



ProBono.Org<sup>®</sup>

ANNUAL REPORT **2017**

**Collaboration**

*“Alone we can do so little; together we can do so much.”*

*Helen Keller*





# ANNUAL REPORT **2017**

## **Collaboration**

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*“We are fortunate to have reached the stage where we can say, with pride, that we are an important and valuable organisation on the legal landscape, with a strong track record, providing a high-quality service to both attorneys who undertake pro bono work and our clients.”*

# Letter from the Chair

**Since I became Chair of ProBono.Org in April 2017, I have come to realise what a critical role we play in extending access to justice. Our achievements during the year demonstrate that we are reaching the lives of thousands of people, and hopefully making a real contribution to improving their circumstances.**

In 2017 we opened 7 468 files, 16% of which were referred to private sector attorneys to take on.

What makes our work unique is the extensive “packaging” we do for pro bono attorneys who take on our matters. In the first place we ensure clients that are referred to attorneys fall within the means test. Secondly we undertake a thorough merit assessment so that attorneys do not waste part of the 24 mandatory pro bono hours required of them per annum, working on matters that have no merit.

If we are not sure whether a matter has merit, or if the matter is complex, we brief counsel for a legal opinion, enabling us to make a decision on merit and have some indication on what action to take. When we send the matter on to an attorney, that attorney will have the benefit of a legal opinion. We collect as many of the required documents as possible, prepare detailed instructions on the facts and the legal issues for the attorney. If the attorney requires us to find a pro bono advocate to be briefed, we identify one.

After a matter has been referred for further legal assistance, there is additional work we do. We track and monitor case progress, address any communication challenges between attorney and client, ensure that clients understand the status of their case, manage client expectations, among other things.

All this keeps our staff fully occupied. Currently we employ 28 staff members, 20 of whom are lawyers. Eleven are legal interns with LLB degrees who are supervised and assisted by

eight attorneys and a senior paralegal. The remaining ProBono.Org staff ensure the finances are managed properly, the data is accurately collected, the administration runs smoothly, clients are provided with assistance at the front desks and that support is given to attorneys and advocates who work with us. In addition we have staff dedicated to raising funds to ensure our sustainability, and staff that assist in marketing the organisation. These dedicated people ensure our success.

We are fortunate to have reached the stage where we can say, with pride, that we are an important and valuable organisation on the legal landscape, with a strong track record, providing a high-quality service to both attorneys who undertake pro bono work and our clients. The law firms that have registered to do pro bono work through us number more than 400, of which seven are the biggest firms in the country with hundreds of attorneys. We also have more than a hundred practices with fewer than ten attorneys, many single person practices. Advocates at the Johannesburg, Cape and KZN bars readily accept briefs from us and our pro bono attorneys, and a panel of 46 mediators is available to do pro bono work.

The lawyers with whom we work have come to rely on our services. We would not be able to enable the delivery of pro bono services to such high numbers without the dedication of these professionals and our staff.

**Mohamed Rander  
Rander & Associates**



*“Our entire modus operandi is to work in cooperation with others – the legal profession, the law societies and bar councils, NGOs, community advice offices, state officials and donors, all for the benefit of the most vulnerable members of our society, whose need for free legal services must be realised.”*

# National Director's Report

**The theme for our 2017 year is “Collaboration”. The word embodies something highly treasured by ProBono.Org, conjuring up the idea of working together, entering partnerships, cooperating, participating and associating with others. These are not only values important to us, but are frequently at the core of many non-governmental organisations that serve the public. Working alone and in isolation, cut off from others, pursuing one's own objectives competitively and in a manner that is exclusionary, are values that are firmly rejected.**

We were very fortunate to have had the opportunity to be involved with two significant collaborations during the year, each with great value to ProBono.Org, the legal practitioners we work with and the clients we serve.

Every year, a Public Interest Law Gathering (PILG) is held at which a collective of organisations and people working to promote human rights and public interest law come together to share ideas, provide important information on cases, trends, policies, advocacy campaigns and research. Such gatherings enable us to talk about the types of cases we see, the trends, the issues that require advocacy and the matters that we might want to work on collaboratively. We learn from one another and make plans to work together.

