started. So, the guys from UP, Stephan and Lance and them, they we're helping Tshwane under very difficult set of circumstances, because there was a lot of reluctance to put up COVID camps for homeless people. And we were of course litigating around the issue. While TLF could provide, especially older people, with beds, and got some form of shelter. This, we are still in court with cases where the one COVID camp and it was a city hall that was used. Tshwane now decided just to evict those people. So, and that was the specific camp that was used for people who's got substance abuse problems. So, Tshwane, also University of Pretoria's health department was called in to help with that issue. So that was a good partnership that we, but this is still ongoing. So we are, for example, there is now the think tank. Because I think the idea from UP is to start to push the issues for all the homeless people in South Africa. Right now, already I think, in Tshwane. So they already started to do quite a lot of research on to try to count homeless people, but they are counting homeless people like people are on the street, not the little shack or shelter or the Reclaimers and so on. And they want to, obviously they want to sort of push to see if they can at least try to resolve that issue. Because homelessness is, it is another thing that we are quite involved in. But that is through this partnership that we have. But otherwise, NO. I'm not good with dealing with other NGOs. Not at all. I'm not interested. *laughs* So it's not my thing. I think you know if an NGO works on a case, there's no need for everybody to run to that case, unless you are the amicus in that case. We've got many things that we have to do. so back to my question: TLF and UP...

Interviewer

Too many cooks in the kitchen ruin the meal kind situation.

Louise du Plessis

Yeah, I'm not that kind of a person in the NGO world, I'm known for not being that kind of person. But obviously, if there's something that comes up, but more of the people that we will deal with and work in partnership is really not so much NGO lawyer, but it is what you refer to as non-legal NGO experts or university or whatever.

Interviewer

Okay, that's it from me if you have anything else to add that you feel like I should really....

Louise du Plessis

No, if you think about something, just shout. I'll give you the Tarisai's number.

Interviewer

Yes, please!

Louise du Plessis

Because she will tell you a lot about women housing cases.

B) Interview 2 – Mpho Makhubela – 25th July 2023

Interviewer

So again, thank you for this! So, to start easy, what's your name and your age?

Mpho

My name is Mpho Gerald Makhubela I'm twenty-two years old, turning 23 this year.

Interviewer

And what is your role at LHR?

Mpho

So, my role is legal intern. So, my role is to while my position is legal intern and my role is to support the land and housing program, including staff, clients and stakeholders. So, we basically do what CAs (candidate attorney) do, but I don't, I don't appear at court. So I would draft document, I would file at court, I would serve our colleagues in the fraternity, I would do legal admin general admin, outreaches, organize workshops and training.

Interviewer

And how long have you worked here?

Mpho

It has been a year. I've came here last year July. Yeah, it's been a year.

Interviewer

what did you do before?

Mpho

Before then I was, well, I still am. But before then, I was working with this other NGO based in Pretoria called Fundanani Africa. So, I was the events coordinator. So I would organize and plan workshops, outreaches and events that they had for advocacy I would plan it, and I would invite stakeholders.

Interviewer

Do they also focus on land and housing?

Mpho

No, they focus on youth development. So we would, for example even last week we went to Hammanskraal, it's near Pretoria, 50 kilometres away. It was a teenage pregnancy outreach. So, we go into the communities and encourage girls to abstain. And at least until they finish high school or matric, or, you know, and, you know, just to give them information about the adult world to provide them with sanitary pads provide them with hygienic products. And just to you know, develop them in any way we can. We also provide training classes for them.

Interviewer

But it's not very much like a legal NGO, like here.

Mpho

No, it's research and social aid.

Interviewer

Okay. That's very cool. And here at LHR what are the most common cases that you have come across?

Mpho

Common cases. So last year when I came, I was based in refugee unit downstairs.

Interviewer

Okay.

Mpho

So I would say that the most common cases will be non-South Africans face, they face all face difficulty with obtaining documents in South Africa and therefore, it forces them to be homeless. So, because now, let's say they came here legally, for the first few years, they have documents and for some reason, something happens at the Department of Home Affairs, the documents are delayed. They can't pay rent

because the bank has blocked their accounts because of you know, IDs and documents. Therefore they can't pay rent. They're getting evicted. and therefore they find themselves in the street, jobless. So I'd say the most cases that I've come across would be vulnerable persons facing poverty in every accident.

Interviewer

And specific specifically for the Land and Housing, what have you seen the most?

Mpho

Specifically for land and housing its, vulnerable woman facing inequality in housing.

Interviewer

What kind of inequalities?

Mpho

Do you'd find that back in, as far as I know. Back in the Apartheid era, so women couldn't own property. So let's say you had to buy property and one of your family members, or maybe I'm your spouse, I would you would buy property through me. So my name would be on the title deed. And you find that years later, you pass away, you leave your children, and they think that the house is registered under your name, but no it's registered under your little brother, your little brother. And you find that my children are claiming your mother's house. So I think a lot of law makers, they're trying to find the balance, but it's not easy, because there isn't a lot of cases that were sort of, sort of a precedent for us to follow. But the most common cases, or the most cases that I'm most interested in, are to sort of try to help women to, you know, sort of to, to get the rights out there, and also voice out.

Interviewer

So it does happen a lot still that like someone dies, and then because the house from back then in Apartheid times was not registered under the woman's name and the woman now has issues.

Mpho

Yeah. And back then woman were, women were not allowed to. own property at all.

Interviewer

And there was nothing done after apartheid to be like, okay, all these women...

Mpho

So these cases is that we have now, cases that that, you know, just occurred is through consultation. So we try and to change that through litigation. To try to set a precedent to say, you know, we can follow this, this case,

Interviewer

but there's so far not many gib precedents?

Mpho

So far, I'd say policies are needed. Something in the Constitution is needed. But so far I haven't seen that many cases. But there's some good cases out there.

Interviewer

So from the demographics that you see, you'd say it's mainly women.

Mpho

Yeah, it's mainly women.

Interviewer

And why do you think these are the most cases why you feel like women and children are more likely to come to you than maybe other cases?

Mpho

compared to men.

Interviewer

for example? I mean, men obviously probably have a bit more help. But why do you think these people are willing to go to you and use the law?

Mpho

So you will find that when they come to consult they don't even know the law. Like some communities that still practice, the old laws, where it says you as a woman you cannot head our family house.

Interviewer

So there's a lack of knowledge?

Mpho

Yeah, it's a lack of knowledge combined with African tradition. So we find that these communities are still rooted into their traditions. And in that regard, you do say, you can't inherit our family house because you're gonna get married. We need a man, who's going to further our bloodline. So that forms complications with law because that's not how it works, right. We believe in equality. So you may find that, so women are vulnerable in such regard that they come from communities that are still rooted in an African tradition that have their own by-laws that is affecting a generation of women down the line. So I would say that those are most common cases. And you may find that, as well as evictions! There's still inequality in terms of gender, in terms of race as well. But I would say women particular face more evictions than men. Because I mean, most of the time, these buildings that you see in town, in the city, most of them have families, and according to my research, a lot of households are headed by single women. So, we find that a man is getting evicted, he is alone. But with women most of the time, it's children as well. She lives with her parents, she takes care of someone at least. And that's, that's, that's why I think I do think women and children are very vulnerable. Particularly women.

Interviewer

And how do people access your services? How do they come to you?

Mpho

So we have walk-ins. Available from Monday to Friday? From 9 to 2 o' clock. So they access us through that. So, so that's how they access us, but some of them. A lot of our clients have at least resources to buy Air time to call us. We have email and WhatsApp as well that you contact us and then you know, to explain their the situation and then we advise and ask them to come. we go to them sometimes, at

least we try to assess, there are some vulnerable communities that cannot make it to us. So, we make means to go to them.

Interviewer

Are they sometimes referred to you by like other organizations, or by a judge, or by the police or anyone?

Mpho

All the time. There is this set of organizations, they do refer them to us and we refer some clients to them but we are very conscious about certain organizations. But to also build relations with other organizations. For instance the organization Future families who provide health services to refugees. We have outreach who provide assists social support to everyone, whether you're South African or not. They also teach English classes.

Interviewer

So referred by other organization that also here in the budling/centre?

Mpho

Yes, in this building yeah. So we form relations, and we try to have a meeting once or twice a year and discuss.

Interviewer

And what do you feel like are the most common challenges that you as lawyers and interns and all of it face when trying to fight for your clients?

Mpho

Intimidation.

Interviewer

intimidation, by who?

Mpho

by our clients oppressors.

Interviewer

They intimidate you guys?

Mpho

Not directly, but there's just that tension to say why do oppress these people? The other one is finding resources. Resources are very limited. Also lack of support from the government. Yeah, I think as well as there is an undermining attitude as well. Yeah. Justice for lawyers that are trying to fight for justice. The other one is lack of organization from the communities. There's a lot of communities that come here, and some of them are really not organized and that can delay a case. So that sort of challenges our clients situation as well, situation, sometimes the case is delayed, because we kind of go them but they can't come to us. And it's that kind of resources as well. Hmm what else, I think capacity as well. Because you know, less resources lead to less personnel.

Interviewer

Yeah. So you feel like there's a lot of people coming to you, and you can't always help everyone, you can

Mpho

Yes, you cannot always help everyone due to capacity, due to funding. We sometimes find that there's a very good case but when we check our finances, there isn't funding for a certain type of case. Because with every case there is funding needed so we find that we cannot take some cases because of lack of resources. But we try to advise at least, and sort of referring to organizations that can definitely help and definitely they have capacity to take the case forward.

Interviewer

And within your unit, do you think it's an equal balance between focus on housing and property and land rights?

Mpho

I think there is equality. It's sometimes we have more land cases than property cases because we live in the city. But you also have housing cases that are still in court. They've been in court for many years, and we're still dealing with them. But yeah I'd say it's equal.

Interviewer

And the things that you do, how do they translate, if they translate, to impact people's everyday life? So is it that you always strive to make a policy change or law change? Or is it more you try to help them on case by case basis?

Mpho

So I think there's levels to it? So we rely on a case by case. So the case we use it for policy changes. So without the cases we wouldn't have basis to argue for policy changes.

Interviewer

So you basically find cases or you have cases, and then you see okay, this case, could help us push for policy change or law change, then you try and do that?

Mpho

Yes. We rely on our clients too to give us that strength. So we would see again, because if the client instructed us to wait then we would have to wait until we find a strong case with clients who want to take it further.

Interviewer

And what do you think, are the legal frameworks that you guys use or interact with the most?

Mpho

What do you mean by that?

Interviewer

What laws and policies do you feel like you refer to the most?

Mpho

The Constitution, so we break it down from the Constitution to the provincial laws, the acts, the parliamentary acts. So it's from the constitution to legislation. In legislation we look at the property acts, including ESTA and PIE.

Interviewer

what's PIE and ESTA? I've heard it so many times now. Just a short version, you don't have to go into detail.

Mpho

ESTA accommodates to rural and farm workers rights. So for instance, you will have an ESTA right if you stayed at a farm somewhere in Pretoria and you've worked on that farm a certain number of years so that gives you the right to stay on that farm. With PIE its occupiers that came into, a land or property to seek accommodation. Yeah, seek accommodation as in rentals, permanent housing, etc.. But with ESTA is people who have rights through their work so like farm workers. You have worked the land working. Si with ESTA you have to prove that you've been working on the land. With PIE, it's just the accommodation. So let's say such as yesterday, we went to local area. There's a farm. And in that farm, there's been occupiers since the 1960s. So they've worked for this farm since the 60s, and therefore ESTA gives them the right to stay there until they die. SO you have no right to evict them. It's their house until the die, it's their property until they die. With PIE you didn't work there, you just moved in to the community you just moved into the property or land. Do you feel like PIE and ESTA is also something you've worked with a lot? Yes, all the time.

Interviewer

I felt like that because I keep on hearing it all the time. And any of these legal frameworks that you just mentioned. I think you mentioned it earlier as well that they you feel like there might need to be a bit of change in the Constitution when it comes to maybe women's rights and stuff. So is that the main thing that you think of when you feel like the legal framework needs some revision around that? Or is there other parts where you're like, this needs to be improved.

