

Monthly Report – November 2014

Projects Abroad Human Rights Office, Cape Town

Social Justice Projects Updates

Vredelus house

Workshop one – Communication

This week we decided to have an educational informal session with the girls on communication, focussing specifically on language/communication barriers.

At the facilities where we present workshops, English is the communicating language between the boys/girls and volunteers. Most of them do not speak English as their first language, and thus sometimes miscommunicate due to this barrier, therefore we felt that we needed to engage with the girls/boys on a personal level.

The volunteers had to come up with an interesting, educational way of breaking the language barrier between themselves and the girls.

We started off the session by playing a game. The girls and volunteers challenged each other with questions and, depending on the answer, various members of the group then had to exchange chairs. The girls projected and spoke very well, and enjoyed the dynamism of the game.

Next the volunteers distributed small pieces of paper with different words on them. The challenge was to go around the room trying to discover the person with the word linked to yours. This encouraged interaction and problem solving amongst the volunteers and the girls, spurring a lot of conversation and laughter.

Following this, the entire group enjoyed talking to each other and dancing together to music. The girls taught the volunteers different dances to various songs with hilarious results. Everyone worked together to complete an entire routine, showing great communication, understanding, and demonstrating a group bond not only amongst the girls, but with the volunteers as well.

Workshop two – Feminism

Recently we have assisted Free Gender, which is an LGBT advocacy organisation, with drafting a training manual for the South African Police Service which focused on raising awareness on dealing with hate crimes relating to the LGBT community. We have also been having a lot of female clients who came to us for assistance with regards to gender discrimination and sexual harassment problems.

We therefore decided to do a workshop on feminism.

Man-hater. Fanatic. Extremist. These are the terms we usually hear when people hear the word feminist. It is as if being a feminist has become synonymous with being someone who hate men and wants to establish matriarchy. Most people don't understand what feminism stands for, and they don't realize how important it is.

Our female volunteers were keen on doing a workshop on feminism as they have also dealt with their fair share of gender discrimination and sexual harassment.

The volunteers had to research what feminism is about, how they could present this workshop so that the girls would be interested and remain focused, as well as find an interactive way to get everyone involved in this workshop.

We started off by explaining that feminism is about gaining equal rights and opportunities for women, and allowing women to have control over their lives and bodies. Feminism is also about empowering women and young girls.

During the presentation we also talked about the history of South African feminism. This covered a variety of milestones in South Africa including white women getting the right to vote in 1930, pass laws, influx control, and the 1994 constitution that gave all citizens the right to vote.

We also spoke about gender discrimination in the workplace and in schools, and how section 9 of the bill of rights protects them.

This was an interesting topic to present, which many of the girls were listening attentively too.

We will be doing this workshop in the future again, as well as at the women's shelters, as we would like to empower the young girls and women to be in control of their bodies and lives.

Workshop three – Shuan's Life story

We did this workshop on making life changing decisions a few months ago at both Vredelus and Bonnytoun. We did it again in order to remind the girls that they are responsible for the decisions they make and that they alone have the power to change their circumstances by deciding to make better choices.

Shuan Solomons, the Social Justice Coordinator, did a power-point presentation about his life. He highlighted the difficulties one faces when coming from a poverty stricken area and broken home. Most, if not all, of the girls at Vredelus come from broken homes, so therefore Shuan could relate to them and explain to them how they too can overcome poverty and be successful.

During the power point-presentation, Shuan took time to explain how he has made mistakes in his life, and made some decisions that negatively affected not just him, but also his family. Shuan also explained that he realised he wanted a better life for himself

and needed to change his ways, but in order for him to do so he needed to start taking responsibility for his actions.

As part of the presentation Shuan displayed pictures of some of the moments where he excelled in sports, received awards and happy moments with his family and the people in his community.

As this workshop was previously done a few months ago, some of the ladies still remembered it and informed us that they still feel encouraged to change their lives and be successful.

For the girls that only saw the presentation for the first time they felt inspired by Shuan's life story and stated that if Shuan could change his life, then they could too.

The feedback we received from the volunteers was also positive, as most of them felt that Shuan's presentation had not only a profound effect on the girls at Vredelus, but on them as well.

Workshop four – HIV/AIDS

Due to World Aids Day being on 01 December, we decided to do a workshop on HIV/AIDS.

World AIDS Day is held on 1 December each year and is an opportunity for people worldwide to unite in the fight against HIV, show their support for people living with HIV and to commemorate people who have died. World AIDS Day was the first ever global health day and the first one was held in 1988.

