



4TH GEORGE BIZOS AWARD

Geoff Budlender

It is a very great honour to be associated with George Bizos and the LRC in this manner.

I first met George in early 1976, when I was a first-year articled clerk. Over the years we worked together on many matters.

Working with George was never dull. At the beginning of my first consultation with him and with my friend and client Charles Nupen, in early 1976, George surprised me by starting the consultation by pulling a book of poetry from his bookshelves. I thought: "An advocate who keeps poetry in his chambers? What next?"

It was a book of poetry by the great Greek poet, C P Cavafy. George read us Cavafy's famous poem, "Waiting for the Barbarians". It was very apposite to the case on which we were consulting – it was a poem about a paranoid state.

Another early memory comes from a dinner in early 1979, at a Greek restaurant in Cape Town called "Sloppy Sam's". It was attended by a number of luminaries in the human rights world – from England, from India, from the USA, and from South Africa. They were attending a human rights conference at UCT. It was a memorable evening. George was the host. Towards the end of the evening, Sydney Kentridge stood up to propose a toast: "*To George Bizos: generous friend; wonderful host; warrior for human rights; great cross-examiner; and the best-loved member of the Johannesburg Bar.*" And then, in the Greek tradition, he smashed the glass on the floor. George was almost in tears.

George had a passion for justice, and for human rights. His cross-examinations were deadly, because he had an uncanny ability to get inside the minds and feelings of each witness. Countless police officers, police spies and hostile witnesses fell apart under his cross-examination.

And he was a master strategist. In 1977 and 1978, the trial of Tokyo Sexwale and eleven others took place in the Pretoria High Court. Arthur Chaskalson led the defence team. George was not part of it. At various points, tricky questions of strategy arose. Arthur's method of dealing with them was to discuss them carefully with all of the accused and the legal team. Then, if he was still unresolved, he would say "*I think I'll go and see George*". He would return the next day, and a decision would then be taken, usually in accordance with George's advice.



George was much less interested in abstruse questions of law than in the clients - he sought to understand them, their needs, their hopes and their fears. He would be their champion, unflinchingly.

George was not always easy to work with. He worked odd hours. He could be demanding. The search for evidence – always a very optimistic search - could be seemingly endless.

George was a man of great generosity. No-one who attended his more or less annual garden party, with lamb on the spit and a huge salad from his garden, could forget it. There was George, in a large floppy hat, directing operations. His wife Arethe quietly made preparations. Their three sons scurried about doing George's bidding. These were magical events. George welcomed the guests, made sure they were well-fed, and told wonderful stories.

And how George could tell stories! He was a great raconteur. He spoke at a dinner to mark Arthur Chaskalson's retirement from the LRC, and told some generous stories about Arthur. When Arthur responded, he said something like this: *“George has a wonderful memory. He has a much better memory than I have. His memory is so good, he can even remember things that didn't happen.”*

George was, to use that over-used phrase, a legend in his own lifetime. When Arthur was the Chief Justice, he and George flew together to Cape Town. There was a driver to collect the Chief Justice, and Arthur asked whether his friend George Bizos could also have a lift. Of course that was fine. So off they went, the driver with the Chief Justice and George. While he was driving, the driver kept shaking his head. Arthur asked him whether there was a problem. *“No problem, it's just that when I get home, no-one will believe me when I tell them that that I drove George Bizos”.*

I personally owe a great deal to the Legal Resources Centre. It gave me 20 years of the opportunity, as a privileged person, to gain some insight into the lives of “ordinary” South Africans and their struggle against the burdens and the suffering imposed by apartheid. It brought me a bit closer to the reality of South Africa, giving me some sight through the eyes of our clients. The memories flood in.

I remember the people of Oukasie, at Brits – fighting to save their homes from the apartheid bulldozers, in the midst of detentions and the police bombing of the home of David Modimoeng, one of their leaders, killing his wife Joyce.



I remember the people of Mgwali, near Stutterheim, threatened with the incorporation of their land into the Ciskei Bantustan. When they resisted, the Ciskei police carried out a raid, and detained ten of them. When the police couldn't find the chairperson of the civic association, Mike Gija, they instead detained his father, who was in his nineties. When they could not find another member of the civic association for whom they were looking, they instead detained his brother, who was blind.

I remember the people of Driefontein, near Wakkerstroom in the South Eastern Transvaal. They had bought their land in 1912, under the leadership of the famous Pixley ka Seme. Now they were to lose their land, and they were to be removed to KwaZulu and KaNgwane. A police constable shot dead their leader, Saul Mkhize, at a public meeting held on Good Friday, 1983. I remember Saul and I remember even more his widow, the remarkable and courageous Beauty Mkhize, who took up the community leadership, and led the community through successful resistance.

And I remember the hundreds of people I met who were doing battle with the pass laws, trying to make a decent family life for themselves and their loved ones. I remember in particular a man who was old enough to be my father, who was plainly manufacturing facts to attempt to justify a claim to legal rights for himself and his family to live in Johannesburg. When I asked him why he had not told me the truth, he said "this is the only way I can get to live with my wife and children", and burst into tears.

The work could be heartbreaking, but it could also be uplifting. Each victory was to be cherished, because it made a real difference to the lives of our clients. The legal work literally changed people's lives. We developed some very special relationships with our clients.

The LRC practises public interest law. It has done so for 45 years.

Today, it seems that there is virtually no issue of public importance which does not find its way into the courts. I think there are two main reasons for this.