Mpho

Even if it's not the constitution, but at least the policies, legislation, the bylaws for every province or city. They should try to implement those, you know, try to really eradicate that kind of inequality. Especially when you're looking at the social issue of single headed households, by looking at the whole mess that is happening now. We chose that after 1994. The government was to sort of suppose to craft policies that accommodates women in housing. Yeah. So I think even if it's not the Constitution, but at least the legislation should make effort to sort of try to put women in the same place as women in terms of housing, in terms of ownership of property.

Interviewer

Do you think it's feasible, that there will be a big that there is a change?

Mpho

I think so. It's a case by case. I think so, I think even if it's not us, but someone will look into it and make a really big impact and change the law as a whole. You never know what case might come in.

Interviewer

Okay. But you do you feel like there's a case needed to make the change. you don't think that the government by themselves will say we need to improve this.

Mpho

I have never seen do the government do something like that by themselves. Unless there is a problem.

Interviewer

So you feel like they need to be pushed in some sort of way?

Mpho

Yes they definitely need to be pushed. You know, cases need to be court constantly.

Interviewer

The next question you kind of answered already that what other support structures does LHR rely on? So you mentioned all the different organization in the house. Is it also that you work with different legal organizations or is it more non-legal organizations or support structures?

Mpho

I think there's there's a few. There's a few I think, Africa as a whole. I'm looking at the larger context. Africa as a whole, we have fewer organizations that fight for social justice. we have fewer organizations that offer legal aid. South Africa, I think, not just South Africa. Africa as a whole, there's a huge shortage of aid organizations. So South Africa, I'd say already, there's a few. So we rely on non-legal organizations, because already, because there's a few of us. And you, you would rely on this non-legal organizations to sort of give us a boost in terms of social impact. So the more people who are knowledgeable about these social issues, they don't seek them out of it, you find that there's a broader legal issue that is affecting social. Yes. So. So yeah.

Interviewer

Okay, that's it from my side. Do you have any other comment of thoughts that you feel like you should mention or feel like is important that I haven't touched on?

Mpho

I think in terms of rates? Yeah. There's, besides women, there's a large inequality in terms of property, I would say, the majority of the land and the majority of property ownership are owned by white men. So you may find that, and when I was mentioning women I was mentioning white women too. Because back then also, they had issues in terms of ownership of property. They also had their own culture sort of oppressed. So there's a difference between the ownership of property, as a whole. And a lot of cases that involve land claims, they are just not moving as much as we thought they would after the democracy. There has been a delay. The government is always not pushing for equality, in terms of ownership. Black people have land to stay, but it's not theirs. That's why we are facing so many evictions. And you may find that because we don't have because, let me not let me put myself out of the conversation, because the black majority do not have land. So we find that

when you look, a lot of black people don't own the title deed but they have been staying at a house for almost 50 years.

Interviewer

There was nothing done right after the end of Apartheid?

Mpho

There wasn't a lot.

Interviewer

There were policies made?

Mpho

The implementation is the problem.

Interviewer

Okay.

Mpho

We have really good constitution. We have really good legislation, but the implementation, it's hard. It's where we lack. It's like we wrote some stuff down and we just relaxed. So there's this, there's been that issue of implementation. If I'm not mistaken, there might be a policy for women as well. But because there's no implementation, therefore, people are misinformed, because we don't see those changes. Besides implementation, I think, what one of the policies that should have been out after the start of our democracy, it should have been just the mass advocacy. That hasn't been a time when you informed people of their rights. Like after the constitution they were supposed to have mass communication workshops, and we find that a person has a constitution. But they have to wait for a paralegal. They have to wait for a lawyer. They have to wait for somebody with a legal background and explain to them what does the Constitution say. So the people have the Constitution, but they don't understand the Constitution. They don't understand their right. Which is for me, it's the main factor.

Interviewer

How are you supposed to fight for your rights If you don't even know them?

Mpho

Exactly. How do we expect you to solve your own legal problem? So there's also an issue of legal aid. And there's an issue of community based paralegals as well, deep into the community. So the government, at least were supposed to support the NGOs, encourage individuals, encourage communities to open to NGOs and to fund them, especially with the legal NGOs, and will have community based paralegals who are available to every community that they can go to and get advice. That's what the problem is, is that we know what the law but we don't know what applies to us. We know the term we don't know what it means. That's one of the problems we face as communities.

Interviewer

Well, thank you very much. This was very helpful.

C) Interview 3 – Nothando Shongwe – 25th July 2023

Interviewer

First question is very simple. What's your name and age?

Nothando

Haha, why do you want to know my age? My name is Nothando Shongwe and I'm 29 years.

Interviewer

What's your role at LHR?

Nothando

I'm an attorney at the land and housing and property rights program. It's a lot! Everything and everything! So it's, it involves obviously, firstly, the one that comes off of mind is supervision of candidate attorneys and the legal interns, drafting of letters, drafting pleadings, meaning high court papers or magistrate court papers. That includes research, then it involves going through findings and proposals, it includes and involves sometimes mediation, maybe between clients and a third party, trainings, facilitating trainings and workshops. Also, what else? Yeah, it's quite broad. But yeah.

Interviewer

So what does that include? As in what are your tasks? You also do the litigation, right?

Nothando

Yeah litigation and like the drafting and all, and appearing in court as well.

Interviewer

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And how long have you worked here?

Nothando

That's quite. So it's quite a story. I started in LHR in 2018 as a legal intern in the statelessness department. I moved to land and housing. So I started 2018 in April. And I think interned for three months in statelessness. And then I moved to land and housing in around September, October 2018. And I interned for a year. And then I got articles, and then I started serving my articles. So I became a candidate attorney, after a year. So I served my articles for two years, up until 2020 or 2021. Yeah, something like that. And then obviously, the contract was two years, serving articles. And then after two years, I stayed continued like working up until last year, 2022. In March 2022, I got admitted as an attorney. And then I moved because there was no funding to retain me here. So I moved to statelessness again, for setting up a full cycle. I moved to statelessness, I was legal advisor there, up until I got appointed as an attorney in November last year, practicing attorney. And then in July, I moved back to land and housing. And within the land and housing unit, what are the most common cases you see? Evictions, for sure. That's what we do mostly with tenant and landlord issues. Evictions where the lease is involved. We have evictions where it's a community eviction, where the municipality either they demolish or like they call them land invaders, people who have moved into a vacant property, and then the municipality of that area will then evict them immediately. And then we have to defend them. Because obviously, you have the rule that they need to bring an eviction order, right. An efficient application rather to get a court order to evict people. So and then we have mining cases as well. When a mine comes into the community, and they start mining big. Now obviously the mine and the community they cannot coexist. Exactly. So now the mine will try to push people out and not do that obviously the right way and that is when will get involved with you know, try negotiate for better location or a settlement. Or now question how the mine got mining rights in, in that area and stuff. So mining cases. And then yeah, I think that covers it if I'm not leaving out something else. But yeah mostly is evictions like obviously as I've said individual and community evictions. And just to add, so sometimes with the eviction it will include double parking, for example where the municipality now will... So we have what we call the RDP system, I just forgot the

full name, where the government will give people like a housing subsidy for free. So there it's a whole thing of applying. So you have to apply and see if you meet the requirements to qualify for that. But now there's a whole issue with the system. So because people, they can commit fraud, there's corruption there were people's houses, when they're supposed to be allocated and stuff, then they give it to somebody else instead of the original owner, or beneficiary rather. So now that will cause maybe a double packing in the sense of the original owner, who maybe has the title deed, cannot occupy the house because somebody else is in the house. So now, yeah, we have a lot of those in South Africa. And we need to deal with that, where we need to challenge the Department of Human Settlement and the municipalities. So, yeah. Okay. And how do people access to your services? So how do people come to you? So it's, it's word of mouth, mostly. People who have access to cell phones or smartphones they use our website. But I think mostly it's word of mouth when another person was helped, or they have seen on the news, because if it's gonna be a big case, obviously, it's gonna get media coverage and then they'll know its Lawyers for Human Rights. And then sometimes we do get invited for like to media sometimes, like getting invites to radio on a radio station on TV. Depends on the case if it blows up and yeah. But other organizations as well, they do refer clients to us.

Interviewer

And within those cases, what are the most common challenges you face when trying to fight for the rights of your clients?

Nothando

Purely, the legislation sometimes the way it's drafted. Because there are going to be certain laws that we think are not fair, that we're trying to challenge in court and change. Because obviously, there were laws that were enacted before the 1996 constitution. And then now we see and we think, or we believe, rather, that they're not in line with the Constitution. And we try now to change those through litigation and stuff. So those laws that they kind of make the common barriers. So it's basically legislation most and sometimes it's officials who don't understand the law.

Interviewer

What kind of laws, can you give me an example?

Nothando

For example, the one for Mary Rahube, Louise can expand on that, it was her case. There the law favored more male than female where now a female house can only be registered under the male head of the family rather than the woman and stuff. So that was the legislation that was the Act back in the day. And yeah LHR challenged that. And so that was the Act back then.

Interviewer

And when was it changed?

Nothando

When did they? I'm not sure if they've already....? Because we've got the order back in 2018.

Interviewer

Ok, wow.

Nothando

But I'm not quite sure. But yeah, it's been a while now that we have that order. And I'm not sure that they have changed that if we have if the Act has been amended. I'm not quite sure on that. Yeah.

Interviewer

So they didn't go through after apartheid themselves to look at one laws do not make sense and change them?

Nothando

No, the laws are there. Now. It's up to us lawyers to see the loophole and try and go back and fix it.

Interviewer

Okay. And what do you think are the most common barriers that people face when they want to come here?

Nothando

Sometimes distance maybe? Because obviously, land and housing especially it's only here in Pretoria. Yeah. We do try it. We do consult over the phone and stuff. Yeah. So that shouldn't, I think, cause much. But then it's the distance most because we have a lot of mining communities, and obviously they are not from Gauteng. It's either from the Northwest or from Mpumalanga, where there is mining, where the mining areas are. So it's just gonna be the distance. Distance now because they have to pay out money. And some of them do not, most of them they're not well off. So I think those are the barriers. The distance and taxi fare.

Interviewer

Yeah. And within your work, do you think there's a stronger focus on land rights or like housing and property rights? Or is it very equal?

Nothando

We try to meet people, I think we fight equally for both. If there's a case, and you see we can do something about it doesn't matter whether if it's land or its housing. Hence the name to the program. It's land and housing. First it was land and housing. Now it's land and housing and property rights.

Interviewer

Fair enough. And your cases, do they translate into like law and policy changes?

Nothando

Some of them. That's what we're trying to do. Referring to the Mary Rahube case because that is the big case that we had, and the Maledu judgment as well in terms of mining, so that is what we are trying to do we try to change the law, we try and make an impact. So if you get a ground breaking judgment that influences the legislation and the amendment of an act. That's always underlying goal.

Interviewer

Okay, cool. And what legal frameworks do you guys interact with the most like what laws and policies

Nothando

So obviously, we have to look at other judgments. Common Law as well. And the legislation, mostly. Is the Constitution, a big part of your work? The Constitution is the foundation. Okay? The constitution is the foundation because everything stems from the Constitution. Like I was saying, that most of the unfair laws we made before the Constitution, so they are not in line. So hence, now when we try to change policies, we're gonna use the constitution to make sure that they laws they are in line with the Constitution. So the Constitution is the big part, it's the foundation. So everything that we do stems from the Constitution.

Interviewer

So you'd say the Constitution is a big tool of yours and you see it as helpful.

Nothando

Of course, absolutely!

Interviewer

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Do you feel like some of the legal frameworks might need revision?

Nothando

Of course! Of course, hence, we've now you're using the constitution to look at all the things that need change.

Interviewer

But the Constitution itself doesn't need improvements?

Nothando

Hmmmm..... that's ,that's a, that's a difficult one. A difficult to do. Do I think the constitution needs to be changed?

Interviewer

Doesn't necessarily need to be changing, maybe just need a little adding here and there.

Nothando

Alright, maybe the adding here and there, yeah. Yeah, I've never really thought much about it. I need to now that you've mentioned it. Yeah, but obviously changing a few thing won't hurt anybody.

Interviewer

Yeah, but constitutional changes are probably also quite hard to get approved right?

Nothando

Yeah, they are not willing to make changes.