Today, many scientific advances have been made in HIV treatment, there are laws to protect people living with HIV and we understand so much more about the condition. But despite this, people do not know the facts about how to protect themselves and others from HIV, and stigma and discrimination remain a reality for many people. World AIDS Day is important as it reminds the public and Government that HIV has not gone away – there is still a vital need to raise money and awareness, fight prejudice and improve education.

The volunteers did research on HIV/AIDS in South Africa and then compiled a slideshow presentation. This detailed what HIV/AIDS is, the myths and facts, ways in which people should protect themselves, as well as prepare possible questions and answers.

We started off the workshop at Vredelus by explaining what the topic was, and asking questions such as "does anyone know any facts about the disease?", "what are they myths surrounding it?", and "what is the difference between HIV and AIDS?".

This was interesting and surprising to see that not many of them knew much about the topic. During the presentation the girls seemed interested and were taking note of what was being presented. They also asked questions when they did not understand something.

This workshop went really well as the girls now knew more about the disease than before. We will be doing this workshop again in the future to refresh the girls' memory as well as to educate the new girls at Vredelus.

Bonnytown

Workshop one – Team Building

This week we did a team building session by challenging the boys' knowledge of South Africa and social networking.

The boys were split into groups and were asked various questions. The boys jumped at the opportunity to show how much they knew about their country and its history. A volunteer would ask a question, and teams of boys raised their hands desperate to be the one to get the right answer. Everyone was engaged, training their focus and developing key skills in team work. Teams which were too slow to answer had to do push-ups, which did not seem like much of a forfeit for the boys.

At the end of the quiz, the boys relished singing the South African national anthem to the volunteers at full volume; their incentive was seeing the volunteers pump out sets of push-ups if they were able to sing it from start to finish in unison. Of course, they managed the task, united by their shared heritage and group spirit. As a result, they very much enjoyed watching the volunteers struggle to complete their push-ups with any sort of grace.

The power-point presentation shown by the volunteers concerned social networking and internet safety. This topic is usually focused at young ladies, so the key point of the presentation was to relay the dangers that the internet poses to young men. Through videos, text, and images, it was shown how boys are often the target of online predators, and how important it is to know the person you are talking to online. The message was to be extremely vigilant in any online exchange. Additionally, the volunteers spoke about sensitive images, and how distributing them can lead to personal humiliation as well as to criminal charges.

The boys were extremely attentive when watching the presentation, and they appeared to absorb the message. This topic is probably something they have never considered before, and their new awareness may help them to avoid potential dangers in the future.

Workshop two – Informal session

This was the first time we visited this particular group of boys in the awaiting trial dorm.

We decided to have an informal session, where the volunteers and the boys got to talk to each other and bond.

They were split into different groups and were given the opportunity to talk about various things, such as sports, places of interest, music, relationships and future plans.

The boys and volunteers really seemed to enjoy this session as they got to get to know each other on a personal level, as well as learn from each other.

Workshop three – HIV Aids

We did the same workshop as at Vredelus.

Some of the boys were paying attention, while some of the boys who were sitting in the back were talkative, but this was only because they were not able to hear or see clearly what was being presented.

For the boys sitting in the back, the volunteers who were sitting with them were able to explain to them what was being said though.

At the end of the presentation the feedback we received from the boys was positive and they requested for us to do this again, as well as to provide them with a pamphlet on the topic.

Workshop four – Making Life changing decisions

This was the same workshop which was done at Vredelus on Shuan's life story.

The boys were in awe when they realised Shuan comes from a similar background as them, and that he changed his circumstances because he wanted a better future for himself.

After the presentation everyone was split into groups and talked about "making life changing decisions". Many of the boys had said that they wanted a better future for themselves and that they wanted to make their family proud of them, but in doing so they had to take responsibility for their actions and make amends for their past mistakes.

Ottery Youth Care

Workshop one – Team building

Few people realize how important our individual personalities are to team functioning. Many of the problems associated with team development stem directly from the interplay between the various personality types.

We decided to do this workshop on team building, because we wanted people with individual personalities to work together, to be able to communicate and trust each other as a team.

The volunteers had to figure out a fun, yet educational way in which we can teach and promote team building exercises.

Before we started we could see there were tensions between the boys, and some of them

were in bad moods, not acknowledging us and yelling at each other in Afrikaans. One of the boys was walking around punching other boys, but was told to have a seat as he would be kicked out of the workshop and would be reported.

We started off the workshop by explaining to the boys what the workshop was about and that everyone needed to participate as it will require verbal and physical interaction.

