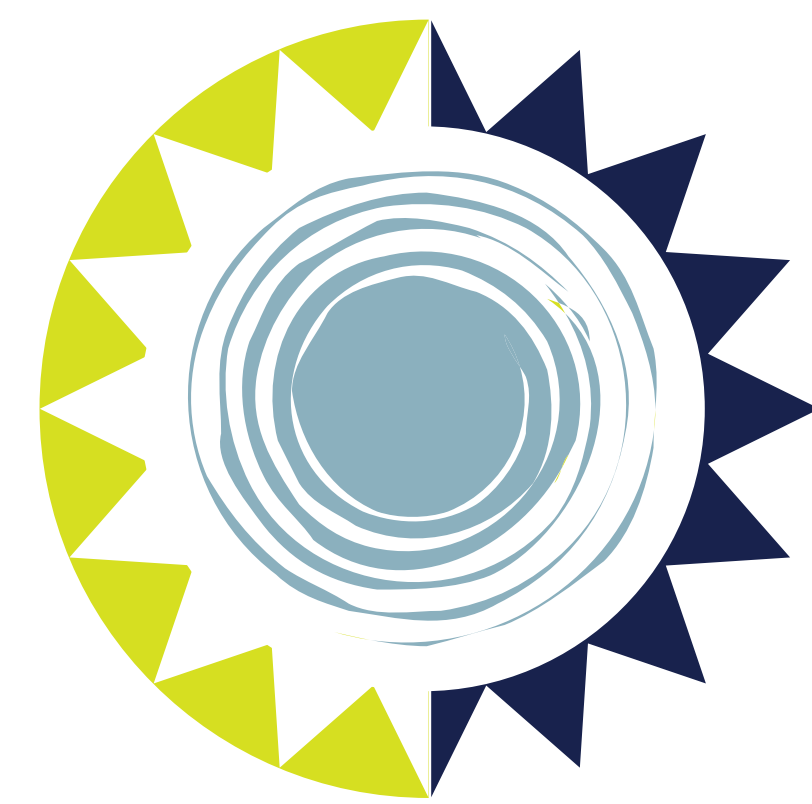


FINALISTS

17 SEPTEMBER

2nd ANNUAL PRO BONO AWARDS CEREMONY 2015

ProBono.Org



EGON OSWALD

INDIVIDUAL
ATTORNEY



Ten years ago, Port Elizabeth attorney Egon Oswald was asked to represent Bradley McCallum, a St Albans prison inmate who alleged he had been tortured, assaulted, beaten and raped by a warder with a baton during a prison-wide orgy of violence and collective beatings. When a trickle of complaints from other inmates also claiming to have been tortured turned into a flood, Oswald's life dramatically changed direction.

At the time, Oswald was running a small commercial and property practice and was an unlikely candidate to take up the cudgels of an assault and torture case. However, he has acted for McCallum and 230 other St Albans torture survivors ever since. In the process, the small-town lawyer mounted a David-and-Goliath one-man battle against the State with little assistance and no financial backing.

After exhausting all domestic legal options in attempting to obtain justice for his clients, Oswald turned to the United Nations Human Rights Committee (UNHRC) in desperation. In so doing, he became the first SA attorney to successfully prosecute SA for human rights violations at the UNHRC in Geneva and win his case – Bradley McCallum vs SA – with little fanfare or acknowledgement. In 2010, the UNHRC ruled that SA had violated its obligations in terms of at least two conventions – the UN Convention on Torture, Cruel, Inhuman and Degrading Treatment and the UN Convention on Civil and Political Rights.

However, Oswald's hope that the adverse finding of the UNHRC would spark the State's moral indignation came to naught. Instead, the State spared no expense in attempting to avoid liability. Since May 2014, Oswald has spent about 55 days in the PE High Court meeting the State's well-resourced defence in a torture-related civil damages claim against the Minister of Correctional Services in which he is representing the first two of 231 potential plaintiffs.

Concluding arguments in this massive trial

were heard at the end of July, ten years after the shocking events occurred at St Albans during the grim winter of 2005. Should the case be successful, it will pave the way for one of the largest damages claims ever instituted against the Minister of Correctional Services. Though the case has enormous human rights implications, it has had virtually no publicity apart from irregular exposure in the on-line Daily Maverick.