Interviewer

That's not in the political interest currently?

Nothando

No, I mean, it will take years, it will take forever. Because now imagine if you are given two years to change a section in an Act and the court gives you two years. And then we find ourselves going back to court after two years for content. So imagine now the whole Constitution.

Interviewer

Yeah. Fair enough. Fair enough. And what other support structures do you guys use legal and non legal?

Nothando

Support structures?

Interviewer

Do you work with like different organizations? Or do you like work with other law firms or attorneys or something like that?

Nothando

We use a lot of, we work with a lot of advocates who are very nice advocates and sometimes they took on our cases pro bono simply Joe. So yeah, we employ a lot of advocative services on a pro bono basis sometimes because I mean litigation is expensive and sometimes it can be dragged on for years and we won't have money for that. But advocates they usually come we come to Arizona so most of the times advocates. Other law firms, no. Maybe if they want we provide advice cause we are kind of seen as experts. Not to blown our own horn but, in most cases because especially for Louise who's the head of the program. She has been in the game for over 20 years. So she is the expert. I think she has earned it to be called an expert.

So obviously, we learn and I'm sure she has a lot to offer. So I think organizations obviously they call in for advice and sometimes we'll also call because there are some cases where we would maybe get a new case we've never dealt with and we do not know how to go about it. You know people in the field, you can give them a call for advice as well.

Interviewer

I feel like the entire like a lot of the legal people in Pretoria know each other from what I have seen so far.

Nothando

I think that's how it should be because even if they will be fighting we're just trying to ,we are fighting for the greater good you know, so we're not fighting each other. I'm just fighting the system or you know, so, we do work with other organizations who are pro bono in terms of maybe referring clients or finding a solution to a bigger problem that one organization cannot deal with on its own. Like because obviously capacity and resources issues. That becomes a big issue like capacity and resources.

Interviewer

They are quite limited right?

Nothando

Yeah, because of obviously finding them and stuff.

Interviewer

You rely on the donors, fully?

Nothando

Exactly. So now bring on an organization that is willing to help make the load lighter.

Interviewer

Okay, well, that's already it if you have any other comments or add-ons that you feel like should be mentioned that I didn't touch on...

Nothando

Not really Yeah, no. I've spoken much. haha. But yeah, that's basically it. If I didn't cover something for you, you'll get something else from Louise or others that you have or are going to interview. So yeah.

Interviewer

Thank you so much.

D) Interview 4 - Phyllia Ngotaje – 26th July 2023

Interviewer

All right. Fairly simple start. What's your name? Your age? And what's your role at LHR?

Phyllia

Okay, my name is Phyllia Ngotaje. My age is 30. And I am a candidate attorney.

Interviewer

And what does that role entail?

Phyllia

Basically, I am learning how to do the whole law thing. I assist. Well, I have my own cases, but I'm under the attorneys, I'm being supervised all the time. So I prepare cases, file at court, I write up court papers and stuff like that, do research.

Interviewer

How long have you been here?

Phyllia

Been here for about two or three months.

Interviewer

What did you do before?

Phyllia

I was the head of a paralegal unit at Mining Affected Communities United in Action.

Interviewer

Okay. Do you feel like there was a difference?

Phyllia

Yes, definitely.

Interviewer

What was the difference?

Phyllia

Um, I guess my role here is a bit more legal. I still write a lot of letters. But it's, it's different in the sense that I do a lot more court orientated research and stuff here at LHR as compared to what I used to do, because what I used to do was more activism based rather than legally.

Interviewer

Which one do you prefer?

Phyllia

I like them both. But I've got to say LHR is winning the race.

Interviewer

Why?

Phyllia

I'm really enjoying the legal research and just kind of the high pressure of it all. Dealing with a lot of cases. And drafting is really cool.

Interviewer

Drafting what?

Phyllia

Drafting stuff for court. It's really cool. Because there's like a lot of research that goes into it that you kind of put into a clever little...

Interviewer

...Argument?

Phyllia

Argument, exactly. It's a really cool.

Interviewer

And here at LHR what are the most common cases you see?

Phyllia

Evictions. Well, it's people who are staying at a place, which they are no longer paying rent for, being unlawfully evicted. Yeah.

Interviewer

So basically evicted with no court order?

Phyllia

Precisely.

Interviewer

Any other cases? Or was it just really mainly this?

Phyllia

Mining stuff, and the mining stuff is kind of always different. It's, I don't know. It's not always straightforward kind of land issues. There are land issues always infused in there. But it's always community issues. Whereby, you know, in one community, you might be looking at SLP issues, which is the social and labour plan stuff. Or you're looking at, I don't know, the community trust issues. Or in another community, you're looking at, you know, the mass eviction of the people because they were staying in mining houses and stuff like that. So like, the mining issues are very intricate and different. So they're quite interesting.

Interviewer

Why do you think those are the most common cases? Why do you feel like these groups are more likely to lean towards the law itself?

Phyllia

I think it might be because the law is the easiest tool to actually kind of vindicate their rights. I wouldn't say it's the most accessible but it's the easiest tool. What's scarier to a landlord who's doing something illegal than someone who is legal, kind of scaring them into place. It doesn't often work, but I think it does work quite a lot, in a lot of instances. And in community settings, I know that a legal letter or legal input can really make a difference. Especially when because communities are often marginalized. The impact of legal kind of weight or whatever, you know, that really makes all of the difference because communities are no longer as vulnerable to exploitation as they were before. When lawyers are involved.

Interviewer

And how do people access your services?

Phyllia

Calls. A lot of people just come to the office as well. But I think a lot of people do just call in, and then try to find out about an appointment at which point we just tell them, they can come in at any time.

Interviewer

Do they get referred a lot? Or is it mainly just people coming in?

Phyllia

I'm not really sure if they're referred, but I would assume so. Because I've had a couple of instances in my short time here where people I don't know, come here looking for Phyllia. Like where did you get my name?

Interviewer

So it's probably also a lot of word of mouth?

Phyllia

Yeah.

Interviewer

Okay. And what are the most common challenges you guys face when working for your clients?

Phyllia

I would say social media harassment. Yeah there's a lot of Xenophobia in South Africa. I know whenever we're working on something that has the potential to, you know assist foreign nationals then Xenophobia becomes a big thing.

Interviewer

So then the organization gets a lot of hate?

Phyllia

A lot of hate, especially on Twitter. I know last week with our Rabie Ridge mass eviction there was doxing of some of LHR's employees online. And when we were working with the refugees, when I initially started, a lot of people were really hating on the refugees and LHR for helping the refugees like they're not vulnerable as a group, which was weird. So Xenophobic sentiment is quite a big, strange thing.

Interviewer

Is it only in the media that the xenophobic sentiment comes through or as well in other places?

Phyllia

For in my experience, it's been in the media predominantly.

Interviewer

So not like judges being assholes?

Phyllia

Um, I've heard of judges doing it. But I had not experienced it.

Interviewer

Fair enough. And what do you think are the most common barriers that people face when they want to come to you?

Phyllia

I would say probably transport, a lot. Because we're a public interest firm, there are very few who do what we do pro bono. So to access the kind of services that we give, is very limited. So if you're living in another province, or even in another area in Johannesburg, for example, and we're in Pretoria, depending on the resources that you have, it might be difficult to come and access our assistance, because we definitely do predominantly deal with, you know, the more marginalized indigenous kind of groups.

Interviewer

Within your work, is there more a focus on land rights or more in housing and property rights, or is it equal?

Phyllia

I would say there's a fair balance. Land rights there's definitely... I think it's quite balanced. I think bigger, more broader issues are definitely land rights. But property issues are more frequent, because people have issues with a landlord on a more frequent basis. But I think the deeper, more intricate issues, the constitutional issues, per se, would be like land rights. And those are what make it to like, the Constitutional Court.

Interviewer

Okay. So you feel like the ones that maybe translate into policy changes or legislation changes tend to be more the land rights cases?

Phyllia

100 percent.

Interviewer

Okay. So what are the legal frameworks that you guys interact with the most?

Phyllia

Um, I've interacted with SPLUMA quite a bit. National Housing Acts, the Rental Housing Act. I think those are the three that I've interacted with the most.

Interviewer

What is SPLUMA?

Phyllia

The Spatial Land Use Management Act.

Interviewer

Okay, what is it like? What is it about, in a short version?

Phyllia

If I'm gonna tell you, I'm gonna lie to you because it's really long.

Interviewer

Ok, never mind. So what role does the Constitution play?

Phyllia

The Constitution is like the overarching guide for all these different acts. Nothing can be against it. It's basically what everything needs to adhere to. It gives us the outline, and everything else colours it in, if that makes sense at all. *walk-in to ask her for files for Rabie Ridge case*

Interviewer

So, where were we?

Phyllia

Constitution.

Interviewer

Constitution. So constitution is you feel like the main important piece of legislation?

Phyllia

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Yeah, I mean, it's the guide. If anything, doesn't comply with the Constitution, it's kind of unconstitutional and that can't stand. So I think the Constitution is the big one. It doesn't say much, but it tells us what we can't do.

Interviewer

Is it very helpful in that sense, or is it sometimes also a challenge?

Phyllia

I think it's aspirational.

Interviewer

Okay. Yeah. It's saying you where you should go, but it's not necessarily always easy to get there?

Phyllia

Yes. And it doesn't tell us where we are. Because by no means are we where the Constitution...

Interviewer

...says you should be?

Phyllia

Yeah.

Interviewer

But do you feel like it's your role as like, litigation lawyers to bring it there?

Phyllia

100%. I mean, as human rights lawyers definitely. It's our role to develop the law in line with the Constitution and get the reality to match what the constitutional imperatives kind of lay out for us. Because the Constitution is very pretty.

Interviewer

Yeah, it's a highly appraised constitution worldwide.

Phyllia

Exactly. Its impressive!

Interviewer

It's a very impressive constitution.

Phyllia

So we need to get reality to look that way. Because at this present moment, I think that reality is lacking in a lot of aspects.

Interviewer

Do you feel like the government is helpful in that sense? Or is it sometimes, like, kind of pushing back on your efforts?

Phyllia

The government is bogged down by a lot of red tape, man. Some is self created, some is corruption.

Interviewer

So corruption is also a big issue?

Phyllia

You cant escape corruption.

Interviewer

Its everywhere?

Phyllia

I mean, and I'm not saying don't be corrupt, you can't run away from it. But I'm saying if there's a whole pie, eat like 20%. Don't eat 80%. And, you know, at least they'll implement things that are good for the country. Don't implement things that you know, are not going to work. A good example would be e-tolls. We saw the E-tolls didn't work in Portugal. But we still implemented the system here. And then we

saw it fail after spending billions. And then we buy trains that don't fit on the spokes. But we know the measurements for you know.

Interviewer

Just generally very little care behind what the government does?

Phyllia

Exactly. We should have people who actually think about what they're implementing.

Interviewer

Do you think any of the legal frameworks you guys work with need some revision?

Phyllia

Oh, no, definitely! Definitely!

Interviewer

Which ones? All of them?

Phyllia

No, not all of them. I think they are, for example, with mining, the Mineral Petroleum Resources and Development Act definitely needs work. But that is because profits are put before people. And it doesn't include enough consultation and stuff like that.

Interviewer

When was that Act made?

Phyllia

In 2002 or 2004.

Interviewer

So not too old.

Phyllia

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Not too old, but old enough to exclude a large majority of people.

Interviewer

Do you guys aims to..?

Phyllia

I mean, there's constant talks about amending it. Implementation is a problem. Yeah. I would say something that needs to be really looked at in terms of our land issues, would be the CLaRA, which is the Communal Land Rights Act. There isn't any legislation which encapsulates communal land rights because communal land rights are, there's nothing that really looks at the way communal land rights in South Africa are, like how they're actually lived. Because it's constantly changing and everybody practices different

Interviewer

Because every community is also different.

Phyllia

Precisely, and that makes it challenging to then have an overarching legislation for that. but if CLaRa is not good enough and that was supposed to be temporary in itself, but it has been ongoing since like, 96. Yeah, it's the informal informal... I forget it now. But it's basically for informal land rights.

Interviewer

Also related to mining or anything?

Phyllia

No, no, no, this is just the way people organize and live their lives, land rights.

