

HRLA report

On conclusion of the placement, internship or contract the successful applicant will be required to write a short report (1,000 to 2000 words) summarising the work he or she has done. This report must be provided to the HRLA within six weeks of the completion of the placement, and will (with the permission of the bursary recipient) be published on the HRLA website

Legal Resources Centre, Grahamstown, South Africa: August/September 2017

In the summer of 2017, I was fortunate enough to have been given the chance to spend 6 weeks interning for the Legal Resources Centre (LRC) in Grahamstown, South Africa.

LRC is a non profit human rights organisation which uses the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless, and landless people and communities who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic, and historical circumstances. LRC specialises in public interest litigation within the scope of constitutional human rights.

Two years previously, I had spent 2 months in Grahamstown working as a volunteer teacher in several of the township schools. Within this teaching role I encountered many of the problems that the South African education system is facing and that LRC is now litigating on. From corporal punishment to a brutally severe lack of resources and infrastructure, teaching was both challenging and psychologically exhausting. So many of the problems that schools encounter on a day to day basis stem from structural and systematic incapacities which stem from the political environment of post-apartheid South Africa. At administrative level, corruption is having the very real effect of spinning the education system into a seemingly irreversible state of trauma. These vast instabilities are compromising the constitutional right to basic education of children across South Africa. To me, even limited to the scope of my teaching capacity, it became very clear very quickly that the law has an extremely important role to play.

In light of this, I was extremely excited to be able to return to these issues in a legal capacity when I was offered a placement at LRC. My wholehearted thanks to the HRLA are overdue as this endeavour would certainly not have been possible without the generous funding and support which I have received.

My time at LRC confirmed several things. Firstly, that this type of work demands both perseverance and unwavering sympathy for the cause of humanity. Secondly, that despite successes, the road to achieving South Africa's vision for human rights is one consistently under threat, plagued, targeted and bulldozed by a flamboyant array of sometimes unbelievable and almost always unpredictable set-backing factors. A case won will merely gift you even more work than the case itself; the task of follow up, enforcement and compliance. Yet it is nonetheless paramount that each small success be sewn into the wider patchwork, it's importance noted: integral to the whole. And finally, that it is not one individual alone who will change the footprint of human rights in South Africa. But instead, it is where dedicated and motivated individuals work together as a

group that social justice becomes more than a mere theory or project. LRC renders it a reality.

My second day in the office transpired not to be a day in the office at all. Instead we spent the day out on location at the site of a rural community negotiating the terms of a complex and lengthy land claim. Over the course of my internship, I was fortunate to have been given the opportunity to visit township communities facing eviction which put the work of the LRC into raw perspective. Engaging with the experiences and struggles of the clients has been emotionally challenging. However, through such exposure, I have been both humbled and consequently encouraged to contribute to the work of non profit human rights law wherever in the world that may be.

I hope to provide an outline of the inspirational work undertaken by LRC by discussing some of the cases I was involved in during my time. Correlative to the poor quality of almost every element of the education system in the Eastern Cape, LRC's focus and thus, my experience lies largely within the remit of litigating the right to education.

Mud schools

Among the most traumatic legacies of apartheid are the mud schools of the Eastern Cape. The unsafe infrastructure conditions that persist in former black-only schools coupled with the reality that these schools are entirely ill equipped to facilitate learning ensures that the existence of these mud schools fundamentally compromises the constitutional right of many children to basic education. Since 2011 LRC has been engaged in litigation against the department of education with the aim of compelling the respondents to eradicate mud schools by complying with promises repeatedly made to do so. Accompanying each promise has been the realisation that there has never been a proper financial and operational plan to achieve the replacement of mud schools and that the existing budgetary allocation for the objective has been hopelessly inadequate. It has been confirmed that the South African constitutional right to basic education is immediately realisable and is therefore not subject to limitation or justification by lack of financial resources. Nevertheless, the department frequently quotes its inability to fund the requirements of the education system. LRC's work has been profound in holding the department to its obligations. Ultimately litigation has led to major settlement agreements, one of which saw the department commit over 8 billion Rand to the project of eradicating mud schools. Much of the work I have been involved in regarding the mud schools matter has been researching and reporting on progress made. I was tasked with compiling the history of mud schools litigation and subsequent commentaries into an audit which is to be published in due course. Throughout this process I have come to realise the importance of compelling the government through public interest litigation and the importance of holding the actors to account in the face of corruption, poor management and complacency.

