

from THE COALFACE

JUSTICE THROUGH EDUCATION WITH THE RHODES LAW CLINIC

ISSUE 002 | FEBRUARY 2014

THE UNSCRUPULOUS MICRO LENDER



Serving our communities

Welcome to our second issue of *From The Coalface*. We warmly wish you a most successful year ahead and hope you will continue with your valued association with the Rhodes University Law Clinic. In this issue we introduce you to our Clinic & Project Administrator as he talks us through what drives him to serve his community. We also get into matters of micro-lending and the unscrupulous dealings that lead poor communities to further disenfranchisement. And finally, we look at the effectiveness of training our paralegals in areas that directly affect the communities they serve.

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IT STARTS WITH THE INDIVIDUAL

Terwin de Vos talks about changing communities through education about their basic human rights

Terwin de Vos, our Project Manager and Clinic Administrator, has worked extensively in the NGO sector, gaining experience in project management, financial management, information technology and human resources. He has also been a researcher in a number of social research projects. His influence in parts of the Grahamstown community and his insight into the NGO sector yield valuable contributions to the Law Clinic. He began his professional career working at the National English Literary Museum here in Grahamstown. A community minded individual, his heart has always been with the Grahamstown community. In 1991 he started his own consultancy, advising clients such as Dakawa and the Eastern Cape Agricultural Research programme on financial and project management. His passion is to see communities developing themselves.

“Development is a difficult sector to work in as your funding is never secure,” said Terwin. “The reward is in the development of the individual and then this spirals out to the community from there.”

Terwin has never worked in a funding stable environment and persisting with this kind of work certainly says a lot about his personal values. Even though his current work commitments make voluntary work less possible, Terwin is still involved in the management and administration of local rugby clubs. He believes this work adds tremendous value to the community through the simple role of mentoring and empowering individuals.

It is this compassion and willingness to help others that perhaps led Terwin to his current position in the Law Clinic.

“Access to justice is not receiving sufficient attention in our Province,” he explained. “The net result is that without access to

their basic human rights, the poor and illiterate communities are increasingly vulnerable and marginalised.” Terwin feels passionate about the Law Clinic’s advice office programme, with its main focus on the training of paralegals and legal and administrative support to community-based advice offices. The advice offices play a vital role in assisting communities in reaching and defending their socio-economic rights.

“What drives me is that we make a difference by working with people at grass-roots level,” said Terwin. “These very communities are the advice office’s first port of call and this is where it matters, we interact with people and are the first line of information to them.”

Since 2005 Terwin has undertaken several research projects in the rural former Transkei. The findings have shown the impact on communities who do not enjoy socio-economic rights or access to justice. He observes that there is a pressing need to challenge the lack of enforcement of rights by enabling these communities to understand their rights. “Because we work with paralegals we are fairly clustered and there is already a relationship with the community,” he said. “The challenges include helping sustain the advice offices, supporting them in being able to provide quality advice, and ensuring that good governance is in place.” The lack of funding for advice offices is the biggest challenge of them all. “Most of the offices work without funding but it would be good to cover basic overheads,” he explained “In the past five or 10 years funding has decreased a lot and we need to get to our clients if we are going to help them.”

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The Law Clinic assists the poor community of Joubertina

Joubertina in the Langkloof is a small town some 200km from Port Elizabeth. Thanks to the community-spirit of Evan Ford, a local businessman and Rhodes alumni, the Rhodes University Law Clinic was alerted to the plight of the poor community at the hands of a micro lender and his alleged illegal activities.

Consumer matters, including micro-lending are an important focus area of the Clinic. Professor Jonathan Campbell, the Clinic's previous Director, had researched the impact of governing micro-lending on especially poor communities and had also made submissions to the Portfolio Committee of Trade and Industries. The National Credit Act (NCA) is aimed at protecting especially the illiterate, exploitable and vulnerable consumers against unscrupulous money-lending practices, making credit services more accessible and regulating the micro lending industry. But have these lofty ideals been realised in practise, and especially in rural communities?

The experience of the lawyers of the Clinic indicates the contrary. In the course of



advising clients at the Clinic's Grahamstown and Queenstown offices and also at advice office throughout the Eastern Cape, during training workshops for paralegals and community workshops, it has become clear that there are still many micro lenders who escape the net of the law and ignore the strict legal provisions.