Interviewer

Do you think the Constitution needs some changes?

Phyllia

It's Aspirational, of course it needs changes. But at the same time, I think it's really good because it's a forward looking constitution instead of a pragmatic one. So we can leave it as it is, because it's something we aspire to. Yeah, we can leave it as it is, if people start changing that they're going to change it to do bad things.

Interviewer

Don't trust the government?

Phyllia

I don't trust the government. I don't know how many people do trust the government.

Interviewer

That's a fair point. What are the support structures that you guys rely on at LHR? Is it more legal support structures or non legal support structures?

Phyllia

I would say legal support structures. And I would, I would venture to say that we look at other organizations within legal spaces. It's not really, I mean, it's not really like a free for all. But there's also non-legal organizations which are, you know, also within the civil society space, which are partners and stuff like that. So, bit of both. It's yeah, it's a bit of balance.

Interviewer

Okay, that's it already. If you have any comments or anything else that you feel like, should be mentioned.

Phyllia

No, I'm pretty comfortable. Good.

Interviewer

Perfect. That's it. Thank you very much.

Phyllia

Thank you.

E) Interview 5 – Nthabiseng Ramosepele – 27th July 2023

Interviewer

A very easy interview. What's your name and your age?

Nthabiseng

I am Nthabiseng, and I am 28, turning 29.

Interviewer

And what is your role at LHR?

Nthabiseng

I'm a candidate attorney.

Interviewer

What does that include?

Nthabiseng

Mostly consulting with clients research, drafting and appearing in court. Magistrate court, the lower court.

Interviewer

And how long have you worked at LHR?

Nthabiseng

I started as an intern. I think 2021. October.

Interviewer

Yeah.

Nthabiseng

And then 2022. September, that's when I got the candidate role.

Interviewer

Okay.

Nthabiseng

Yeah.

Interviewer

Did you work anywhere before? Or was it before University?

Nthabiseng

No. So, while I was at university, I used to volunteer for socio economic research institute, it's very similar to the work that we do at land and housing specifically, it is also an NPO. And after that, I went into financial services. So before doing my articles, I was in the financial services industry.

Interviewer

So socio-economic research institute that SERI, right?

Nthabiseng

yes.

Interviewer

Do you feel like there's a difference in SERI and LHR or they similar?

Nthabiseng

They're not very similar. Maybe I'm biased, but I think we do a lot more.

Interviewer

Yeah?

Nthabiseng

Fun things. I think at first, I thought they were similar. Because on the outside, when you read everything, it reads the same. But honestly, with LHP, I think we reach a scope with regards to housing and land that most organizations barely touch. Yeah, so I think, I mean, the goal is the same: land tenure, but SERI is more focused on the City and we are focused on everything that includes housing, property and land.

Interviewer

Okay. And what are the most common cases that you see at the land and housing unit?

Nthabiseng

So I think it really depends that last year, I was more exposed to evictions in agricultural holdings. So I thought that was the biggest issue, which is ESTA and it sort of makes sense, because very few organizations deal with that part of legislation and that part of land, but right this year, I would say I'm seeing more....ehm, I think inner city evictions. So there's a lot of squatter camps around the city, people are trying to move closer to the city, and it's just a demolition and evictions of those types of settlements.

Interviewer

And what are the most common demographics that you see, like of people that you see here?

Nthabiseng

That's a very interesting question. Because let me ask, are you asking demographics in a sense of who brings the case? Or is demographics and in the sense of when we look at the number of people we are representing? Who exactly are they?

Interviewer

Both!

Nthabiseng

So who brings the case is usually black man? But when you look at, I'm not sure if you've seen our questionnaires. So after we collect our mandates, we capture the questionnaires. But when you look at it, you get to see that there's a lot of black woman single-headed households. So who walks in and who we represent sometimes do not really match so but, it's mostly black people.

Interviewer

But why do you feel like black men are the ones who always come first? A very simple answer.

Nthabiseng

Patriarchy. It's really is that and it's because they usually just assumed the leadership role. Yeah, even when we do have community meetings, you realize that the bulk of the people who are here are actually women and when you ask, it's you find that the leaders only represent less than 5% of the entire community.

Interviewer

Okay. And why do you think these like you said eviction cases come here a lot and farmers cases, come here a lot. Why do you feel like, these are the cases that are.... these are the group of people that see the law as an avenue. So why do you think they are the people who think, okay, I can go to lawyers for human rights, and they will help me.

Nthabiseng

Because there's no one else who can help. There really isn't anyone else most of them are either any below minimum wage, which means they cannot afford private lawyers. I think also lawyers for Human Rights has bulked, quite a good credibility of showing that they are there for communities and able to assist where it seems like the city is not on their side, the nation is not adhering to the Constitution. That's when Lawyers for Human rights jumps in and is able to protect them. I think that's the reason why they come here.

Interviewer

How do you, how do the people access your services?

Nthabiseng

So I think Louise and the team have built quite a strong community network. So I would like to say they go to our website, but that is not true. A lot of ways that people access our services is through word of mouth. So previously, we had a sort of a forum or a training called activism school, we would have leaders from different areas around the city of Tshwane. And I saw that that was the way that people who needed help got access to help. By asking somebody, I have this case, but because they went through the training that we provided, they would know that, okay, you have to go to Lawyers for Human Rights. So the it's just word of mouth.

Interviewer

Was that training a one time thing? Or is that something you guys do regularly?

Nthabiseng

We did it regular. I think previously, I've only been to two trainings. So I think previously, it was a regular thing. And I think the last year of this year, it was caught? Yeah, because of budget issues. Yeah.

Interviewer

That's the problem I keep on hearing a lot. And we're coming to it right now, what are the most common challenges?

Nthabiseng

Budget issues, hahaha. I think, budget issues maybe I'm really not that high to know what is happening with the budget. But as a CA, I think the most common problems I am experiencing, I think I'll have to speak on capacity. But we are working on that. I think we do quite a lot of work in the city of Pretoria as well as Johannesburg, sometimes. We are only, this is just us doing all of that. So sometimes it can be, those are small capacity issues that we might experience. But everybody knows the role they play. So usually it works well. Very well.

Interviewer

That's good. That's good. Do you feel like the city and the government is helpful? Or do they also pose a challenge?

Nthabiseng

I think that was a big challenge. Yeah, yeah. I think it's the city's not helpful. From my experience, the city is really not helpful, the city it is just causing more chaos. They're not helpful. I cannot say that, I don't see how they've been helpful in the two and a half years that I've been at LHR. I haven't engaged with the city and seen exactly.

Interviewer

So they're more of a challenge?

Nthabiseng

They are they are they are our biggest challenge to be honest. So yeah. Just trying to make them aware of what they're supposed to do, constitutionally speaking.

Interviewer

Yeah. So in your work is there a stronger focus on land or on housing rights? Or is it quite equal?

Nthabiseng

I think it's quite equal. I think it's quite equal, because I say this based on the cases that I have. Yeah, of course. I currently have two land cases that are raising question that needs to be answered today. And we've also experienced one of the biggest RDP hijacking in the western area, in which we are telling, we're taking the application to court to say that here are people who have been on the waiting list housing for this long, and then they saw that the RDPs are now vacant are now entering into those houses. It is illegal, but it raises questions that that have been waiting to be answered from 1994, when the RDP is initially sort of introduced into the country. So I think we do quite well in both housing and land.

Interviewer

And how does the work in the cases you do translate into, like, impacting people's everyday life, or even policy or law changes. Does that happen? Is that always the goal? Or is it more the goal of helping the people? Or is the goal always behind it more, try to make actually like legislative changes.

Nthabiseng

I think of recent we've, we've been trying to make sure that we are able to assist our clients, but also literally changed the law. Because, I'm not sure if it's not a new thing, but a lot of our high court matter, we tried to draft it in two parts. The first part is addressing our client's needs. And the second part is addressing the national need because most of the time when one person comes in, we know that this is not the only person who's struggling with this. And so if we change policy, then we have more than one person. So, both.

Interviewer

Do you think the High Court is helpful in that sense? Or do they feel like they're more often rejected the second part.

Nthabiseng

I haven't participated in a successful second part. So I don't know how the court would act.

Interviewer

Um, what are the legal frameworks that you guys use the most?

Nthabiseng

PIE, ESTA, Housing Act, as well. The Constitution, definitely. Number one. Not so much the Rental Housing Act but yeah.

Interviewer

The Constitution plays what role exactly.

Nthabiseng

So the Constitution, I think it's our main agent, because it's the one that... when we are going against the city is the one that tells us what are the provincial goals and as well as what the city is supposed to do. But most importantly, tells us about section 26, which is the housing laws and that is where all those judgments all the acts then come into place. But at best the starting point, is always the Constitution.

Interviewer

Do you feel like some of the legal frameworks that you guys have need some revisions?

Nthabiseng

I think so!

Interviewer

Which ones?

Nthabiseng

ESTA does not provide, so ESTA it's the one that we use for agricultural holdings. ESTA does not protect the children of the long term occupier. So when the long term occupier passes away, those children no longer have rights to remain in the property. The history of this country when it comes to wages, the history of this country when it comes to housing, should somehow make provision for at least first generation to be able to have those rights when it comes to housing and occupation of land. Because if a person has any minimum wage, and they know this place as their home.

And with ESTA, particularly with ESTA it's sort of communities that grow and remain in the same place. And they grow remaining in the same place, thinking that this is home forever. So whenever the long-term occupier passes away, that's when the realisation that this is actually not home, we have to go... So I think if perhaps ESTA could be extended so that it can at least afford first generation, some protection when it comes to housing.

Interviewer

Do you think the Constitution needs some work?

Nthabiseng

very long thinking pause I Think not. I think that the constitution is fine. I just worry about my interpretation and the city's interpretation of the Constitution.

Interviewer

Oh, do you think they're vary?

Nthabiseng

I think so. Because if they were reading the same constitution that we are reading, they would not be the one demolition and evicting unlawfully. So,

Interviewer

Do you feel like the city doesn't care about the Constitution?

Nthabiseng

Yes. I think the city does not care about the Constitution. I have seen the city care about the Constitution where it benefits the city. So a lot of cities have this inclusive city, a liveable city. But when you go into the issues that are affecting our clients, you realize that our clients are being pushed outside of the city. So the city for me, only cares about whatever goals that they're trying to do. So when, if they decide that they want to start a clean-up project, it does not matter who's sitting on the corner trying to make money for their family and selling bananas and other foods. They just want to clean the city. So the city only cares about the city, not the people within the city.

Interviewer

Do you guys work with other legal support structures or non-legal support structures?

Nthabiseng

We do sometimes work with for example, the meeting that we're in, I think the Neil and I'm not sure what his name is, he's in architecture. Sometimes we work with people who do maps and stuff. So it's no it's not always legal. Yeah.

Interviewer

But also with legal organization you work together?

Nthabiseng

Yes, I think we have a project with pro bono. Oh, and legal aid. Legal Aid recently started a land and housing unit. Louise's helping quite a lot there. So, yeah. And other small sort of social organizations as well.

Interviewer

Okay, that's it already. Do you have any comments or thoughts that you feel like should be mentioned?

Nthabiseng

No, no, no. I think I think I think women need to be in housing. That's my last comment. I mean, in South Africa needs, that right to housing, we need to push it really to cover women. Women need to be in housing.

Interviewer

So, you feel like they need more specific attention?

Nthabiseng

Yeah, I think I think so. I think we already have a case that does that. For certain parts of South Africa, I'm really hoping that word gets out and women actually come and approach us or pro bono because I think we're working with pro bono with that to seek assistance in getting houses in their names. Yeah.

Interviewer

Thank you.

Nthabiseng

Thank you.

F) Interview 6 – Adenike Fapohunda – 31st July 2023

Interviewer

So, to start off easy. What's your name and age?

Adenike

Adenike Fapohunda, age 25.

Interviewer

Okay, and what is your, what's your role at LHR?

Adenike

I'm a candidate attorney.

Interviewer

And how long have you worked here?

Adenike

About a year and a half?

Interviewer

And what does your role entail?

Adenike

Basically I draft papers for litigation, speak to clients, do legal research. Write lots and lots of letters.

Interviewer

And before that, what did you do?

Adenike

I was in university.

Interviewer

Studying what?