First, the legal environment encourages it. Our Constitution is expansive. It covers a wide range of rights. And our courts, led by the Constitutional Court, have taken an expansive approach to questions such as standing and remedies. They are slow to exclude would-be litigants who in many other legal systems would be dismissed as busybodies. And they are inventive as to the remedies which they will order. Section 172(1)(b) of the Constitution provides that in deciding a constitutional matter within its



power, a court “may make any order that it just and equitable”. The courts have been willing to shape inventive remedies, on the basis that where there is a right, there must be a remedy – and on the basis that for a remedy to be just and equitable, it should be effective.

Some people think the courts have been too intrusive. I don’t share that view. It’s one of the great ironies of our time that it is often the very people and entities that complain about over-reach by the courts, that are quickest to rush to court. They regularly do so with cases that are entirely without merit, and that seem to have been concocted only to further a political objective, or to create delay. We all know the term Stalingrad. It’s reassuring that the courts are now starting to assert themselves against this abuse of the process of court.

The second reason the courts are so heavily engaged with such a broad range of issues is explained by what I was told about 20 years ago by a judge from India, who is now a very senior judge there. At that time, the Indian courts were very adventurous with regard to standing, the nature of the judicial function, and remedies. I asked him how that had come about, given that the Indian courts (like ours) derived much of their culture from the English courts, which have a culture of conservatism on those matters. His answer was that in India the democratic process was opaque and ineffective in responding to people’s problems; so was the executive; and so, there was what he called a “democratic deficit”. The courts stepped in to fill the vacuum.

I think much the same happens here. When people are in distress because of dysfunctional organs of state, and the institutions of government are unresponsive, the courts are inclined to step in if a breach of a right is demonstrated. And our rights are so wide in their scope, that it is generally not too difficult to demonstrate a breach of a right.

The courts have to avoid what Justice Kate O’Regan called “a jurisprudence of exasperation”, in which they base their judgments on exasperation with the state of affairs in the country rather than on arguments based on the possibilities and limits of the law. By and large they manage to do so. But it must surely be right that when the courts see people’s rights breached on an ongoing basis – think of lack of access to secure and well-located housing, think of poor health services, think of lack of access to clean water - they must try to order an effective remedy.

This is where public interest lawyers must step in. They must be accessible to the most vulnerable and powerless; they must be affordable; and they must be skilled. Poor



people don't need second-rate lawyers, they actually need better lawyers than the rich and powerful, who are better able to see to their needs themselves.

Public interest law is most effective when its practice is closely linked to the people on the ground. They are the people who know best where the shoe pinches, and who are best able to mobilise so that legal practice does not stand alone, but is linked to other forms of democratic activism. Public interest activism is most effective in achieving lasting changes when there is action on the ground to mobilise those affected, to enforce and build on the legal victories that are won.

That is the story of the effective resistance to forced removals under apartheid – using legal representation which is strategically designed and closely linked to organisation on the ground. At Driefontein, the government strategy to bring about a so-called “voluntary” removal of the community was to take public services away from Driefontein, and tell people they could get the services in the “resettlement” areas once they had moved. Working with lawyers, the community forced the government to reverse its decision to cut off the payment of social pensions at Driefontein. When the government closed and destroyed the local clinic, they rebuilt it and re-opened it with the assistance of sympathetic health workers. They opened a regular legal clinic that addressed the needs of members of the community. They mobilised against the local magistrate, who was a key figure in the removal strategy, suing him when he exceeded his lawful powers. I kept on wondering about when and how we could challenge the lawfulness of the forced removal. I couldn't find the answer – the law was against us. The community had a different answer – they turned the government's actions against it, using those actions as a means to mobilise opposition to the removal and to build community strength. They succeeded.

That is also the back story of the iconic Treatment Action Campaign case, in which the judgment of the Constitutional Court literally saved the lives of at the very least hundreds of thousands of children, perhaps millions. Without the social and political mobilisation led by the TAC, and without its ability to monitor implementation of the judgment because it had “feet on the ground”, the outcome would have been very different.

We see too many cases in which litigation is run, sometimes all the way to the Constitutional Court, and a judgment is obtained, but nothing much changes. The problem is not so much the cases in which an organ of state is obstructive or intransigent – in those cases, court orders can be obtained, and they can be made pretty effective



through the use of contempt of court proceedings which carry a threat of imprisonment, and the creative use of personal costs orders against the individuals who are responsible.

The real problem is the cases in which an organ of state lacks the human resources, the skills and the funds to do what is necessary. Think about villagers litigating for access to clean water in dysfunctional rural municipalities. Of course, dysfunctionality is not limited to the rural areas. We need to think harder about ways to deal with this problem.

It's also long overdue that public interest lawyers tackle the issue of systemic inequality. The constitutional promise of a right to equality is mocked when people receive inadequate public services because they are poor. You don't have to be a legal genius to work out that when poverty is racially distributed, discriminating against the poor means discrimination against black people. Systemic challenges are not easy, but we have barely scratched the surface.

Underlying all of this is that we have to think harder about remedies – the case is not over when an order is made that rights have been breached. It's then that the really hard work starts. If it is going to be effective, it has to involve close work with the people on the ground, those who are affected.

This is what the LRC has done for 45 years. The work is not over. Many of the problems that were initially brought about by apartheid still exist. Think land and housing; think of the hugely unequal school system, which deprives so many children of opportunity in their lives. The two fundamental differences are that we now have democratic elections; and we have a legal framework which establishes clear rights. Under apartheid, we were often paradoxically litigating against the law. Now we have laws and courts which one could previously only dream of.

Our democratic Constitution will only survive and flourish, and ward off the attacks that are made on it, if the people of South Africa truly experience it as their Constitution, which looks after them, and looks after those who are vulnerable and in need.

That is the work of the Legal Resources Centre. So I want to salute the LRC – viva! I want to thank the LRC for the great honour it has given me; and I want to thank you for your support for the LRC, and for the memory of George Bizos, which is signified by your presence here.