The inmates were subjected to collective mass-beatings and torture by about 50 warders in retribution for the murder of fellow-warder Babini Nkaqula, a family member of then-Minister of Safety and Security Charles Nqakula who was the husband of former Minister of Correctional Services Nosiviwe Mapisa-Nqakula.

The testimony below is illustrative of some of the traumatic evidence Oswald has dealt with over the past decade:

"We were forced to run naked down the corridor through a tunnel of warders who hit us while we were running and sprayed us with water. They were swearing and screaming 'today you're going to die'. Then they forced us to lie on the wet floor in a long human chain - about seventy prisoners from my section.

"Each inmate was forced to have their nose in the arse of the person in front of them. If you turned to look up, they kicked you in the face with an army boot. There were also female warders who walked over us, kicked us in our genitals and mocked us about our private parts. And there were dogs.

"The warders beat us with batons, shockboards, broomsticks, pool-cues and pickaxe handles. As a result of the electric-shock shields and the terror, the prisoners were pissing and shitting on themselves and on each other. Blood was literally running down those prison walls.

"I was covered in human waste and blood," McCallum said. "There were people with AIDS, TB, diabetes, sick people, old people. The warders didn't care."

There were inmates with far worse injuries than McCallum. McCallum was left with a dislocated jaw, bleeding head wounds, no front teeth, a skew arm and regular flashbacks which continue until today.

The case had received little publicity.

Though Oswald was voted Human Rights Lawyer of the Year by the Cape Law Society in 2011 for his efforts as the first SA lawyer to successfully prosecute a complaint against the South African State at the United Nations, the reward also received little publicity. (Other awards he has received are: Human Rights Attorney of the year (2012) South Africa – Acquisition International; Sustained excellence in the field of Human Rights South Africa – Acquisition International 2013; Human Rights Attorney of the year South Africa 2014 – Acquisition International)

Back in PE after the success of McCallum vs SA in Geneva, nothing much changed. SA was instructed to investigate McCallum's claims, prosecute those responsible and provide a remedy and information about measures taken within 180 days. More than a year later, in October 2011, DCS finally issued a media statement but ignored the UNHRC's request to publish its findings. Even the implicated warders remained in their jobs and remain there to date.

Driven by what Oswald terms "a complete antipathy to the abuse of power and the culture of impunity increasingly prevalent in SA institutions," Oswald was also incensed by the fact that SA ignored five requests by the UN body to respond to McCallum's allegations.

If Oswald wins the torture-related civil

damages claim for his clients, it will pave the way for 229 other applications. If not, he will have succeeded in placing the subject of torture on the legal map and in raising awareness of its causes and consequences.

As it turned out, McCallum's case was not unique. Instead, it served to reveal a wide-spread culture of impunity and brutality behind bars which led to Oswald representing other torture-survivors in different prisons. He is currently also representing more than 200 survivors of a second round of mass beatings and torture which took place at St Albans in March last year – a direct replication of events which occurred in the same prison a decade earlier.

Oswald has devoted his life to the 2005 St Albans matter, funded the litigation himself for more than a decade at the cost of his own practice, and reaped no financial reward.

The wide-spread torture that occurred at St. Albans in 2005 has been an unpopular and difficult cause to champion. However, the UNHRC decision provided the impetus to force Parliament to finally enact legislation – The Prevention and Combating of Torture of Persons Act 2013 – criminalising torture in SA.

Oswald's efforts have probably also contributed to the prioritisation of human rights abuses in South African prisons on the SAHRC agenda and he serves in a voluntary capacity on the SAHRC's Section 11 Committee. His commitment to the St Albans torture survivors – an endurance test beyond his wildest imaginings when he agreed to represent McCallum in 2005 – demonstrates the vital role lawyers can play in maintaining SA's constitutional democracy.



COURT PREPARATION TRAINING FOR TEDDY BEAR CLINIC

Children's Rights

Hogan Lovells



The Teddy Bear Clinic is a not-for-profit organisation that provides medical and therapeutic services to children who have been physically or sexually abused in South Africa. Hogan Lovells adopted the clinic as its chosen charity when it was formed over 13 years ago. The relationship started with funding the organisation on a monthly basis but grew to providing legal and management advice. Over the course of time, a number of directors have sat on the board of the Teddy Bear Clinic and provide corporate governance assistance to the organisation.