This year ProBono.Org participated in three panels: one on reviving the Domestic Partnerships Bill, one on the Legal Practice Act (the Act) and its community service provisions, and one on legal clinics as a means of extending access to justice.

The panel entitled “Does the Legal Practice Act enhance Access to Justice?” enabled panelists to talk critically about the community service provisions of the Act from their different perspectives. For instance, Devan Dass from Wits University law clinic stressed the value of clinical legal experience during the

LLB which serves the most needy, and Penny Andrews from the UCT Faculty of Law stressed how student community service should be improved and made more meaningful. Tshenolo Masha, a ProBono.Org staff member, stressed that pro bono or community service should focus on the direct legal needs of the poor and marginalised. Ilan Lax, a member of NADEL and a board member of ProBono.Org, spoke about a submission that was prepared for the Minister of Justice on Section 29 of the LPA.

This submission emerged out of another significant collaboration – between ProBono.Org, the Law Society of South Africa (LSSA), the National Association of Democratic Lawyers (NADEL) and others. Over a period of two years this group met and started evaluating and preparing a critical analysis of Section 29 of the Act. At the end of the process, a paper was prepared and presented at consultative gatherings around the country for comment and input. The thrust of the paper and comments is that Section 29 does not mention pro bono as a form of recurring community service and does not prioritise access to justice for the poor as a central aim of community service/pro bono. The collaboration is ongoing, with the next step being engagement with the Department of Justice.

These two collaborations indicate how useful and constructive working with others can be for our clients and the lawyers we work with. Our entire modus operandi is to work in cooperation with others – the legal profession, the law societies and bar councils, NGOs, community advice offices, state officials and donors, all for the benefit of the most vulnerable members of our society, whose need for free legal services must be realised.

**Erica Emdon**  
**National Director**



## Special Projects

*Our role as ProBono.Org is to ensure that legal professionals in private practice are brought into the CAO space and do their pro bono work through community advice offices.*

### The Community Advice Office Support Project (CAOSP)

**This project is founded on the principles of collaboration. We partner and work with advice offices, funders, other legal service providers such as public interest law organisations and legal practitioners in the private sector.**

We have participated in many discussions surrounding the current state of the sector and one issue of great importance concerns the case management system. We attended a developers convening hosted by the National Association for the Development of Community Advice Offices (NADCAO) which was a discussion on how the sector can have a single case management system. The system that was developed by ProBono.Org seeks to ease the burden of requiring resources to report on cases by making use of mobile phones and social media platforms. CAOs are notoriously under-resourced but that alone should not be an obstacle for creating a means to gather information about their work. By capturing details of the cases they deal with and the trends that they see, they are not only enabled to make strategic decisions that may lead to advocacy, they are able to indicate to donors and government the importance of their work. We are looking forward to further engagements and possible implementation of a unified case management system.

We have been able to offer some financial support to a handful of CAOs by contracting them to undertake certain work for us out of Mott Foundation funding. These CAOs organised a number of community training workshops and identified legal practitioners in their areas to undertake pro bono work. We have been advised by the Mott Foundation that their funding for this project will cease at the end of 2018. We hope this will be an opportunity for other funders to come in and support the work that we do with this sector.

Our role as ProBono.Org is to ensure that legal professionals in private practice are brought into the CAO space and do their pro bono work through community advice offices. We hosted a pro bono briefing session for legal professionals in the Vaal area in collaboration with the Orange Farm Human Rights Centre and the Law Society of the Northern Provinces (LSNP) to align the CAO with legal professionals in the Vaal area. As a direct result of this session, the advice office now has a greater pool of law firms that participate, not only with cases but also with giving presentations at community workshops on topics related to deceased estates and domestic violence.

**Tshenolo Masha**



## One-Child-a-Year Campaign (OCAY)

**This campaign has become established and is now run as a project by a full-time intern and an in-house advocate. The project is receiving many cases from courts on the East Rand and is developing a working relationship with the office of the Family Advocate, Johannesburg and the Johannesburg Children's Court.**

ProBono.Org engaged with the South African Law Reform Commission during the year, making a submission on Issue Paper 31, Project 100D (Family Dispute Resolution: Care of and Contact with Children), and is involved with the Commission's projects dealing with children's issues in divorce conflict, and mediation.