Adenike

I studied. Bachelor of Laws and Bachelor in politics and philosophy.

Interviewer

And, within your study, were human rights centred or not so much?

Adenike

Well, I think it's almost impossible to do a law degree in South Africa now and not like have to centre human rights. Yeah, there's definitely, causes when it comes across more heavily than others. Criminal Procedure, we had a lot of conversations about human rights. Constitutional Law, of course. Our entire constitution is like based on like, you know, the rebuilding of the society of South Africa. Even like Administrative Law, so there were definitely like the importance came across.

Interviewer

And at your work here at LHR, what are the most common cases that you see?

Adenike

I think the most common cases you see are Land and Housing cases, eviction cases....

Interviewer

Land and Housing cases meaning what?

Adenike

Yeah so cases having to do with like, where people stand the quality of their lives. So for example, the landlords who remove access to water, landlords who remove the access to electricity, evictions, especially by squatters. I've worked with a few cases with those. There are a few cases where we work on mining rights. There are a few cases where we work on. Yeah, I guess that's it.

Interviewer

And demographics wise, what do you feel like, are the most common groups of people that you see.

Adenike

I think the most commonly groups of people that we see are impoverished black people. Um, the ages I think range. Obviously you can't really talk to a lawyer if you're under 18. But a lot of our clients, especially when we have large scale evictions from shacks, are children just represented by their parents.

Interviewer

Why do you think that these are the most common cases? In the sense of like, why do you think people with eviction issues and property issues are more likely to come to you than people with other issues?

Adenike

Well, I think because the organization obviously has a different you know, there's a refugee clinic. So we do land and housing here and the reason that I think those people tend to be black and impoverished peoples because those are normally people who have issues when it comes to access to housing, access to justice, access to property access to security of tenure, are more likely to get exploited. For example, on farms and would need help and their labour conditions, and living conditions make up the vast majority of mines and also make up the vast majority of this country. So yeah,

Interviewer

And how do people access your services?

Adenike

I mean, they call, they email the way they normally just walk through. A lot of our clients don't have email addresses. So most of the time it's calling.

Interviewer

What do you think are the like, challenges that they face when they want to access the law?

Adenike

So, so I think there's a lot of groundwork that's been done, about people knowing that they actually have rights and that they can actually go to court. That just because somebody comes and evicts you and you are living in a shack where you don't have security of tenure doesn't mean you have to go, right. But I think maybe that would be an issue the fact that people don't even know that they have rights like in PIE in ESTA, right. But there are a lot of community leaders. I guess when they get to us, those are clients who mostly know that they have rights. I think the other issues are if you are served, for example, with an eviction notice. You wouldn't necessarily understand the language like what does it mean that you have 15 days to file like a week? A legal week is not the same as a calendar week, right? You wouldn't know what it means for your case. If you don't file within those 15 days, you wouldn't know that you can access a lawyer without paying, right? In some of our cases, we've had issues as it pertains to language, especially when our clients are migrants, right? It's easier for them to be exploited because again, the lease agreement with your landlord might be in English and I don't speak English, so I can't access the help I need when I need it. Because I don't even know how to explain that issue to my lawyer. Even like I can't even go to the rental housing tribunal because my ability to voice my concerns. And also just like time, like you have to like take a day off work, come and sit down and talk to your lawyer and that's harder when you're poor. I know like in terms of cases like transport money, I've had a lot of clients like problematize like even the ability to be able to like afford the 20 Rand or whatever, to get into a taxi and come here. To get there, like the other people that are supporting the case. And it's not like we charge for legal services, but that's also very hard. It's also difficult to vindicate your individual rights and you live in a community right? So we all get evicted. I might want to take a different route but if the large majority wants to settle, I'm now forced to settle, if the large majority wants to reject the legal help from whatever NGO, I think, then I would also have to because, people don't necessarily know they have personal rights. It was an unreal, rather, what are the most common challenges that you guys face when you are fighting for those people? Like I really think, like, I don't even know if it's a funding issue. I do think it's running against the curve, like I don't think so going to court is obviously one way in which you can negate your right but you do need real structural change, like, we can take 1000 cases to court on evictions, and the law can look so beautiful, but if you don't have a government that's putting in place housing plans, right, accessible housing plans, we're just going to keep going to court and it does feel a bit like you know, putting stickers on the like, you know, the leaking, keep on putting a sticker over the water that's falling out. So I think in that way, I help 100 people and then 300 people, there's 200 People next week, there's 5000 people who still need help. I want to say that it's funding. That is true, but I think without structural change, we can get as much funding as we want or like the idea that we're understaffed, right, again, even if we were able, we are far from being able to litigate every man that comes to us. We have to tell clients like go to the rental housing tribunal. Have you tried to represent yourself in court because we just don't have the capacity. But even if we have the capacity, the law by itself accessing the judiciary by itself is just not, it's just not enough. No, I think the laws are perfect. I think policies are pretty good too. I just think the implementation of the policies and the implementation of the laws are really poor.

Interviewer

So do you feel like there's a lack of political will there?

Adenike

Yeah, I think there's a lack of political will because, and especially issues relating to land and property would be necessary to make like largescale systemic change

Interviewer

and what type of change you think like policy changes or the laws itself? And within your work, do you think there's a stronger focus on land and property or more on housing?

Adenike

Well it's intertwined, right, we don't really litigate so that people can farm, or to have access to it assets per se. It's more with impoverished people security of tenure, housing, your ability to live on this land. When we do have mining cases when we want communities to get like settlement agreements, we want them to get like money for the land that they own. Even that is so intertwined with their houses, people come to us and they're like, well, we would like the mine to give us what's due for mining on our land. However, the reality is also that we live here, and that I mean, there's always this very weird issue where people come back and my great grandfather's grave is being, like the tombstones falling off because of the shocks from mining. Yeah. So I think it's very intertwined.

Interviewer

Okay. What are the legal frameworks that you guys work with?

Adenike

legal frameworks as in the laws? PIE, ESTA The Constitution, of course. Yeah, those are the main ones now.

Interviewer

And you think that changing these laws wouldn't help that much?

Adenike

No, because the laws are great

Interviewer

you think they perfect the way they are?

Adenike

I mean, obviously, laws can't be perfect. Laws can't be perfect, but I think they're, I think they're well written. I think they're, they cover a lot of bases. They're open to expansion, of course by litigation. Yeah. I, however, think, because it almost seems like I can't say.... It's difficult for me to say like, this is how the laws can be improved when we're not even managing to do what they say. And I feel like they're quite good. Yeah.

Interviewer

So what exact role does the Constitution play?

Adenike

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It colours the way we read the laws right? Like so. For example, in terms of communal land, there is this traditional Councils Act that would almost give men, but just because of the way like African traditions work, men the power to decide on what happens to the land. And it's difficult to pass laws like that or it's difficult for them to survive litigation and judicial muster. Because, like, the effect of them are sexist, right, not that they're sexist themselves. It's just that looking at our reality and the laws apply to reality, you know, there is you know... So I think like just in everything, it's the kind of underlies the law and helps us to interpret it.

Interviewer

Do you guys do extra work next to litigation or is it mainly litigation?

Adenike

No, so we do communal engagements, we do activism school. You know, teach activists how to get on with it basically on their own. We have manuals which we give out, we do education, we comment on legislation.

Interviewer

And do you have legal or non legal support structures that LHR works together with?

Adenike

Um, yeah, we do. We kind of work with the NGOs in the building.

Interviewer

Like the UN one that's downstairs?

Adenike

Yeah. Future families. It's always difficult because you have to like remember like your role as an attorney. Oh, Tshwane Leadership Foundations is the other one in terms of getting houses for clients, like when we really emergency housing. But it's always difficult because like, obviously you're lawyer but also an activist and so you have to remember your role within that. And so it's not your job to get people food.

Interviewer

But then you have other organizations that you can rely on

Adenike

Yes.

Interviewer

Okay, fair enough. That's it already. Any other comments or thoughts that you feel like need to be mentioned?

Adenike

No, do you have any other follow up questions?

Interviewer

Not so far, and I'll get back to you.

Adenike

Okay.

Interviewer

Perfect. Thank you very much.

G) Interview 7 – David Dickinson – 1st August 2023

David Dickinson

Hi.

Johanne Degenhardt

Hi, how are you?

David Dickinson

I'm good, thanks.

Johanne Degenhardt

Thank you for doing this, first of all.

David Dickinson

That's a pleasure. Go ahead. Yeah.

Johanne Degenhardt

OK, so I'm doing research for my master. I'm doing development studies at the International Institute for Social Studies in the Netherlands, and I have been with LHR for the last two weeks with the land and housing program. Umm to basically learn about how their function and yeah how legal mobilization can maybe lead to structural changes, and if so, how? And Louisa and Jacob told me both that you have been at LHR as well, right?

David Dickinson

Yeah.

Johanne Degenhardt

So yeah, I wanted to also interview you because I interviewed everyone else there. And Jacob and Louisa said you might have some interesting insights.

David Dickinson

OK.

Johanne Degenhardt

OK, first of all, how long have you worked at LHR?

David Dickinson

I was there for 12 months.

Johanne Degenhardt

OK.

Johanne Degenhardt

And what exactly was your role?

David Dickinson

I was a candidate attorney? 0:1:22.510 --> 0:1:24.190

Johanne Degenhardt
OK, what did that entail exactly?

David Dickinson
Umm well, a candidate attorney is a part of a legal training to become an attorney.

Johanne Degenhardt
Mm-hmm.

David Dickinson
And so you have a principle. Which was Louise in this case. And basically, you work under the instructions of the principle. And you either do 12 months or two years depending on the amount of training you do. And given my time shortage, I had a sabbatical year, which I used for the CA. And so yeah, I worked with Louise and obviously other members of the, who you interviewed, I worked on the land housing issues.

Johanne Degenhardt
OK. And do you still work with them or what do you do now?

David Dickinson
Well, I'm back at the university as, as I said, I was on sabbatical leave, but I've got three cases which I've continued. Well, two cases I've continued with and one new case that I've picked up, so I still work on a small number of cases. Working with Louise and Nothando. I'm not a CA anymore, so I think if anything I'm an intern now. I've been demoted to intern, yeah.

Johanne Degenhardt
OK. And your lecturer at the university, right?

David Dickinson
At wits university, yeah. In the sociology department.

Johanne Degenhardt
OK. Umm, while you were at LHR, what were the like most common cases you saw? Yeah, you still see probably.

David Dickinson
Well, you, there's obviously the walk-ins which I don't do now because I'm not at the office. So yeah, the walk-ins give you a variety of cases. So, you probably sat in on some of them. You know, so and I think that's probably a different spectrum to what you get when you go into sort of litigation or mobilization.

Johanne Degenhardt
Yeah.

David Dickinson
So umm, the cases which I've really run with mainly of being evictions, threatened evictions or evictions. So that certainly was the cases which take up most time because we pursued them. But obviously, in the walk-ins you're getting all sorts of disputes around houses around trading rights. A lot of family kind of disputes

involving wills. And obviously the family household dynamic of the family house, you know?

Johanne Degenhardt

Uh, and how did you guys choose which cases to take on more seriously like was there?

David Dickinson

Yeah, it's a good question. And I don't think there was a, there was a variety of a variety of reasons, a lot of personalities involved. Obviously, I was very junior there and there's a lot of junior staff there, so I think there's a lot of mistakes get made, you know, and in a way, it's a way of finding your feet as a human rights lawyer. So, I think there's a bit of chaos. But uh, so there I think there's competing dynamics. I mean, for some people it's around strategic litigation this term I'm sure you're familiar with. So, Louise certainly as a senior attorney is looking for eh... She's got ideas about what she wants to challenge, and so she's looking into a case as to whether that might fit into that. On the other hand, you know you're there to serve the clients and to do your best for the clients, whatever their problem is, and whether it's routine. So, my own approach is, for me, I'm not that interested in strategic litigation. I'm more interested in mobilisation, so social mobilization around using legal tools as part of a part of a package of tools. So, you know, I mean, and given that there's a lot of autonomy, you've probably seen the LHR is chaotic, right?

Johanne Degenhardt

Yeah.