Scholar transport

Another matter which the LRC is undertaking to litigate on pertains to the project of scholar transport. The Department of Education is bound by national policy to administer transport for students to and from school. However, the distribution of the

transport is both haphazard and systemically flawed. Students must meet arbitrary criteria in order to be eligible for state funded transport. Furthermore, due to systematic incapacities, transport is often not provided because schools fail to comply with basic application procedure and where they do, the applications often go unapproved due to a severe backlog of applications. The effects of not being provided with scholar transport leaves students in danger of being mugged, raped and even murdered as they walk long distances in harsh conditions between home and school. It is difficult to comprehend the risks that students are expected to make in order to achieve a basic level of education. In light of this, the LRC has undertaken to ensure that applications submitted by eligible students do not go unnoticed and unapproved. Once more the complacency of the department of education is wholly unsatisfactory as it is directly endangering the education and the lives of children across the Eastern Cape. LRC is hoping to gather a class of applicant schools to challenge the department where it fails to administer transport as it should and to ensure it is held to its statutory and constitutional obligations.

Post provisioning

Towards the end of my internship I was tasked with preparing for litigation, once more against the department of education, but this time in respect of the failures of the department to properly appoint teachers to government teacher posts and consequently absorb liability to pay teacher salaries. This is an obligation which has been confirmed by high court judgement, however where the state has failed to do so, schools across the eastern cape have been forced to pay teacher salaries, the devastating effects of which are twofold. Firstly, non fee paying schools have been forced to source funds to pay teachers for which they are financially ill equipped to do, forcing them to forgo much needed school maintenance and improvement of school resources and infrastructure. Secondly, educators have been forced to work government posts but at a significantly reduced salary than that which they are entitled to. Much of the work I have been engaging in has been researching the possibility of bringing a class action against the department of education on behalf of the teachers who have suffered a significant loss in salary over a not insignificant period of time. In being tasked with drafting the notice of motion and founding affidavit for the class action I have been engaging with issues of prescription of claim, ensuring that the class action is sufficiently grounded to satisfy certification requirements and compiling a pool of applicants. Ultimately, I have concluded that though class action litigation is relatively new to South Africa, it represents an exciting and extremely appropriate vehicle for promoting access to justice in this country. Where it is prepared for effectively and carried out properly, class action litigation is nothing short of an extremely powerful tool against the backdrop of the political instability and economic corruption of South Africa. It has the ability to represent the voice of many in a climate where individuals have historically and continue to struggle to have their voices heard.

Aside from these three main projects, I enjoyed assisting the LRC team more broadly in basic tasks of legal research and drafting whenever necessary. I particularly enjoyed being exposed to the broad variety of matters undertaken by the LRC which included cases of racial hate crime, familial custody issues, eviction matters and land claims. All

of these issues are particularly relevant to the country's current climate and have allowed me to form a holistic view of the role of the law in South Africa.

Conclusion

Spending 6 weeks interning at LRC consolidated my interest and passion for working in the field of human rights in socially and politically complex environments. It has been enormously exciting to be working alongside attorneys who are passionate about effectuating tangible change, imperative to the next steps of South Africa's substantive democratic transition.

With my interest in the education system and my curiosity to understand the failures of it coupled with my legal knowledge and experience, I certainly do not take for granted the opportunity to put my skills to work on cases concerning litigating the constitutional right to education. Indeed, I anticipate that images of the mud schools of the Eastern Cape whose children are today, learning in classrooms which literally crumble to the ground around them are images that will continue to both haunt me and form the basis of my motivation to the cause of human rights. I have been both inspired and encouraged by the work of the LRC and return home ever more convinced of my commitment to achieve social justice in whichever employ I strive to attain.