We worked in groups doing problem solving puzzles, playing dominoes, as well as blind folding each other and doing trust exercises.

The games and exercises carried out were to promote and encourage team building, as well as be a fun learning experience.

After we did the workshop we could see the improvement in the boys' attitude as they were no longer in a bad mood or yelling at each other, instead they were talking to each other calmly and laughing with one another.

Workshop two – Substance Abuse

Along with peer pressure, there are several other major factors that can influence the abuse of drugs among youths, namely weak parental control, child abuse, imitation, emotional stress, truancy among students, the availability of the drugs and the ineffectiveness of laws on drug trafficking.

We therefore decided to do a presentation on substance abuse as 99% of the boys at Ottery has experimented with, or been addicted to, one or more substances.

The interns did research on the most common types of substance abuse in South Africa, how substance abuse affects your body, mental health and future.

What a lot of the boys did not know was that substance abuse is associated with violent and income generating crimes. Gangs, trafficking, prostitution and growing numbers of youth homicides are among the social and criminal justice problems often linked to adolescent substance abuse.

We could see the boys were paying attention and interested in the workshops as they were sitting and listening attentively.

What made this workshop so successful is the research that was done; how we could relate drug usage to the daily lives of the people living in poverty stricken areas, as well as the references we made on our experiences with drug users.

Women's Shelters

St Anne's

Workshop one – Know your rights part 1

We have been covering an array of topics of late, and thus decided to go back to basics and look at the Bill of Rights, enshrined in Chapter 2 of the Constitution. The volunteers started out by first asking whether the ladies know what their fundamental rights are, and if they are able to identify when they are being violated.

They then talked about equality, and whether they feel that this is a reality in South Africa, between men and women, as well as between the different races. The feedback given was that they don't feel protected by the law, as they mentioned that there is too much corruption in the country. They also said that, as coloured women, they feel that there is a lot of inequality within the sphere of employment. However, they did mention that Protection Orders are easy to obtain.

They then moved on to discuss freedom of religion, belief and opinion. The ladies felt that they do have the right to express themselves religiously (some were Christian and others Muslim), and they did not feel that this impacted on their potential to get a job. The conversation did stray into the topic of abortion, which is always quite a sensitive issue. Due to religious reasons, the ladies are almost always against terminating a pregnancy, although they did say that they could understand if the child was a product of rape.

The conversation then turned towards political rights – the use of the word 'politics' is usually greeted by a groan at the shelters, and this time it was no different! Only one of the ladies who was present had voted in the General Elections held in May this year, and the reason for this was purely that her boyfriend had thought that it would be 'fun'. The other ladies simply do not see the point as it doesn't matter who is in power, they are corrupt and only help themselves.

The ladies were very interactive during this workshop, and had plenty of opinions on the subjects. After the discussion, they did a relaxing exercise wherein they listened to different music and freely drew, without thinking about it, how the music made them feel. They really enjoyed that too.

Workshop one – Know your rights part 2

Continuing with our theme, we decided to look at the Bill of Rights in relation to education and employment. These are very important topics, but unfortunately there were only two ladies present, as the others were either at work or at the clinic. One of the ladies was very vocal, and very knowledgeable about the issues, with a lot of first-hand experiences to share.

The discussion turned to what is put on paper versus the reality of effecting rights; this has been raised many times, and it has frequently been said that the South African Constitution is the best in the world *on paper*. In terms of education, the sentiment was very much that having no money is equal to having no access to high-standard institutions. Two key issues which they thought should be addressed were; firstly, the government should work to get every child into school, following which the issue of the quality of education must be addressed; secondly, the language barrier poses an issue when children grow up in rural areas and do not get a satisfactory standard of English education. One of the ladies stressed that this must start at home, while the other felt that there is a responsibility on the state to ensure that every child is at least bilingual from a young age.

They stressed that the system at the shelter is very good, and that they get good information about how to write a CV, apply for jobs and conduct themselves during interviews. However, it was said that the jobs that are offered to them, as women residing in a shelter, are more for the unskilled, and they also emphasised the problems posed by not being able to work shifts under their current living conditions, as there is nobody to care for their children during the evening hours. Regarding the topic of HIV in relation to employment, they said that there is little discrimination in urban areas, the reason being that it's so common that it's no longer a big deal. However, they did say that this is not necessarily the case among the black culture, where it is considered a curse, especially when contracted by a woman who may then be banished by the community.