David Dickinson

I mean, I think that's the best word to describe it. Umm. Which has the advantage of, you know, I think one of the wonderful things that I had for the year was that Louise gave me a lot of freedom to run with cases that I've that I've thought, you know, would work well for me. So yeah, so is there a strategy for cases? Yes, there are multiple strategies. Are they coherent? No, they're not. Because Lawyer for Human Rights is under resourced, so you can't possibly meet all the demands that are coming in. Legitimate demands, yeah.

Johanne Degenhardt

OK. And what were the biggest challenges that you faced when picking a case and working with that case?

David Dickinson

Picking the case sounds, gives too much autonomy.

Johanne Degenhardt

OK.

David Dickinson

You know, cases sometimes impose themselves on you and I think that's one of the things you have to learn is to manage cases. So that you select on, on a on an efficient basis, let's put it that way. So, I mean, one of the rules that I developed for

myself, and Louise was fully supportive. What I said this I said that I'm not gonna work with clients unless I've been out there to see for myself on the ground.

Johanne Degenhardt
Umm.

David Dickinson

And in fact, I mean I've extended that. So typically with a few cases that I'm managing, and I obviously have the luxury, I'm paid by Wits. And I have quite a bit of spare time. But I spent a lot of time with the clients out in the field. Umm, but you know that's the way I approach things. So, because you can end up with hopeless cases, I would have liked. I think for me, I would like more structure in any human rights work. I think it's always gonna be chaotic. Human rights work is always chaotic because you've got people coming to you who have low educational levels. Often, they've actually been to many sources of help. Before you, they just like all, every lawyer tells you. The clients lie to you. It takes time to work out what's really going on. So, you know. So, for example, there was a number of cases that were happening when all we could actually do was delay an eviction.

Johanne Degenhardt
Yeah.

David Dickinson

Because if you looked at it you saw that it was going to happen. The rights were not there and I, my own question was, well, why are we putting resources into that? Umm, when actually, there's other groups where we could achieve real gains for them. So, I think you know there's a, I mean this is the, but you've seen LHR and no one's gonna deny this is chaotic. I think other parts of lawyers for human rights are more managerially organized and there's pros and cons for that. I'm not saying it's. I think as I said to you, I think the chaos actually has some good aspects to it. Umm, but what was the main challenge is I think very clearly to me. With hindsight, it was being overworked, partly our own fault, because you know, you took things on. And in doing that, it was hard for the level I was at CA, candidate attorney, to kind of absorb and to learn and to spend time sort of working the law out working out what's going on here. So I think just overwhelmed by coming for help would be the biggest problem. I mean, I think there's, I wanna make sure you know that there's a lot of good things about LHR, but you're pushing as to you know, what the difficulties are.

Johanne Degenhardt
Yeah.

Johanne Degenhardt

And did you face any challenges as in like was there ever a push back from the city or from other like people outside of LHR or was that not the case?

David Dickinson

What do you mean, pushback? Resistance to what we were doing?

Johanne Degenhardt
Yes.

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David Dickinson

Absolutely. I mean it's a war. Fought out with legally, primarily in legal terms, but there's also media terms and so on.

And you got to remember that you've got lawyers on the other side who have been paid too...

There's there was very rare, very few cases that we came across, that I came across, I should say where it was able to resolve it in the way you would like to by a pre litigation.

Simply, you know, coming to an agreement. I mean some of the best cases I had was, uh, you know, where you actually got a family to sort of reach agreement over some dispute, because it was so unusual.

Often, by the time you've got to Lawyers for Human Rights people are dug into positions, and then obviously you've got to recognize that when people have been evicted, which is, as I've said, is the case that I'm doing.

There's powerful forces that want them to be evicted, whether that's private umm developers, which is two of the cases that I'm running with at the moment, or whether it's municipal authorities who have their plans which these people don't fit into as they would like. So these are these are politically economy struggles that are happening.

Johanne Degenhardt

Yeah.

David Dickinson

They reflect the wider inequalities of South African society. Probably every society. So of course, there's opposition. And there's money, you're up against money where again, the municipality, despite being bankrupt.

Tshwane municipality has unlimited funds to throw lawyers against us and private developers similarly. And you've got to remember the legal profession, while it professes morality and ethics, in practice, you know it's a dirty game.

Johanne Degenhardt

Yeah, it's very political in the end, is it?

David Dickinson

Well, I would say not even political. But depends what you mean by political. I would actually say very instrumental and based around knowledge of the law and technicalities in to further the interests of clients irrespective of the impact on human beings.

Johanne Degenhardt

And did you develop like a strategy to overcome like these various in that sense or was it just trying to fight back?

David Dickinson

I don't think the organization as a whole did that at. It was very much reactive. All of the CAs, you probably spoke to and Nthabi, who I worked with a lot.

Johanne Degenhardt

Yes, I have.

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David Dickinson

You know, we all in the process of that chaos developed ourselves. So, it's certainly, I mean look, I'm an academic, you know, I spent a lot of time thinking about what I do and so certainly I've been developing strategies.

But recognizing there's actually limits to what you can do, South Africa, if you look at the broader South African picture, it's not great. In fact, it's the completely opposite. So, you know, you've got to think about do you want to just focus on small victories for some of your clients, you know to do some good that way. Do you want to learn or to develop ways in which we mobilize communities? Which of course is official line of LHR, but I don't actually see that much of it taking place, to be honest. It's something I'm very interested in. But I think most human rights lawyers, it's very hard to be a good human rights lawyer.

It's emotionally stressful if you are taking it seriously. I mean, I've been, you know, I mean, I've what can I say? It wasn't a shock to me, but that's because I've spent 30 years in townships. I'm not new to the kind of poverty and the community disputes and so on, but I think a lot of people run away from the dirt and the grit of the of the situation of the client, the actual situation. It's much easier to just focus on the law and stay within a much more sterile environment while still trying to do good. So yeah, I mean you, you know, it's an important question around these strategies and I think you know I've got a great respect for Wayne and I hope you've interviewed him. I think he thinks very clearly about these things.

And yeah, I mean, he probably says not too much different from what I think, but I think, yeah, look, it's just overwhelming, I think overwhelming and the tide going against human rights.

Johanne Degenhardt

Yeah, that's fair.

Did you like when you on the cases that you were working on, what did you work towards?

So, did you do some sort of litigation strategy to bring forward a precedent or was it for you more for the single cases and trying to help the person in their situation?

David Dickinson

Well, as a CA, you're not really independent.

I mean, you're working under the principle. And so, I think that's not really a fair question to ask a CA.

So, uh, for many CAs I think it's just a matter of doing what they're told and hoping that they they're gonna get through the day.

But I you know what's been interesting for me is since leaving, I left in February, and actually having a lower workload and not being in the office for the walk-ins has allowed me to think much more clearly around strategies. Uh, within the current context.

So, uh, you know, I'm intending to set up a, a, a law clinic down in the Free State.

Johanne Degenhardt

Yeah.

David Dickinson

So obviously it's a very good learning process for me to think about how I'm going to manage that you know, in in a different context.

But you know, with a lot of autonomy to work out how to work effectively. So yeah, so I'm thinking a lot about that. But again, you know, as I say, I'm not your average CA, right?

And so you know, I have that experience which helped. So, it'd be interesting to know, you know what the other CAs or interns, how they see things.

Remember, a lot of people come to LHR not because they're particularly interested in human rights, but they need to get their, they want to be a lawyer and they need that experience.

So you know, and that's fair enough. I mean that's what they want to get.

Johanne Degenhardt

Yeah, fair enough. Were you also involved in other kinds of work next to litigation?

Johanne Degenhardt

Because I've heard that they do sometimes workshops or like training with communities, where you involved in those?

David Dickinson

Yeah, I've done a bit of. I've worked a lot with an activist on the West Rand. As I say, that's closest to what I'm interested in. So, we've done training. Yeah, a few times I did one with Nthabi. I've done some with Moss, who's this activist.

Johanne Degenhardt

What kind of training was it?

David Dickinson

Well, basic legal training.

Johanne Degenhardt

OK.

David Dickinson

Umm, but also a committee training where you've got an informal settlement trying to get a sort of, we held elections for the committee and then train the committee.

Yeah, there was the activist school that you probably come across this. I wasn't involved with that. That was bringing activists into central locations.

LHR was just the partner in that there was other organizations I think really driving it.

The work I did, because Louise gave me a lot of freedom to do this, was much more thinking about how communities operate.

So I mean, we actually had a demonstration on the West Round in support of three community where we and I think Members from three other communities', cases I'm dealing with, came to support. So, it's trying to build a network, you know, but these are very small steps.

Johanne Degenhardt

And were there other like support structures or organizations that you guys collaborated with, legal or non-legal ones?

David Dickinson

Umm. Not really. I mean, I think you know the work is so overwhelming. You

know, I mean, I think a lot of other better resourced organizations, people have much more chance to workshop and so on. I mean, I struggled. I mean, one of the things I did try, and push was that we would increase the training there and I organized one training, I think maybe 2. But it was like swimming against the tide because, you know, people were too busy. They were going to court and whatever, whatever.

So, you know, I think that's very different actually to what we call downstairs, which is the Immigration and Rights program. They have, I've been I'm looking from the outside, but very extensive training and so on. So I think it depends on the organizational culture, or sub-cultures within LHR. But coming back to the point, no, I mean I think were we really?

Look, I mean the service organization, so you know we would have a costs attorney when we win costs in in a case you know that gets handed over.

That's a professional relationship.

And yeah, I mean, Louise, for example, huge network of people, you know, that you could contact. Certainly, sort of superficial links. But you know, and sometimes you'd get help from somebody.

But umm, no, I would say that's something that is fairly limited. And I don't know if that's normal because my background is not NGO. As I said, it's academic.

Johanne Degenhardt

Fair enough. What were the legal frameworks that you guys used or interacted with the most?

David Dickinson

By legal framework you mean?

Johanne Degenhardt

Legislation.

David Dickinson

Oh, I see.

David Dickinson

Well, evictions, it's obviously it's primarily PIE and ESTA.

Johanne Degenhardt

Yeah.

David Dickinson

And then I was involved in, there was a there's a flat dwellers, there's a rent strike that I was working with, not the rent strike itself because that's actually.... So electricity cut offs, water cut offs, rent issues.

So there you've obviously got the Housing Act, the National Housing and the Rental Act in particular, but particularly and then the Consumer Protection Act obviously kicks in there as well.

But then a lot of its municipal. So, you've got to get the municipal bylaws as to what the regulations are around water and electricity.

Johanne Degenhardt

Mm-hmm.

David Dickinson

Very hard.

Very complex.

Umm, I mean, electricity is a complete nightmare to try and understand when and where people have got the right to cut electricity off.

Occasionally it becomes clear because it becomes constructive eviction.

So you just move into PIE. But yeah.

So a lot of municipal stuff around the city clients.

I think that's the primary, but I mean, you know probably over the course of a year

I was dipping into, I don't know, 30, 40, 50 different pieces of legislation.

Sometimes quite superficially.

But you know, if you if you try to enforce costs, then you start to go into, you know, costs against the organs of state.

I mean, it's just execution processes, going after money when people we're not paying up. You know, so it just kind of mushrooms as you know.

I mean, I don't know how many pieces of statutory legislation there are in the country, but it's a lot.

And then you put the municipal, and each municipality is different of course. The Municipal Systems Act is quite important because it provides this framework for minimum standards around service delivery.

And we actually had a very successful case and we've got a guy's electricity back.

Using that and the municipal bylaws combined and that was an interesting case because it was it was a vindictive case against him for trade union action. Umm.

And we yeah, so the mine company instructed the municipality to cut the guys electricity off and we had evidence of that.

So we won in the High Court actually and got his electricity back.

Johanne Degenhardt

And what role does the Constitution play?

David Dickinson

Well, it's fundamental in terms of that, uh, you know, the all of those, a lot of those, statutory acts that I've talked about, are the enabling legislation of the various sections of the Bill of Rights.

I mean, it's an extremely powerful weapon for human rights, but of course it's largely subverted.

Not only in the housing field I've done a lot of work around precarious labour, labour brokers. You know, so the laws are good, actually pro-worker, but they're circumvented, right?

And they're your lawyers are involved. They're the ones that are strategizing how you get around the law to the advantage of employers. And it's the same in the housing business. There's firms of lawyers that are advising their clients how you get rid of people without the hassle of going to court.