A case in point is the micro lender in Joubertina. In October 2013, Jobst Bodenstern, Nomazizi Klaas (attorney), Nombasa Mtengenya (administrator) and James Ekron (candidate attorney) visited this community. On arrival we met with members of the local SA Police Services.

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Marriage law and the right to equality

Paralegal training is most effective in areas of the law that directly affect the rural poor

During the third week in November 2013, 22 paralegals from community-based advice offices throughout the Eastern Cape, attended a five-day training workshop on family law offered by the Rhodes University Law Clinic. The training has become an annual institution and more than 300 paralegals have benefitted from the Rhodes University-accredited training during the past 12 years. The topics are chosen according to inputs from paralegals and during community workshops.

In rural settings, paralegals are usually the first port of call for poor persons needing advice. Ideally a paralegal should have a general knowledge of those areas of the law most often encountered by a person living in a poor community. Marriage law is

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A number of debtors had laid charges with the local police against the micro lender for the latter having illegally withheld identity documents, a practice which has been criminalised in terms of the NCA. In the evening we attended a community meeting at which some 80 members of the poor community were present. Following a brief workshop on the rights and duties of micro debtors, speaker after speaker started relating his or her own tale of woe. The frustrations, anger and helplessness were tangible. At about 9.45pm the Clinic's lawyers started advising individual debtors, eventually halting proceedings for the night after 11pm and continuing again early the following morning.

THE NATIONAL CREDIT ACT (NCA) IS AIMED AT PROTECTING ESPECIALLY THE ILLITERATE, EXPLOITABLE AND VULNERABLE CONSUMERS AGAINST UNSCRUPULOUS MONEY-LENDING PRACTICES, MAKING CREDIT SERVICES MORE ACCESSIBLE AND REGULATING THE MICRO LENDING INDUSTRY. BUT HAVE THESE LOFTY IDEALS BEEN REALISED IN PRACTISE, AND ESPECIALLY IN RURAL COMMUNITIES?

Altogether 30 persons were interviewed. A picture started emerging of gross abuses, overcharges of administrative fees, the continuation of deductions and interest charges from pensioners' SASSETA accounts many months after the debt had been paid in full, of no proper written loan agreements having been concluded, signatures forged, and the list continues. Twenty two cases were referred to the National Credit Regulator with the request to, firstly, investigate possible criminal activities



by the lender and, secondly, to institute actions on behalf of the individual debtors against the lender company. Following investigations, the office of the National Credit Regulator duly closed the micro lender's offices and had two employees of the lender arrested. The Regulator subsequently informed us of the extremely disturbing development that the prosecuting authority of Joubertina had demanded from the SAPS that the arrested persons be released. This has been taken up with HAWKS and the NPA.

On reflection, the most important issues arising from the Joubertina case, include: firstly, that the shocking revelations in Joubertina are probably mirror images of similar disturbing practices in hundreds of towns in South Africa; secondly, that whilst clearly not lacking in their intention to protect consumers, that the authorities just do not have the resources to effectively enforce and police the provisions of the NCR; finally, a combination of ignorance of their rights, feelings by vulnerable communities that their plight is being ignored and their voices are not being heard, as well as apparent widespread disinterest and lack of support by other state role players (eg the police), whose support in enforcing the NCR is absolutely vital. Law clinics, justice centres, NGOs and paralegal advice offices can and should play an increasing part in supporting such communities in regaining their voice and in addressing problems which affect the realisation of their socio-economic rights.

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one of these. According to insights of the Clinic's lawyers, there is a considerable disjuncture in many communities in the Eastern Cape between changes brought about by the Constitution and the actual application of such legislative changes to the everyday lives of people. There appears to be widespread ignorance about the application of the right of equality to especially matrimonial property and succession rights. One of the tasks which the paralegals had to fulfil during their training was to interview people on the streets in Grahamstown about their form (civil or customary) of marriage and on their matrimonial regime. The general consensus amongst the paralegals was that this exercise greatly improved their own understanding of the application of laws to lives of people.

The relevance of this training cannot be overemphasised and a comment during assessment at the end of the training bears witness to it: "All I wish is to encourage you to keep on providing our offices with such information as they are dealing directly with communities that need this help."

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Conscious Creativity. Dynamic Design.

Coming up in our next issue ... In our next issue an old stalwart and indeed the longest serving staff member of the Rhodes University Law Clinic will be profiled. We shall also be reporting on an exciting project which takes learners from Grahamstown all the way to Berlin and Poland.