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*THE INSIDE STORY: A REVIEW OF LANDMARK VICTORY FOR JUSTICE:
BIOWATCH'S BATTLE WITH THE SOUTH AFRICAN STATE AND MONSANTO¹*

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A surface overview of this book can be provided in just a few sentences, a big story about a small non-profit organisation, Biowatch, conceived by two activists on a summer's day in 1997, taking on a major legal battle against a \$10 billion company, Monsanto – a modern David and Goliath story. The story seems trivial when caricatured like this and the trivialisation of the story is a theme which emerges from the litigation process undertaken by Biowatch against Monsanto.

The lessons learned, and the journey travelled, leading up to what we have come to know as a landmark case in South African jurisprudence – the “Biowatch case” – started off as a simple request for information. Biowatch requested official information from the National Department of Agriculture on Genetically Modified Organisms in 1999. The request relied on the right to access to information contained in section 32 of the Constitution. This was the first employment of a tactic civil society could use to defend rights where litigation seems impossible.

Biowatch's first hurdle was encountered at the very beginning of the litigation process in the North Gauteng High Court. There were struggles within the organisation which impacted on its preparedness for court. This was made worse by the intervention of other companies in the court proceedings as interested parties on the State's side. These were major companies with superior financial resources to carry out litigation. The battle field was already uneven at this point. With options other than litigation open to civil society, Biowatch campaigned and raised awareness and advocacy. Major alliances were formed in an effort to lobby in aid of legal reform.

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¹ Rachel Wynberg and David Fig *A Landmark Victory for Justice: Biowatch's Battle with the South African State and Monsanto* (2013) Biowatch South Africa: Durban.

The second hurdle revolved around the negative press Biowatch received from Monsanto. The media, sometimes a tool civil society can use to campaign and promote advocacy, was in this instance used against civil society. This makes the reader think of a hypothetical high school field with different social cliques. There is the little group that is in favour of peace and people getting along. On the other side of the field, there is a larger group that has an upper hand over the small group due to its social standing. Both groups use the same field to rotate information about the other. The imbalance is in the standing of the bigger group and the influence they have on how information is perceived by others. A request to access information is said, by Monsanto, to be ‘opening the door for thoughtless activists to continue to misinform and mislead the public by poking holes in all assessments and reviews previously conducted by experts in the field.’² It seems improbable that anyone could ever trivialise the efforts and aims Biowatch had more than Monsanto did through this statement.

Victory came but was short lived. The reader becomes hopeful and remains in support of little David as he wins the battle against Goliath. The court grants cost orders against Biowatch in favour of Monsanto but allows Biowatch the access to information. This leads the reader into a debate about what victory means to them: winning the war or the battle. Information was attained but at an unexpected cost. This gives a further insight into Biowatch’s resilience as it was not deterred by the cost order. The aim was to win the war.

The journey through the High Court, the Supreme Court of Appeal and the Constitutional Court, where the cost order was unanimously reversed, makes the reader feel as though they were part of the process along with the author. Another trait the book achieves is transparency. The internal issues of the organisation are made part of the journey, giving the reader an even clearer inside story. ‘The organisation has made a contribution beyond its mandate.’³

The threat, purpose, and impact the cost order had on civil society and the importance of the victory is explained in an interview with Janet Love, the National Director of the Legal Resources Centre, within the book as she states that ‘the order

² Ibid at page 42.

³ Ibid at page 69.

posed a threat to the vibrancy and survival of civil society and NGOs...'⁴ It is with the precedent the case has set that civil society can proceed in litigation without any fear of being financially drawn out by an opponent in its pursuit of justice.

Little David ultimately won the war. A success story that is continually shared amongst people for encouragement... this book serves the same purpose within civil society in its efforts to continually access justice.

⁴ Ibid at page 49.