Of course, that's our job, is to try and get them into the hassle of going to court.

Johanne Degenhardt

so do you feel like the Constitution is helpful or were there also times where you felt like the Constitution was not helpful.

David Dickinson

Well, I would answer in two ways.
One is it's the Constitution is fundamental to human rights work.

Johanne Degenhardt
Sure.

David Dickinson
But in another way, I would say it's clear the Constitution isn't working.

Johanne Degenhardt
so do you feel like the Constitution might need some revision?

David Dickinson
Yeah. Well, it has to be revised, but it won't be.

Johanne Degenhardt
Why?

David Dickinson
Well, there's a political stalemate in the country.
There isn't. There aren't the social forces or political or social forces capable of mobilizing enough to reconstruct the Constitution.

David Dickinson
So the Constitution, I mean, look what happened. They can't even get the expropriation through.
You know when you have the EFF and the ANC in theory on the same side and they can't even get that done.
So you know the last constitutional change was when? 2015 or something. And all the constitutional changes have been fairly technical.
There's been very little fundamental change. And that political deadlock.
Is if anything worse. So and as I said to you, I mean the de facto law of the land has moved. It's increasingly detached from the Constitution.

Johanne Degenhardt
Yeah.

David Dickinson
So what we actually do is not what the Constitution says and that's this disjuncture, the crisis that we're in.

Johanne Degenhardt
Do you feel like other legal frameworks might also need revision?

David Dickinson
What do you mean by other legal frameworks? All of them fall under the Constitution.

Johanne Degenhardt
That's true, ok.

OK, I think that's all I have questions.

Do you feel like you have any other comments that should be added?

David Dickinson

I don't think so. I mean, I think you know, I'd be very interested to, I assume you're going to show us your work when you've done.

Johanne Degenhardt

Yes.

David Dickinson

Good. I'm pleased. I'll read it with interest.

Johanne Degenhardt

OK, cool.

Thank you very much.

David Dickinson

OK.

Johanne Degenhardt

Have a great evening.

David Dickinson

You too.

Johanne Degenhardt

Bye bye.

H) Interview 8 –Tarisai Placedes Mugunyani – 2nd August 2023

Johanne Degenhardt

Hello.

Tarisai Placedes Mugunyani

Morning.

How are you?

Johanne Degenhardt

Good. How are you?

Tarisai Placedes Mugunyani

I'm good, thanks.

Johanne Degenhardt

Thank you for doing this first of all, I know it's early.

Tarisai Placedes Mugunyani

That's OK.

Johanne Degenhardt

Umm so I am a master student from the Netherlands, and I have been with Louise and the housing unit from LHR for the last three weeks.

I'm doing a master's in development studies and I'm basically looking at law and legal mobilization and the impact it can have.

Tarisai Placedes Mugunyani

OK.

Johanne Degenhardt

And so yeah, wanted to basically get to know your time at LHR and your experiences.

Tarisai Placedes Mugunyani

Sure.

Johanne Degenhardt

OK, cool. Uh, first question would be how long have you worked at LHR?

Tarisai Placedes Mugunyani

Ah, so I joined LHR in 2013 as a candidate attorney. I think in March, and I left LHR in 2020 April, yeah.

Johanne Degenhardt

And so where you were candidate attorney, the entire time or did you change?

Tarisai Placedes Mugunyani

No. So are the candidate attorney for the first two years, and then I got admitted and I got retained as an attorney.

Johanne Degenhardt

And what did your roles as an attorney and as a candidate attorney entail?

Tarisai Placedes Mugunyani

Uh, I mean, as a candidate attorney I think you have the gist of what the work is that the

program does. So, I was basically the first stop in terms of that work. So, consultations, client intakes, admin, writing letters. I think I was, and only if I can say, one of the few candidate attorneys to litigate as well. As a candidate attorney I had, I had my own cases in the Magistrates Court and as I gradually gained experience. I had High Court matters as well.

And I think I did my first constitutional matter when I was still a candidate attorney at LHR.

Johanne Degenhardt

Wow, that's very cool.

What were the most common cases that you saw while working at LHR?

Tarisai Placedes Mugunyani

I mean, it was very broad in the sense that you had your runoff the mill housing cases, which is either landlord and tenant issues.

Umm, that ranges from being locked out, you know for failure to pay rent. It's water issues in terms of freights and levies and access to that. Electricity issues as well in terms of levies and access to that.

And then what also came out of that work then was, I think during my time there was a lot of informal settlements merging up, you know, due to the housing crisis and the need for accommodation.

So, we had a lot of urgent applications stemming from evictions that happened. And demolitions that the city of Tshwane would do for those informal settlements. Outside of also like the land issues, like the restriction matters that came through, there's a lot of work around farm dwellers.

Their right to housing and what legal rights they have.

Once either they stop working on the farm and you know, security of tenure in that regard.

And I developed quite a huge, what we called the women in housing practice.

So, what we ended up seeing in terms of the consultations that were coming in is that there were a lot of women who are staying in townships. In what we call family homes that would face eviction because either the property, it's a family house, where the property was registered in the male relative's name and that person sells the property.

Therefore, it creates tenure issues for the women in the house.

I had a big banking practice also at LHR. Something we saw were a lot of sales in executions, which should be like a normal run of the mill. But looking carefully into them, they were not as clear cut as they should be because a lot of these people were not getting adequate notice that their properties were on sale.

Communication around making settlement plans for trying to, you know, catch up to the areas was not being done. Which is a requirement in law here in South Africa.

Also that there was a big loophole in terms of once a property, its selling execution has been issued by the court, right. And the property has to go on auction. What was the price? You find that a lot these homes sold for very minimal amounts, that did not equate to the value of the property at all. Because there's a loophole in law that allows between the sheriff and, you know, people who come to auctions to buy property.

So, you ended up seeing what we call bulk buyers. Where maybe one comes with like R50,000 and is able to buy five properties because the sheriff started the bet that maybe 10 Rand you know. And the maximum bid that it goes up to be like maybe R5000 and someone is able to... you have bulk buyers within sell the properties at market value make more than what they bought the properties for. But the people in the house are not aware their house has gone on sale, so they'll come to with this eviction application. Someone says this is my home. I owned it. I'm surprised, now there's an eviction application. There is someone who says they're now owning my house.

I don't know when my house was sold. And we had to interrogate the process of how did this property ... How did the bank go through the process of issuing notice if their areas, issuing summons. Seeing if there is an execution order granted, and how from then, has the property gone on the market. You know, which was something of a concern for us.

So, we challenged the uniform rules of court to try and enable the code to actually set a market price that in the process of hearing these applications for sale in execution, that the Court in granting and order notes the minimal amount that a property can be sold for. You know that the person who's requesting for the sale in execution needs to plead and state what is the market value, what would be the minimal amount the property can be sold for and then that is part and parcel of the order granted by court. To ensure that if one is to lose their home that they are not also settled with a debt, you know.

The aim of the selling execution is to recover a debt, but if the process is not going to recover the debt and the person is left owing, then we haven't achieved what the lawyers created to do, the relief that is created to do for the creditor, you know, and for the debtor in question.

Johanne Degenhardt

So what were the most common challenges that you guys faced with these cases, or barriers maybe?

Tarisai Placedes Mugunyani

I mean it can depend, right? You can have challenges in terms of clients, in understanding of the process that the wheels of justice are slow.

I don't know in your jurisdiction, but we have, you know. So, you have those internal administrative challenges. But from an external point of view, I think it's also the fact that LHR is a non-profit organization. So, you rely on funding to be able to carry through some of these matters.

At some point in time, you need to employ Council and you know costs that come with litigation. But outside of that I think it's also once you've obtained certain judgements, you know we've created and I think and LHR still continues to, but in my time we created a lot of important jurisprudence that post-judgment you have issues in making sure that you know the terms of those judgments are properly

executed and not because you umm, but because the state is just not coming to the party.

Particularly when you get judgments from court that call for meaningful engagement on certain things, that keep put timelines on the state to deliver certain things and to come up with alternative solutions and certain things. That obviously slows down the process, yeah.

Johanne Degenhardt

Yeah, for sure for sure.

And how did you guys pick which cases you took on and which cases you didn't have the capacity to take on?

Tarisai Placedes Mugunyani

Umm, I think you know the spectrum of LHR's work is in two, right?

So one is you do the day-to-day work, you know of what we call basic issues, but secondly that through the process of consultation, you are able to identify strategic issues that can cover and cater to a broad spectrum of people.

So that you know, you either are targeting loopholes within the law, or you are and further developing the law that is already in existence.

You know, certain things will start by chance.

Like I said, through consultation, you'll find that you're having a lot of these 'My property was sold and I'm being evicted'. And the moment you sit with three of such consultations you pick up the thread and you kind of interrogate and see, what are the common elements and what could possibly be the issue.

And I think that's how we kind of developed that element of the work, even with the women in housing cases. I think Louise would have told you that through just general basic consultation, you pick up these interesting aspects in terms of the challenges that the clients are facing and then, just as a public interest lawyer, you start picking up these issues that you can like further develop and say maybe there's a loophole in law here, or there's a question that needs to be posed, the development of common law, you know, yeah.

Johanne Degenhardt

OK. What do you think were the biggest challenges that people were facing, like trying to access you or maybe they didn't know you or they didn't feel comfortable with the law?

Tarisai Placedes Mugunyani

Umm, I think the issue with LHR is not access.

I think they have such a strong footprint, in terms of just the public interest sector and the work that they do. I think the biggest challenge is capacity. That you are overwhelmed by the number of people who require assistance and it's a challenge on, you know, who not deserves but who requires immediate help and who do you advise to go seek help elsewhere?

You know umm, so the challenge is, is not in terms of access

But I think in terms of capacity to be able to give assistance to each and every person would knock on LHR's doors.

Johanne Degenhardt

Yeah. Fair enough. Umm, so did you guys develop like a strategy in that sense

when you were working towards litigation? Was there like a set strategy that you guys followed?

Tarisai Placedes Mugunyani

I mean, I think in many instances, you start the year off with you know what key issues came out of your work from the previous year, right? What key issues do you want to continue, where you see a growing need?

So, for example, at some point we moved away from doing the urgent evictions in the common sense as they were. Because the law is clear there and there's been enough jurisprudence that has been developed, you know, through the Constitutional court, through the PIE Act to say you cannot evict anyone without a court order, right.

And what considerations need to be taken into account when you actually then do evict, particularly from the state and not necessarily private parties who are seeking eviction applications.

Because then there are certain duties that are there on the state to provide a report to the code for suitable alternative accommodation and such as that. So, we got to a point where we had adequately developed that aspect of the law.

So obviously we change our tactic in terms of that. A common thread, we started picking up was now that those evictions are happening, you find that the city goes into these informal settlements, and they destroy people's properties.

So an element of constitutional damages comes along in terms of, how should evictions be conducted.

And they do this because they want to deter people from being able to put up structures again. So, if they take people's materials, if they destroy people's properties, then they in their minds, they think then people will not have the means to be able to put up structures.

So therefore, they've deterred anyone from what they call land invasions in court. So, we picked up an element to say actually now instead of just focusing on, you should not evict without a court order, that there's an interesting aspect in terms of how they deal with people's property there. And then element of constitutional damages came into play.

To say, they do not have the right to destroy people's property, they do not have the right to confiscate people's building materials, and if they do, they have to pay for that.

And you'll find that there is it's a bit of a number of cases that went towards that element, right?

So each year, based on the common threads that we would have picked up from the previous year, you kind of set targets for the next year.

And in doing that also, you know there's certain aspects that you can't control.

So you might find out that Louise sits with a lot of the restriction matters.

That's her specialty.

When I was there, I sat with what we call the urban practice, right, the evictions, the women in housing matters, the banking matters.

But something what came out of that work also, and that was not in the year plan, was recyclers.

You know, and that's something that just came out from someone approaching the office, a consultation, and then you start seeing these common threads that these recyclers are facing challenges of do they have the right to work? And if they have the right to work, what are their right to accommodation in terms of their vicinity to

their work?

And then those issues came up. So certain things can be planned for, but the beauty of how LHR operates as a law clinic is that you might be asked to extend or deviate your plan based on what is coming up and the concerns that you pick up from the from the clinic.