Following this issue regarding stigma, it was mentioned by one of the ladies present that a lot of people are of the belief that, if a woman is living in a shelter, then it means that they are uneducated. She was quick to dispel this notion, listing her qualifications and the different jobs that she has had in the past. She also spoke about the stigma that is attached to staying in a shelter, and how often prospective employers attempt to take advantage of them, offering too little money with the pretext of helping them because of their "situation". In relation to minimum wages, she said that people prey on their desperation.

Overall, the ladies were very opinionated on the matter, and were often in conflict with one another, but it was positive to see that they are well informed on their rights.

Workshop one – Know your rights part 3

Continuing through the Bill of Rights, this week focused on children. The volunteers discussed the school fees exemption process, as well as how to register a child's birth and obtain identification documents. They then moved on to look at the fundamental rights of children, with the help of a booklet which is written in a very simple manner to ensure basic understanding thereof. The women seemed to find this very interesting and useful, and were furnished with copies to keep. They then posed questions with regards to the rights and obligations of the father, and whether these are different depending on the marriage status of the parents. One woman asked about child and spousal maintenance but, when the process and criteria were explained, another lady said that it was easier to find work, as the court process is so long and can be intimidating. This was an interesting, yet rather disheartening, opinion. Firstly because so many people struggle to find work, and can be job seeking for months without being successful; and secondly because they are entitled to child

support from the father, a point which is key to the notion behind exploring the Bill of Rights.

Following this conversation, one of the volunteers hosted a quiz for her colleagues and the ladies. Some of the questions related to what they had just been learning about, while others were of a more fun nature. They all enjoyed it.

Workshop one – Know your rights part 4

We moved on to discuss property, which is a highly important topic as the ladies will all, eventually, move out of the shelter and need to find somewhere to call home. The volunteers covered a lot of topics, including how to apply for a housing subsidy, tenant/landlord rights and responsibilities, lease agreements and the eviction process. The ladies were very talkative, and shared their experiences relating to the topic at hand. They also asked questions about certain challenges that they are facing, which the volunteers noted down to research and furnish the correct information at the next session. The conversation got rather heated when it turned to President Jacob Zuma and his multi-million rand Nkandla homestead, for which public funds were spent on making improvements to the property, while so many in South Africa are homeless or living in shacks.

Following the discussion, the volunteers and ladies held another cupcake decorating competition, as it was so popular the last time it was done. Again, the women all really enjoyed it, and they engaged in general conversation while they were busy.

Sisters Incorporated

Workshop one – Know your rights part 1

We held the same workshop as had been held at St Anne's, regarding fundamental rights. The discussion was very similar, although the conversation revolved mainly around the inequality between the races and the rights of people in same sex relationships. With regards to the latter, it was possibly the first time that the ladies were in favour of adoption within gay couples, as well as speaking out in favour of equal rights; in the past, the ladies have been generally opposed to the concept when the issue has been raised.

The fact that black communities help each other and stick together more was raised, whereas coloured communities are not as supportive towards each other, and there is more resentment when someone succeeds.

Workshop one – Know your rights part 2

This was similar to the workshop at St Anne's, also focusing on education and employment rights, but with less conflict within the group! Happily, the ladies present had a good knowledge of their rights, although also felt that discrimination between the races and the sexes does exist, and also felt that many people, in particularly those in similar situations to themselves, may not enforce their rights, as having a job, even if underpaid, is better than having no job at all.

Talk of discrimination eventually steered the conversation towards issues arising with the police – there was a strong sentiment that the excessively high level of corruption leads to the unfair treatment of a lot of people, while some officers within the force don't take their jobs seriously, but rather abuse their power. There was a possibly rather alarming reverence for mob justice, which frequently occurs in townships and involves processes such as 'necklacing', which was deemed to be quicker and, often, more effective. The notorious vigilante group entitled People Against Gangs and Drugs (PAGAD) was also discussed – this stemmed from people who sought to fight violence within their communities, but was eventually deemed to be a terrorist organisation by the South African government.

Workshop one – Know your rights part 3

Again, this workshop focused on children's rights. Unfortunately, of the four ladies in attendance, three were very quiet, and so there was only interaction with one woman and our volunteers. That being stated, they were all very interested in reading the aforementioned booklets on the rights of the child. Other topics that were covered included what to teach your children about swearing and about hitting other children, and the issue of corporal punishment. Following this, one of our Global Gap volunteers played guitar and sang some songs for the women, which they really appreciated.