The clinic engages the child immediately when the crime is reported and once the child has undergone the medical treatment and psychological counselling, he or she enters a court programme which helps him or her to become a better witness in the criminal trial against the perpetrators. In 2013 Hogan Lovells considered the challenges faced by the Teddy Bear Clinic on preparing the child witness for giving evidence in court and the decrease in the conviction rate of perpetrators and approached the clinic with a proposal.

Hogan Lovells volunteered to update and improve a court preparation manual for the children, offered to provide volunteer lawyers to assist with the Saturday training (for children) and, together with the social workers of the clinic, to work to prepare the children as witnesses to give evidence in court.

The idea behind the proposal was to empower children who have had their rights infringed, to change the mindset from victim to champion and to assist them to find closure from the sexual abuse by being the best witnesses they can be. The firm wanted to give them a real life court experience, to teach them legal principles necessary for the court experience and to grow confident, credible witnesses – and still have fun and be children.

The existing Teddy Bear Clinic manual was re-designed in a manner that taught court preparation in fun role plays, games and life skills activities. A programme was developed that included confidence and trust building exercises for the children.

The Teddy Bear Clinic Saturday training is held on one Saturday a month for two hours and the children are taken through various modules on a structured programme. The day begins with trust and confidence building exercises and then progresses to what needs to be taught to the children about the court process. The entire programme is done in 10 sessions over the year. The volunteers for the project are candidate attorneys and

associates of Hogan Lovells. Hogan Lovells partners each lawyer with a social worker as a team and the children are taught about the role players in court, court procedure, legal concepts in the criminal justice system, outcomes of trial and sentencing. They also learn how to deal with anxiety, stress, and fear before, during and after giving evidence in court.

For 2014, the new programme ran only at the Soweto clinic but for 2015, this has now been extended to the Krugersdorp clinic.

There were approximately 70 children and 40 adults that underwent the programme in 2014.

THE CENTRE FOR ENVIRONMENTAL RIGHTS

HUMAN
RIGHTS
CHAMPION

The Centre for Environmental Rights (CER) uses the law through litigation, advocacy or law reform to fulfil people's rights. The nomination is based on the case of a community organisation Vaal Environmental Justice Alliance (VEJA) in its battle to access environmental records from multinational steelmaker ArcelorMittal (AMSA).

The problem

South Africa has significant heavy industry which has substantial environmental impacts, and – if not properly managed – poses significant risks to human rights, including the constitutional right to an environment not harmful to health or well-being. Because of South Africa's history, many poor South Africans are affected by pollution from industrial facilities, with no ability to move away from the sources of this pollution nor the resources to challenge the companies that own these facilities.

Compliance monitoring and enforcement of environmental laws remains generally poor and inadequate, and there is negligible follow-up on complaints made about pollution from industrial operations. To compound the problem, South African corporates have fostered a culture of secrecy with no recognition that industrial operations ought to comply with environmental and other laws or that they have an obligation to reveal their impacts.

The birth of Steel Valley

The Vanderbijlpark Steel Works was built in the 1950s by the apartheid parastatal Iscor as part of a government initiative to establish industry on the Vaal coalfields. For most of its existence, the Steel Valley community was a racially segmented society, with white smallholders as owners, retaining one or two black families as farmworkers or servants on each holding. For many decades, the Steel Valley community argued that the Steel Works were polluting air, soil and groundwater in the area.

By 2002, the entire community of nearly 600 smallholdings, their houses, outbuildings and shops had disappeared. Civil damages claims brought against Iscor floundered as the steelmaker bought up many of their small farms. The area was cordoned off with electric fences and most of the population had been dispersed into neighbouring towns and townships.

However, Steel Valley residents would not go quietly: some of the ex-residents continued their battle.

The long-sought Master Plan

In the early 2000s, under pressure from Steel Valley residents and regulators (particularly in view of the new Constitution and its recognition of environmental rights, and new environmental legislation passed in the late 1990s) the company commissioned a "holistic integrated environmental Master Plan for the Iscor Vanderbijlpark Steel (IVS) Works, whereby all disciplines would be thoroughly researched, and all available historic information used and combined with the aim of providing an integrated environmental management plan for the Works".

The Master Plan, completed in 2003, is a comprehensive strategy document that contains the results of specialist environmental tests for pollution levels at Vanderbijlpark, as well as recommendations for AMSA to address this pollution and rehabilitate its sites over a 20-year period. The plan would provide VEJA with a huge amount of information about the nature and scope of AMSA's environmental impacts. But despite undertakings by Iscor to share the Master Plan with local communities, in 2003 they were only given a summary report of the Master Plan. This summary failed to answer their questions, and left the communities frustrated and angry.