And those are the day-to-day consultations, yeah.

Johanne Degenhardt

Umm, umm, what other work did was done by LHR in your time next to litigation?

Tarisai Placedes Mugunyani

I mean, LHR was big on advocacy, but I think advocacy, not in the same way that maybe other public interest organizations do, but.

Just like advocacy in terms of community awareness of their rights. So a lot of community engagement work, training as well in terms of, I think in my time it was not the, I think now they have the general eviction training in terms of trying to capacitate these communities so that where we cannot step in, they know their right and that they can do certain things for themselves.

But funny enough, in my time we developed quite a practice in terms of like mining communities and the challenges faced by mining communities.

So before I left, I think we've done quite a number of trainings in terms of the rights those communities have in terms of public participation in the process of the application for mining rights, the social and labour plans in terms of what benefits can communities get if the mine is to come within their communities, what can they ask for?

What's the process, awareness in terms of the impact of mining that it can have and also just a link between what are your rights to land, vis à vis the mining companies right to mine once they have made an application and application has been granted.

So advocacy in that sense.

Johanne Degenhardt

And within your time you mentioned it. You went also to the High Court and the Constitutional Court.

Can you give me maybe like one or two examples of uh, like legislation, changes or amendments that you guys managed to do?

Tarisai Placedes Mugunyani

OK.

So umm, the Mary Rahube case?

Johanne Degenhardt

Yeah, I read on that one.

Tarisai Placedes Mugunyani

Yes. So, we managed to get a particular section of the Upgrading of Tenure Act unconstitutional. As it discriminated against women's right to property.

Our work in the Given Nkwane case.

We then participated in the amendment of Rule 46A with regards to those sales in executions and having the court participate in the process of setting up a minimal amount in terms of rental property can be sold in. So actually, parties now have to

plead that.

Johanne Degenhardt

Could you say the case name again, sorry I didn't catch the name.

Tarisai Placedes Mugunyani

Let me type it for you.

Johanne Degenhardt

Yes, thank you.

Tarisai Placedes Mugunyani

Umm, I mean, we eventually settled, but this led to the development of that Rule 46A that I spoke about.

Umm, I mean, we have the Maledu judgment, just strengthening appeal rights in terms of community consultation and consent to mining on their property.

I mean, we have the Schubart Park judgment.

That kind of set out for the development of PIE in terms of what needs to be done when one evicts particularly a large number of people and what meaningful engagement looks like. And those were set terms that were put by the Constitutional Court.

Off the top of my head, I think that's what I can think of.

Johanne Degenhardt

That's already a lot. Thank you, umm.

And were you guys like collaborating with other non-legal or legal organizations or other support structures that you were working with?

Tarisai Placedes Mugunyani

I mean with, with this banking matter, I think we managed to get the South African Human Rights Commission to come in as amici in the High Court. To kind of give their experiences in terms of concerns around banking practices that were coming through their doors.

With some Maledu judgment, I think LRC came in as amici just on the communal property rights questions in the Constitutional Court.

And something of interest is, I think at some point in time, Legal Aid, the legal aid board, they have a constitutional Development Fund, was assisting us with some of the litigation costs.

I think in the Maledu matter, yeah.

I think because the sector is so small in South Africa and it becomes smaller given the area in which certain public interest organizations focus on that, we sort of rely on each other in terms of stepping in as amici if needed.

Just that type of support because we are sort of working on the same issues and people might have the same interest and it would bolster a case if we had to step into each other's cases as amici to give it different perspectives to the court in terms of what is being deliberated. So, I think that is also an aspect of the work.

I think if you look at the number of public interest organizations that deal with land questions in particular, they're very few.

I think it's LHR, it's LRC, it's AFRA, what's that one in Cape Town... I am forgetting.

But you'll also note that not all of them also litigate to the extent in which maybe LHR does, and I think LHR really leads on that aspect.

Tarisai Placedes Mugunyani

Others might have more of a policy view to their work and that helps us should they come in as amici because they bring that different perspective.

And you might have SERI, but they are very much more urban focused, you know, like urban property questions and they have a research component to their work as well.

So they might not heavily litigate in the manner in which LHR does.

I mean, I stand corrected, but I think when it comes to this particular aspect of the work in LHR and maybe LRC are the only ones that actually have more of a litigation focus than anything else when it comes to land and housing issues.

Johanne Degenhardt

What were the legal frameworks or the different types of legislation that you interacted with the most?

Tarisai Placedes Mugunyani

Oh gosh! All of them!

Sorry I'm not making it easier for you, but all of them.

From the prevention of...I know the acronyms: PIE Acts, ESTA the Restitution Acts, The Labour Tenants Acts, ... Just based on the various aspects of the works, certain things will come into play. For example, with a lot of the mining work, even though it has a land focus, you find that you interact with the MPRDA a lot because that comes into play. If it comes to the mining work, NEMA comes into play as well.

If you're looking at the water aspect, the Water and Sanitation Act comes into play. But I must say SPLUMA at some point in time became like such a focus for us. Because with the urban issues you kind of now have to look at, especially with the recyclers, you kind of now have to look at what does SPLUMA say in terms of either relocating them, in terms of work and home and in planning. What are our cities obligations in terms of planning, and I think for some of the informal settlements where we have court orders for upgrading a particular settlement, how does SPLUMA come into play in terms of upgrading a settlement and making it into a formalized township or formalized place of residence.

Johanne Degenhardt

What role did the Constitution play?

Tarisai Placedes Mugunyani

I mean, it's the cornerstone of where all these other pieces of legislation come from.

They come from 25 and 26. You plead this is the applicant, this is the respondent. You cannot negate to say: Then what are the constitutional rights in terms of either the right property or the right land, security of tenure because it's it starts from there.

Johanne Degenhardt

Umm do you feel like the Constitution needs revision or do you think it's good as it is?

Tarisai Placedes Mugunyani

I don't think the Constitution needs revision.

I think the Constitution is clear, right?

Maybe one aspect in terms of market value and expropriating property, but that's another question. I'm not for expropriation without compensation, but I think market value is a lot, because if you are to look at in restitution matters, how much then the state has to pay.

I think amounts need to be deliberated in the context in which restitution occurs, right?

So, if you are to consider market value, you might not be able to have property restituted because the state can't afford to pay market value for those properties.

So there is an aspect. But I think it's a small aspect in a broader spectrum of how I think good that part of the Constitution is. I think what it needs revision is the actual pieces of legislation that came out of those two sections.

Johanne Degenhardt

Okay.

Tarisai Placedes Mugunyani

I think there's a need for reflection in terms of the litigation that has happened in terms of those pieces of legislation, the current needs of the country in terms of those rights.

So, I think that needs to be revisited. I think there's a need to have an overhaul of what we call the land acts, you know, that needs to be done.

And I think that hasn't been done since a lot of these pieces of legislation have come in.

I mean, we have, I don't know if this was controversial to say, we have the DA try to amend PIE, right?

Because they hate informal settlements and they're trying to deal with the homelessness issue. They tried to limit people's rights. I know that SERI has participated in submitting comments on how ridiculous those proposals that are being made from the DA are.

But just from the state, that they haven't looked at that. For example, ESTA, the one that deals with farm workers, I think we had a case challenging the minimal amount.

So I think you have to earn a certain amount, and that had not been relogged for the longest time. And I think we litigated on that.

And then the Gazette was amended.

So, since the amendment of the Act, I think they hadn't revisited that until maybe 2017, 2016, 2017. And that's something that came out in 1997.

So obviously there's a need to consider inflation and all of that, and they hadn't. They have only just amended that amount like in the past two, three years or so, right.

But the actual provisions of the Act in terms of how limiting it is to women, right?

So for example, if you are an occupier as a man and you worked on a property and then that person passes away. The rights that the women and children have to be on that property are very much limited.

I think they are given a year, but you know whether they work directly on the farm or not, we do not consider that they within their own rights would have rights as people who were maybe resident on that property for over 20 years.

That's something we haven't looked at because then the only way we can retract that is through practice and what has been happening right and to look back and to see if there any loopholes or something needs to be considered and that hasn't been done.

We have the Labour Tenants Act because we had a lot of people who gave labour back in the day, pre-Apartheid, who gave labour for the right to stay on a property. That hasn't been revisited to see, how is that relationship now?

Because it's something that we don't talk about, there's still people who are giving labour to have a right to stay on particular pieces of farms in this country. And that's not something we're looking at, that hasn't been revisited.

We sit with the Restitution Acts that they attempted to amend, but that amendment was declared unconstitutional, and we haven't revisited that to say how are we going to deal with that, because there's still a lot of restitution questions that come up.

People who applied, or who lodged land claims as far back as 1998, those claims have not been finalized. So, there's clearly a fault within the system in terms of the Restitution Act, establishment of the Land Claims Commission, the duties of the Commission, the Land Claims Court, which then got established because of the Restitution Act, to just revisit and see if things are working or not. And we haven't done that.

So, the issue is not the Constitution, but you know, every law needs to be amended and revisited often, to always see if it's still protecting the rights that it intended to protect.

And I think that's something that needs to be considered.

Johanne Degenhardt

You feel like it's likely that's going to happen, or rather unlikely?

Tarisai Placedes Mugunyani

Listen, I think it will, you know. But it's a heavy load on public interest organizations, right, because you kind of now have to challenge the provision of the Constitution for that provision to be revisited, in terms of the legislation, which is exhausting. but I think there's been talk within the Department of Rural Development and Land Reform to revisit all those laws. I think there was some sort of committee that was created, but it's been many years and we're not seeing the progress of that. So, it will happen. I think the issue becomes of when and how long the process take.

Johanne Degenhardt

Then I have some more miscellaneous questions in that sense.

Where did you study?

Tarisai Placedes Mugunyani

And then I studied at Northwest University in Mahikeng.

Johanne Degenhardt

And within your study, do you feel like human rights were very centred?

Tarisai Placedes Mugunyani

Huh, that's a tough one because I followed this path because when I did constitutional law, I was fascinated. And when I did international human rights law was fascinated. And then I participated in moots and that's how I got into this field. Yeah, so I don't know if I'm the right person to ask...

Johanne Degenhardt

Fair enough. You were already interested from the get-go.

Tarisai Placedes Mugunyani

Because I was already interested. I was in class, and I was like, hmm, this is interesting.

So I don't know if to say if it's centred. But I think the curriculum covers it.

I think the question just becomes, how practical is it? Because it's one thing to say, umm, you know, we have a Bill of Rights, we have the Constitution. This is what it says.

name spoke about the right to life and it developed that section 11 and this and this, and it did that. But I think that there is a lack of just translating what that means in terms of day to day.

I think there is a focus, but I just think that more can be done in terms of how it translates day to day, you know. I think that's important to do because we sit with... I don't know how to express this. You know you have students that come from various backgrounds, right.

And if you haven't experienced something you might not have a full understanding of it.

So, what's the right to education means to someone who either went to a good government school or private school and then went to one of the top universities. Their understanding of section 27 of the Constitution differs from someone who comes from the rural areas, who had to really be the best of the best to be able to then have access to some of the best universities in the country and what's that right means.

And an understanding of that right will then trickle down to the basis of education in terms of any development learning, any childhood learning, schools capacity, access to certain things.

So their understanding of section 27 totally differs from one to the other and maybe what the curriculum needs to do is to ensure that for someone who has unconsciously benefited that their mind is opened up to the fact that there are really disparities within the context in which everyone has access to certain things. And that translates to how you understand the Constitution, is application in the particular subject when you're in school. I think that will help in creating a stronger civil society and maybe extending it a bit more. Because I feel like there is such a need, but I think the sector is really small.

Johanne Degenhardt

OK.

That is it for my questions.

If you feel like there's any other comment or thought that you want to say before this ends.

Tarisai Placedes Mugunyani
No...

Johanne Degenhardt
No, thank you so much.

Tarisai Placedes Mugunyani
Alright, thank you.
Hope it helps.

Johanne Degenhardt
It helped a lot.
Thank you so much.

Tarisai Placedes Mugunyani
And good luck.

Johanne Degenhardt
Thank you.
Have a great day.

Tarisai Placedes Mugunyani
You too. Bye.