Workshop one – Know your rights part 4

As was done at St Anne's, the workshop focused on human rights in relation to property matters. The volunteers covered the same topics, however on this day the ladies were not very talkative, which made it more difficult. Unfortunately this does arise, and cannot be foreseen, and the volunteers felt like they were just giving out information with very little reception. That being said, there was a question in relation to the waiting list for government housing, but it seems like the women are rather disillusioned with the housing situation in South Africa, which is not unusual given the crisis that the country is facing. Another sentiment, which we have encountered before, concerns an attitude of "us" and "them" for the ladies; the belief that African foreigners come into the country and are handed jobs and housing, while the coloured community are not entitled to such perceived treatment. This, sadly, leads to resentment and keeps racism alive. In order to attempt to tackle this, we plan to hold another workshop on xenophobia, and to highlight the circumstances which force foreign African nationals to make their way into South Africa.

Following on from this, the mood lightened when the cupcakes came out for the icing competition. The volunteers were thrilled that the ladies brought their children out of the nursery to join in, and they all enjoyed the cakes after they had been decorated.

Legal Services

Maria Mulindi

Anton Tysklind – Refugee Case

The client attended our office during the second week of October for assistance with his application for permanent residency being rejected.

The client made his initial application for permanent residency on the basis of his child, section 27(g) of the Immigration Act no 13 of 2002.

However, the Act was changed earlier this year, and the consequences of that is that you can no longer make an application for permanent residency on the basis of a child except if that child supports you.

Since the client's son was born last year, he is not in a position to support anyone, but according to section 26, the Department of Home Affairs may give direct residence to someone who is a spouse of a citizen or a permanent resident.

I then contacted the client in order to inform himself and his wife of the above. The client now had to start the application for permanent residency from over, since his application was now going to be based on a different section. This also meant that the client cannot appeal his current application rejection, and he has to pay the application fee all over again.

The client can do this application online, which I will be able to assist him with. I also now need to make sure all the facts and details surrounding his new application are 100% correct in order for the application to be filed.

Oliver King – Labour & Refugee case

The client came to us for assistance with two issues he is having; one is a labour case and the second is a refugee matter.

Case #1

Unfair Dismissal - Constructive Dismissal

The client informed us that he had been assaulted at his place of work and lodged a work grievance.

The client had been wrongly accused of stealing, a member of the security team then assaulted the client and his co-worker at the request of their employer. The injuries he suffered as a result of the physical assault had precluded him from working since.

It was advised that the client resign immediately in order to build a case for 'Unfair Dismissal', specifically that of 'Constructive Dismissal'. The client then submitted his resignation and filed a case for 'Unfair Dismissal' with the CCMA.

After pursuing his previous place of employment for a potential settlement agreement in order to avoid court proceedings, negotiations fell through. The company would not meet the client's settlement conditions, amounting to six months' wages and the sum of his hospital bills.

With no other options available to our client, he decided to proceed with his case and prepare for a preliminary hearing with the CCMA. In preparation, a 'Heads of Argument' was constructed outlining the particulars of our client's case; this had a key aim of demonstrating the employer's culpability for intolerable working conditions, and how this was wholly responsible for the client's resignation.

With a medico-legal report confirming that the client was assaulted, which also states that his injuries resembled the use of fists and hands, we were able to construct a strong case for 'Constructive Dismissal'. Stipulations from relevant case law were satisfied, and the burden of proof has now shifted to the employer; who must now prove that our client did not take reasonable action in resigning from his place of employment.

Case #2

Refugee Status Rejection – Appeal

The client also needed help forming an appeal following the rejection of his application for refugee status.

Growing up in the Democratic Republic of Congo (DRC), the threat of forced recruitment into a military faction was ever-present. In 2007 at the age of fifteen, the client states he was taken from his home in Mbuji Mayi, and transported to an unknown location alongside other young boys from his village. There, they were beaten and made to swear oaths to join the Congolese military (FARDC), loyal to President Kabila. Fearing their imminent return, our client fled the country with his father to South Africa.

As of now, the RSDO does not consider this threat to our client's freedom to be a valid reason for asylum in this country. Today, he is twenty-two years of age, and still falls into the bracket of young men who are targeted for forced recruitment. According to various reports from the United Nations, Human Rights Watch, and Amnesty International, forced recruitment into the FARDC is still extremely prevalent. This is an elevated threat in outlying rural settlements such as Mbuji Mayi. The client's father, who has since returned to the DRC, has experienced persecution and abuse for the absence of his son and his fleeing from his military duty.

Based on this palpable threat to our client, we drafted a Notice of Appeal and Appeal Affidavit, stating very clearly the concerns described above with the backing of contemporary, relevant publications by human rights groups and NGOs.

