

## 'Change will come in a barrel': a tribute to Rudolph Jansen

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TRIBUTE



## ‘Change will come in a barrel’: a tribute to Rudolph Jansen

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Long-time human rights and land reform lawyer, Advocate Rudolph Jansen SC died in Limpopo Province, South Africa on 25 November 2017. His passion for social justice was matched by a keen wit and abiding sense of humour, a combination that was reflected in his own twist to an iconic statement by Mao Tse-Tung, sardonically remarking that ‘change will come in a barrel’.

Rudolph’s funeral was attended by hundreds of friends and members of communities that he had represented throughout his career, all paying tribute to his talents as a human rights lawyer and to his qualities as a human being. He was a long-standing member of the Pretoria bar, becoming a senior counsel in 2014, and National Director of Lawyers for Human Rights (LHR) from 2003 until 2007. He completed his law studies at the University of Pretoria. From the very beginning of his career as an advocate with the Pretoria Bar, Rudolph became involved in the anti-apartheid struggle, doing pro bono work for LHR. The cases that he brought, alone and with others, became the subject of extensive scholarly discussion.

During the late 1980s and early 1990s, Rudolph joined other LHR lawyers to prevent the execution of political activists who were facing the death penalty, a horrific tool of persecution by the apartheid state. LHR’s strategy in these days was to delay executions, hopefully for long enough until the death penalty was eventually abolished. Numerous contributions to this Journal took issue with this core human rights issue.<sup>1</sup> And eventually, the death penalty became the focus of the very first case to reach the attention of the Constitutional Court in *S v Makwanyane*.<sup>2</sup>

Rudolf was a talented litigator. Many police officers, unscrupulous landlords and government officials experienced his piercing cross-examination. Like many human rights lawyers, not all litigation was met with success, particularly prior to 1994, but

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<sup>1</sup> C Murray, J Sloth-Nielsen & C Tredoux ‘The death penalty in the Cape Provincial Division: 1986–1988’ (1989) 5 *South African Journal on Human Rights* 154; L Vogelmann ‘The living dead: Living on death row’ (1989) 5 *South African Journal on Human Rights* 183; U Bentele ‘The false promise of discretionary imposition of the death penalty in South Africa’ (1993) 9 *South African Journal on Human Rights* 255; P Maduna ‘The death penalty and human rights’ (1996) 12 *South African Journal on Human Rights* 193.

<sup>2</sup> *S v Makwanyane* 1995 (3) SA 391 (CC) (death penalty a violation of rights to life and human dignity).

that came with the territory and in any event brought important social justice issues to the public's attention, validating the legitimacy of the anti-apartheid struggle.<sup>3</sup>

With the abolition of the death penalty in 1995, Rudolph assisted LHR to expand its focus to the awful conditions in South African prisons. Together with fellow human rights lawyers, Jody Kollapen, Andries Nel and others, Rudolph challenged overcrowding and abusive practices in prisons, like indefinite solitary confinement and other violations. In this Journal, he wrote about these experiences and reflected on the role of public interest litigation in an article with Emily Tendayi Achiume.<sup>4</sup>

Throughout his career, Rudolph developed a busy and wide-ranging human rights practice, representing prisoners, asylum seekers, unlawfully evicted persons, human rights defenders and sex workers. His involvement in housing cases has helped to ensure fair process and dignity for those who find themselves without a home, with the aim to secure tenure for all. In the case of *S v Jordan*,<sup>5</sup> Rudolph was part of a team that brought a constitutional challenge provisions to the Sexual Offences Act 23 of 1957 which, in essence, criminalised prostitution and discriminated against sex workers by making them the primary offenders and the focus of law enforcement. While the judgment did not find in favour of his clients, it generated a great deal of attention and scholarly debate on gender equality, including in the pages of this Journal.<sup>6</sup>

It was Rudolph's contribution to South African land reform and restitution in the post-1994 democratic era that deserves special mention, a beacon of hope, enabling the dispossessed to return to their land and communities. His steadfast commitment resulted in ground-breaking legal cases. In the *Baphiring*<sup>7</sup> case, it took seventeen years of sustained litigation to restore landownership to a North-West community of 400 families who had been forcibly removed by the Apartheid government. This set a ground-breaking precedent on both the restoration of land as well as the post-settlement support required in the land restitution process.

Towards the end of 2017, Rudolph led an important legal challenge to the Mining Charter, seeking to ensure an equitable distribution of the country's mining benefits to affected communities, whose voices had historically been muted.<sup>8</sup>

Rudolph's professional and personal commitment to equality and justice reached well beyond the development of legal precedents and academic debate. His tireless work has had very real consequences on thousands of people. He has played a key role in the campaign for social justice, for equitable wealth distribution.

<sup>3</sup> R Abel *Politics by Other Means* (1995).

<sup>4</sup> R Jansen & ET Achiume 'Prison conditions in South Africa and the role of public interest litigation since 1994' (2011) 27 *South African Journal on Human Rights* 183.

<sup>5</sup> 2002 (6) SA 642 (CC).

<sup>6</sup> M Richter & B Chesa 'Adult, consensual sex work in South Africa – The cautionary message of criminal law and sexual morality' (2009) 25 *South African Journal on Human Rights* 179; R Robson 'Sexual democracy' (2007) 23 *South African Journal on Human Rights* 409; N Bohler-Muller 'The promise of equality courts' (2006) 22 *South African Journal on Human Rights* 380; R Krüger 'Sex work from a feminist perspective: A visit to the *Jordan Case*' (2004) 20 *South African Journal on Human Rights* 138.

<sup>7</sup> *The Baphiring Community v Tshwaranani Projects* CC 2014 (1) SA 330 (SCA).

<sup>8</sup> L Omarjee 'Court allows mining communities to join Chamber's case against DMR' *FIN24*, 14 November 2017; LHR's heads of argument can be downloaded at <<http://miningcharter.chamberofmines.org.za/downloads/send/29-court-documents/135-lhr-heads-of-argument>>.

But beyond these outstanding professional accomplishments, what gave Rudolph the greatest source of pride and joy was his family, and especially his wife, Mariana, and his sons, Gustav and Rudolph.

Those of us who knew Rudolph Jansen will feel humbled to have known this great man. The legacy of his work, to push quietly for a more just society, will continue to the next generation of human rights lawyers. With this tribute, the *South African Journal on Human Rights* recognizes Rudolph Jansen's important contributions to the advancement of social justice and to human rights jurisprudence and scholarship.

And so again, we say *Hamba kahle*, comrade Jansen.