

# Fighting racist court decisions

In an article in the 1969 South African Law Journal, Prof Barend van Niekerk wrote "that a considerable number of replying advocates, almost 50 per cent in fact, believe that justice as regards capital punishment is meted out on a differential basis to the different races, and that 41 per cent who so believe are also of the opinion that such differentiation is 'conscious and deliberate'." He was commenting on replies received from advocates to two questions in a survey. The questions were concerned, firstly, with the possibility of the intrusion of the racial factor into the imposition of the death sentence and, secondly, the "conscious or deliberate" nature or otherwise of such intrusion. Barend van Niekerk was charged for contempt of court as a result of this article, but was acquitted by the Transvaal provincial division of the Supreme Court. That was in 1969.

During more recent times, especially the past 12 months, there has been a trend which conclusively proves that equality before the law is not a human right enjoyed by all the citizens of this country.

The Universal Declaration of Human Rights stipulates in Article 7 that all are equal before the law and entitled without discrimination to equal protection of the law. It is this right which Lawyers for Human Rights is trying to protect and enforce.

Lawyers for Human Rights has found this distressing trend of a lack of equality before the law in a number of cases. In instances where a group of black people are involved in a killing, invariably as many as can be identified are charged with murder on the common purpose doctrine and vigorously prosecuted, resulting in most of the accused being sentenced to death. On the other hand where a group of white people (particularly farmers and policemen) are involved in the killing of a black person, only the main perpetrator is charged with murder; the others are charged with offences ranging from culpable homicide to assault. The prosecution proceeds almost

**The distressing trend of lack of equality before the law in South Africa has moved Lawyers for Human Rights to embark on a special project to help restore this right to those who are denied it. Project director AHMED MOTALA (right) reports . . .**



apologetically and the accused are given relatively light sentences.

Black people convicted of murder, particularly when the victim is white are sentenced to death in disproportionately high percentages. White people convicted of murder, particularly when a black person is the victim, are sentenced to death only in minute percentages. For example, in 1983, of 21 whites convicted of murder of blacks, not one was sent to the gallows. Barend Strydom is one of the very few exceptions.

As a result of blatant racial discrimination in the administration of justice in this country Lawyers for Human Rights has resolved to establish a special portfolio to monitor prosecutions, convictions and sentences in appropriate cases. This programme will be referred to as Lawyers for Human Rights Project Article 7. In making this allegation about discrimination in the administration of justice, we are mindful of the fact that there are many judges and magistrates who dispense justice fairly without considering the race of the accused. Those judicial officers who are racist in their application of the law discredit the entire judiciary and legal system in South Africa. For the sake of civilised standards and a future democratic South Africa this programme is aimed at eliminating racial discrimination in the administration of justice so that all citizens

can be equal before the law.

In launching the project, Lawyers for Human Rights has notified the offices of various community organisations, including Black Sash and Idasa, as well as members of Lawyers for Human Rights. This will ensure a flow of information from all parts of the country in regard to cases relevant to the project where there has been discrimination in the administration of justice. The media have also been called upon to render their assistance.

After receiving information of cases, we will investigate them and take appropriate action. We intend to investigate each case thoroughly and then to highlight injustices which we find. Through the media we will inform the public of cases where there has been inequality before the law. It is our belief that the judiciary will take appropriate steps to curb discrimination, to protect its image and credibility.

All cases will be scrupulously documented and at the end of each year, a report will be prepared and published for both national and international consumption. We will make copies available to international human rights forums including the appropriate United Nations bodies.

In some cases where it is necessary we will make representation to either the appropriate chief magistrate, or the appropriate judge president or to the chief justice.

On a practical level, where we are able, we will assist with appeals, either by providing a lawyer through our Pro Bono Scheme, that is where the person is unrepresented or if the person is impecunious and cannot afford further legal representation, we will consider an application for funding through our Litigation Trust Fund.

Lawyers for Human Rights looks forward to the assistance of organisations and their members in making this a successful project, strengthening its endeavours to restore to those who are denied it, the right to equality before the law.

was fostered. Shy people mixed and spoke freely in the groups, dominant and aggressive persons were aware that their behaviour in groups was sometimes destructive and often undemocratic, we learned to listen better to one another and we were all made aware of just how little we still know and understand about democracy.

There was consensus in the group that the weekend was a big success; that it equipped us better with the essential tools and skills to have democratic debates about serious issues which directly affect the lives of all of us; that we contributed in a small way towards the nurturing of a democratic culture in the school and in society; that we acted out the concept of non-racial nation building and in so doing managed for a short moment to embrace the future.

But the greatest achievement of the weekend was that, despite apartheid and apartheid schools, we managed to transcend (albeit briefly) the race, class and historical divisions of our society, having come to accept each other as equal human beings.

□ André Zaaiman is the Regional Director of Idasa in Pretoria.

## Tieners kweek begrip vir mekaar

Dit is een ding om te intellektualiseer oor nierassigheid en demokrasie, maar iets heel anders om direk daarmee gekonfronteer te word. So ook moes 35 Afrikaanse en township tieners die verskille en ooreenkomste met mekaar uitklaar op 'n naweek saam in die Franschhoek berge wat in September deur Idasa gereël is.

Die verskille was duidelik. Tieners het gepraat oor die verskille in hul skool leerplanne en die omstandighede waaronder hulle skoolgaan, hoe hul sosiaal verkeer en hul familie situasies. Daar was verbasing toe een meisie hoor dat haar groepmaat nie 'n badkamer in haar huis het nie, en verstomming toe dit blyk dat niemand in die hele woongebied so 'n luuksheid het nie.

Die eerste oefening waaraan die groep



Kaapse tieners byeen in Franschhoek.

deeltgeneem het, was om na 'n video, "Blue Eyes Brown Eyes", te kyk. Dit handel oor 'n oefening wat gedoen is in Amerika met laerskool kinders. Die kinders is geïdentifiseer op grond van die kleur van hul oë. Sekere voordele is eers aan die kinders met blou oë gegee, en later aan die kinders met bruin oë.

To Page 8