The appeal was submitted, and we now wait to hear of its success.

Molly Stephens – Labour Case

The client has sought help from the office in relation to his dismissal from his place of employment.

The client states he has been working as a security guard for a particular company for six years. His employment was terminated due to the company losing a contract which they had to provide security services for.

The security company taking over the contract informed the client that a Congolese national in South Africa on an asylum permit cannot be employed by them as they do not employ foreigners.

The issue is complicated by the fact that the client had been working under a false name. The client did not possess the required certificates to be able to work in the security industry, so the client states the company suggested to him that he use a different name. He has always been paid under the name on the payslips and was provided with a letter from the company enabling him to open an account under this alias.

We are currently pursuing two possible recourses for the client. The first is exploring any possibility of a claim in unfair dismissal for the failure of the new company to take over the client's contract from the first company. However, as this may be frustrated by the client working illegally under a false name we are also ensuring that the original company, which must comply with the Basic Conditions of Employment Act 1997, has paid the client the full severance pay to which he is entitled.

Leonie Beuss – Immigration case

The client's application for asylum was rejected; therefore he came to us for assistance with his notice of appeal.

The client was born in Buyenzi, Burundi in 1981. The client states his parents left himself and his two brothers in 2002 when they left Burundi, due to unrest in his hometown.

Up till this day the client does not know if his parents are alive or dead. In 2004 he became a member of the FNL (Forces Nationales de Libération). The FNL is a rebel group in Burundi which fought in the Burundi Civil War for the Hutu ethnic group and is estimated to have around 3,000 combatants. In the same year the client had to flee to the Murama bush, because members of the FNL were killed and attacked by members of the CNDD-FDD (Conseil National Pour la Défense de la Démocratie) – (Forces pour la Défense de la Démocratie) at night. During Burundi's civil war CNDD-FDD was the most significant rebel group active and became a major political party in Burundi.

The client lived in the bush for six years and survived by working on different farms. In 2010 he went back to his hometown (Buyenzi) and realised that his two brothers were killed, while he was in hiding in the bush, because they were also members of the FNL.

In 2010 the FNL was defeated in the local election. The CNDD-FDD and eight opposition parties signed a declaration claiming that the communal elections had been marked by 'massive fraud' and called for fresh elections. After the election the members of the opposition party (FNL) were forced to join the CNDD-FDD.

The client realised that given to his political affiliations, he was not safe anywhere in Burundi and at the end of 2010 he decided to leave Burundi. He hitchhiked his way to South Africa and passed Tanzania, Mozambique and Zimbabwe before he arrived in Cape Town in August 2011.

The client has started a family since he has been in South Africa and therefor does not wish to return back to Burundi.

Miriam MacDonald

Patricia Kristensen – Property case

The client came into the office regarding a property dispute she is having between herself and her two sisters.

The property in dispute belonged to her parents who passed away in 2003 and 2006. The client's son resided on the said property with her parents and the client moved in after her father passed away in 2003.

While the client's father was still alive he made his brother-in-law the executor of the estate and after the client's father past away the executor initiated sale proceedings in order to pay the estates' expenses. The estate was sold twice, however both sales were cancelled by the buyer as a result of our client's refusal to vacate the property. The client has been granted the opportunity to provide proof that she qualifies to purchase the property and has failed to provide such proof.

In 2013 eviction proceedings were initiated by the executor of the estate and our client and her son have been given until 30 January 2015 to vacate the property.

The client approached PAHRO hoping to appeal the decision. The grounds on which she wished to appeal was firstly a joint will signed by the deceased and dated 5 July 2003 stipulating that in the event the testators die together the property was to be sold and the profit split between the grandchildren. Secondly, our client was of the opinion that the executor of the will was wrongfully appointed.

After obtaining and reading through all relevant documents of the case it was concluded that chances of a successful appeal are slim. In the event that the will is found to be void because the testators did not die together as specified the rules of intestate succession applies. This, however, does not change the fact that our client and her children will be inheriting a minority of the property and thus her sisters will still be able to evict her. As for the executor we cannot agree that he was wrongfully appointed and in any event it does not affect the outcome of the case. We are currently waiting to meet with the client to explain our findings.

Oliver King – Divorce case

The client came to us seeking assistance with her divorce.

She married her husband in late 2014, before suffering three months of physical and mental abuse at the hands of her husband. In February 2013, her husband left Cape Town, claiming he was going to the Eastern Province to find work. At this opportunity, the client escaped the house they were staying in with only a few belongings. She has not heard from her husband since, and does not know anything of his true whereabouts.