High Court victory for the Vaal Environmental Justice Alliance

In 2011, with support from the newly established Centre for Environmental Rights (CER), VEJA submitted a request in terms of the Promotion of Access to Information Act (PAIA) for the Master Plan. It was argued that it was in the public interest, and more specifically, the interest of the Vaal community, to know what impact AMSA was causing on the environment and people's health.

AMSA refused VEJA's request to access this information on the basis that VEJA had failed to establish that it had a right to access the documents.

In October 2012, the CER, on behalf of VEJA, instituted proceedings in the High Court to compel AMSA to release the

Master Plan under PAIA. AMSA opposed the application, arguing essentially that it owed the public no duty of transparency in relation to activities that impact on the environment.

On 10 September 2013, the High Court gave a precedent-setting judgement in VEJA's favour. It held that VEJA did have a right to access the records. A refusal of the application would amount to hampering VEJA in championing its cause and generating public opinion, and this would dissuade public mobilisation, **"when it has been clearly established that the participation of public interest groups is vital [for] the protection of the environment"**.

In October 2013, instead of handing over the documents as ordered, AMSA launched an appeal against the High Court decision, making many of the same arguments submitted in the High Court.

The SCA handed down judgement on 26 November 2014, and in a groundbreaking victory for VEJA, the court ordered AMSA to release the Master Plan to VEJA, and to pay VEJA's legal costs.

The SCA emphasised the importance of corporate transparency in relation to environmental issues, stating that **"Corporations operating within our borders... must be left in no doubt that, in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced"**.

The SCA highlighted the **"dangers of a culture of secrecy and unresponsiveness"** and berated AMSA's **"obstructive and contrived", "disingenuous"** approach in which it had **"feigned ignorance"** of the existence of the Master Plan. The judgement recognises **"the importance of consultation and interaction with the public. After all, environmental degradation affects us all"**. As an **"advocate of environmental justice"**, VEJA is entitled to the information sought and **"to monitor the operations of [AMSA] and its effects on the environment"**.

The judgement set a new precedent on the rights of fenceline communities and civil society organisations, not only to have access to environmental records, but also to enforce compliance with environmental laws in line with their constitutional right to an environment that is not harmful to health or well-being. The judgement also made important findings on corporate accountability and transparency to a degree that we have not seen before in South Africa.



After the litigation

AMSA handed over the Master Plan, in hardcopy, to VEJA on 17 December 2014. At the time, the new AMSA CEO Paul O'Flaherty announced that AMSA was committed to dealing with its "legacy" of environmental problems "openly and transparently" and stated that, "we intend reaching out and holding an NGO forum as quickly as we can . . . to talk through these issues."

At the start of 2015, VEJA and the CER started the arduous process of scanning and going through all the documents that made up the Master Plan, and obtaining an initial assessment of the findings. The Master Plan certainly makes clear that, at the time that it was prepared, there was already substantial pollution at the Vanderbijlpark plant, particularly groundwater and soil contamination by a range of contaminants that include heavy metals. The report showed a "potentially unacceptable" risk to the environment and human health as these contaminants move through groundwater, with potential exposure through affected drinking water.

Residents of Steel Valley have long alleged significant health impacts from water pollution in the area, and the process to establish possible causes of action for damages claims against AMSA now begins, as does work to ensure proper rehabilitation of the contaminated soil and groundwater by AMSA.



Centre for Environmental Rights
Advancing Environmental Rights in South Africa



Outstanding Law Student at a University Law Clinic

Mxolisi Ngubane



Mxolisi's duties included dealing with cases relating to contractual, consumer and general civil law disputes. The work involved consulting with clients and witnesses, conducting legal research, drafting letters and pleadings, and preparing cases for and attending trials. He was responsible for handling the cases he had taken on and finding solutions to clients' problems.

Mxolisi was undoubtedly the most dedicated student in the course. He worked significantly more hours than was required for the course during the course of the academic year, and further volunteered his time and services during the holidays during and after the course.

Mxolisi's contribution to the Clinic was so significant that he was awarded the Nadine Mann Memorial Prize during the Wits Law School's prize-giving ceremony.