The only relevant document that the client has in her possession is her marriage certificate. This poses a significant problem when trying to secure a divorce without the spouse's consent. In order to have a divorce granted using 'substituted service' or without the approval of the spouse, one must demonstrate that they have taken the appropriate steps to locate them. In South Africa, the necessary steps include posting a notice in a national newspaper appealing for the whereabouts of the missing spouse. This newspaper appeal must include a photograph, which our client does not possess. Even with PAHRO funding at hand to help pay for the newspaper appeal, the lack of a photograph means it cannot be posted according to pro bono legal services such as Legal Aid and the Cape Law Society.

One may employ a tracing agent to locate the missing spouse as a substitute for a newspaper appeal, but our client cannot afford one, nor can PAHRO afford to help fund a private investigation.

As a result, further research is required to find another way to prove that our client has diligently searched for her spouse. At present, we have not found an alternative that will allow to her to be granted a divorce based on 'substituted service'.

Sherwin Daniels

Criminal Law Cases

Polsmoor Prison

1. Parole for our client who is incarcerated

In 2013, our client, who was charged with murder, pleaded guilty in terms of a plea agreement (section 105A of the Criminal Procedure Act 51 of 1977) entered into by our office and the State. Our client and his friends were at a park in Manenberg when they saw their rival gang members walking down the street. The leader of the rival gang, fell to the ground due to a stone throw fight between the two gangs, and a friend of our client straddled the deceased. The deceased was unable to move, and our client started stabbing him, after which, he and his friends ran away. At this point, the deceased was still alive, and got up and ran away. Our client found out that the deceased was dead when the police came to his house later that night.

Sherwin Daniels, together with intern Paul Mallet, consulted with the client at Pollsmoor. He agreed to plead guilty. On 20 February 2013 the client was sentenced to ten years imprisonment of which three were suspended for a period of five years on condition that he is not convicted of murder, attempted murder or assault with the intent to do grievous

bodily harm committed during the period of suspension.

The mother of our client contacted Projects Abroad Human Rights Office in late November 2014. She was under the impression that her son was up for parole at this time. Our client had, at this point in time, served 21 months, equivalent to $\frac{1}{4}$ of his sentence. After doing general research on parole, we concluded that the process will automatically be initiated and presented to the Parole Board, thus leaving no steps for the offender himself or legal representatives to take. The offender must serve a prescribed minimum portion of his sentence before he will be considered for parole. We have yet to find out which specific minimum applies to this particular case.

Intern Patricia Lam, under the supervision of Sherwin Daniels, is currently in the midst of researching and drafting a legal opinion on parole, which will include a detailed explanation of the parole process, as well what factors will be considered by the Parole Board when making their decision.

2. Housebreaking with intent to steal, and theft

Our client has been charged with house breaking with intent to steal, and theft.

On the 27th September 2014, the client broke into the complainants shed-like structure at his panel beating business, and stole the following items: one Bosch grinder 1400 W, one Ryobi 180mm polisher, one CP polisher, one MTS yellow polisher and a bucket with a joint value of R7550.00. The client was then apprehended by a security guard from a private Security Force Company, who proceeded to return the client to the scene of crime and contacted the police. He was then arrested by the South African Police.

The first court date for PAHRO was set for the 27th of October 2014, where Sherwin Daniels and Jack Harrison appeared in Wynberg Magistrates' court in order to place Sherwin Daniels as the attorney on record. It was confirmed that the investigation was complete and the case was postponed for our office to obtain the evidence against our client/ State investigation.

On the 5th November 2014, Sherwin Daniels and Ryan Clarke attended Wynberg court for representation of the client. The client had his bail removed, due to an application by Sherwin, and was released from custody on warning. The matter was then postponed to the 13th of November 2014, for our office to consult with our client.

Our instruction from the client was to plead guilty to the charges set above. Ryan Clarke then prepared the document required for court, in terms of section 112 of the Criminal Procedure Act 51 of 1977. Mitigating circumstances were also investigated with the hopes that our client would receive house arrest [s276 (1) (h) Act 51 of 1977], as opposed to direct imprisonment at Pollsmoor Detention Facility.

On the 13th of November 2014, Mr. Daniels and Ryan Clarke attended court and the client pleaded guilty to housebreaking with the intent to steal, and theft. The trial was postponed, however, as the magistrate ruled that the possibility of house arrest be

investigated as to establish its suitability as a means of punishment for this specific client. The next court hearing is dated for the 21st January 2015, in order to obtain the correctional officers report on suitability of sentence.

Moot Court

“On Friday 28th November, the volunteers took part in a moot court. This case concerned a client who was facing five charges:

1. Murder
2. Gang membership
3. Gang association/contribution to criminal gang activities
4. Possession of an unlicensed firearm
5. Possession of unlicensed ammunition.

On the 14th March 2014, at approximately 17h00, a shoot-out between the American and Playboy gangs took place in Athlone, Cape Town. As a result, a 59 year old lady was shot in the chest and died on the street a few metres from her back door. The following day, our client was arrested in the area and subsequently, charged with her murder amongst other gang related offences.

The evidence for this case was centered around two key witness statements, which are fairly incoherent and conflicting in important details. The opening of the prosecution’s case focused its efforts on identifying the likely competence of the statements, seeking to secure a competent identification of the accused performing the murder in the eyes of the court. Witness 1 states that she saw the accused whilst standing at her back door; he stood 10-15 metres from her position, drew a firearm from his right pocket and fired one shot in the direction of the victim before she fell to the ground and died. This is the only statement that identifies the accused. Witness 3 states that she could not identify the shooter whilst standing on the top floor of her Flat block looking down from her bedroom window, citing a person of a different appearance to the person in Witness 1’s statement. The prosecution asserted that the lack of specificity in Witness 3’s statement is indicative of someone who did not see things clearly, from an elevated vantage point which makes things unclear looking down. Relying on Section 193 of the Criminal Procedure Act No. 51 of 1977, the prosecution impressed upon the court that it was their responsibility to identify the competence of the witnesses and the validity of their statements. Furthermore, the point was made that “an accused may be convicted on any offence on the single evidence of any competent witness” as specified in Chapter 24 Section 208 of the Criminal Procedure Act No. 51 of 1977. It was shown that convictions based on a single piece of evidence from a single witness held in the case of *State v Siba and Others 2012*, where the accused were found guilty of attempted murder. Essentially, the prosecution needed to prove that Witness 1’s statement was more reliable and demonstrated a clearer view of the events than Witness 3, and that this evidence alone was enough to secure a conviction of the charges by South African Law.

The defence rejected this notion, calling into question the age of Witness 1 (fifteen years

old) and how evidence given by children has been treated in past cases. Citing relevant case law, it was noted how the court was subject to extreme caution when considering the evidence given by minors and how they have been deemed incompetent in the past. The multiple inconsistencies that could be identified in the statements given by Witnesses 1 and 3 were said to demonstrate reasonable doubt for how the true incident played out, where the evidence of one witness cannot stand when another describes a very different chain of events.

Regarding gang related charges, the prosecution focused their case on the statement from Witness 1, together with a sworn affidavit from a police constable - a gang specialist who serves in the area as a contact for informants. Using Section 11(c) of the Prevention of Organized Crime Act 121 of 1998, the prosecution sought to prove the accused's membership to a prominent gang. They proved that the accused frequented the gang's area, and had gang-related tattoos on his arm. This information is enough to satisfy the stipulations of the legislation in Section 11(c).

To counter this point, the defence attempted to show that it was impossible to truly identify whether a tattoo is gang-related, where some symbols adopted by the gangs are also popular amongst those that have no affiliation with them i.e. the stars that the accused had on his arm could be considered a fashionable pattern as opposed to a representation of his gang loyalty.

The charges associated with the unlicensed possession of a firearm and ammunition were the biggest problem for the prosecution. The firearm used to kill the victim was never recovered. As a result, the prosecution asserted the point that it is easy to conceal a firearm in an area that is populated with the accused's fellow gang members.

The defense utilised this key point to put forward a convincing argument for a lack of evidence in this case. They concluded that the murder of the victim could not be proven beyond a reasonable doubt without any evidence linking the accused to a murder weapon. Without a murder conviction, the possession of an unlicensed firearm and ammunition charges cannot stand.

At the conclusion of both arguments, the majority of observers (volunteers/ interns and staff) found the accused not-guilty of all charges. However, a select few deemed that his actions and appearance satisfied the stipulations of Section 11(c) of the Prevention of Organised Crime Act 121 of 1998, therefore finding him guilty of gang membership."- By Oliver King, *UK, Human Rights Intern*.

Conclusion

We have started with the preparation for our office move on the 05th December.

A majority of our clients have been notified of the move and the rest of the clients we have been unable to get hold of.

In December our Social Justice workshops will be limited or reduced as our project partners

will be closing.

Volunteers who will be here for the December period will be able to join the Projects Abroad Holiday Program, which they have been notified of.