The case load has been heavy, with 137 open cases carried over from 2016 to 2017. A further 61 cases were opened in 2017. In addition, the project had 31 cases where clients were assisted with once-off advice either by email, telephonic consultation or direct consultation.



Due to the complex nature of cases involving children, the many parties involved, various kinds of legal problems requiring intervention and the involvement of attorneys and counsel, continuous support by the ProBono.Org team has to be available to legal practitioners who accept referrals. This constrains the project which can only manage a case load of between 50 and 60 open cases at any one time, despite the much greater need.

The project, like most of ProBono.Org's work, involves an important collaboration. This is with the uMazisi Wethu Forum and other stakeholders such as the Johannesburg Child Advocacy Forum, psychologists and social workers with the aim of assisting undocumented minors. Unfortunately, the implications of a settlement order obtained by Lawyers for Human Rights, which directed the Department of Home Affairs to issue a birth certificate for a stateless child, did not present solutions to the type of cases the forum had been dealing with. The reason was that the case was not heard in court and therefore did not lead to a change of policy across the board.



Our experience with this project has indicated that resources made available by government to fulfil its duty towards undocumented minors is very limited. Sometimes however, one finds pockets of excellence and very meaningful collaborations develop. For instance when dealing with these cases on the East Rand we have established a good working relationship with that Department of Home Affairs office. Apart from liaising with us about pending court cases, the Department has been very helpful in assisting with general enquiries about undocumented minors. The Department has shown its willingness to participate in ProBono.Org information sessions for lawyers on its panel to establish a better understanding between the legal professionals dealing with undocumented minors and the practical procedures and problems the Department experiences around this issue. It became clear that not all Home Affairs offices have the same knowledge, expertise and approach in dealing with undocumented minors. Currently the OCAY project is closely following two cases that are pending in the Grahamstown High Court and the Western Cape High Court as the decisions should give a clear direction on at least two recurring problems with undocumented minors, being Home Affairs not issuing identity documents and/or birth

certificates for children born in South Africa of migrant parents.

Co-operating with the different role-players in children's cases has proved to be a very effective way of reaching solutions, obtaining information or driving the case to a conclusion without having to follow a litigious approach. The OCAY project started supporting social workers in gathering information, liaising with their offices about the best and most practical strategy in safeguarding children's best interests and obtaining confirmation from the social workers about the progress of cases and whether a postponement was imminent, or if the hearing would proceed. In many cases, the OCAY project is able to obtain permission from the magistrates for postponement, which it relayed to the lawyers involved. In certain instances, ProBono.Org's advocate appeared on behalf of the attorney and attended to issues in preparation for trials or further hearings on behalf of the attorney.

**Elsabe Steenhuisen**



# Collaborations

## Johannesburg

**2017 can be characterised by the different tiers of collaboration that contributed to the housing unit's success and development. In 2017 our Johannesburg office was accepted as a committee member of the Gauteng Interdepartmental Stakeholders Engagement Committee. This committee, which is chaired by the Johannesburg Deputy Registrar of Deeds Jabu Maphumulo, seeks to eliminate the inefficiencies experienced by clients with housing problems when key stakeholders don't talk to each other. The committee comprises the Johannesburg and Pretoria Deeds Offices, the office of the Surveyor General, the Johannesburg Master's Office, The Gauteng Department of Human Settlements, the Johannesburg Housing Company, the Cities of Johannesburg and Tshwane and the Ekurhuleni Metropolitan Municipality, as well as the Johannesburg and Pretoria Attorneys' Associations and the Gauteng Law Council.**

The committee meets every month and the main aim is to ensure proper communication with all stakeholders in the housing space and see that they do not operate in silos. Our participation in this committee has ensured that we are in a position to resolve administrative issues in an efficient manner. The committee has also given us an opportunity to extend invitations for community workshops so that all stakeholders are properly represented. One example demonstrates the need for collaboration; this was a case from the Master's Office help desk concerning a minor child. The Deeds Office Johannesburg and the Master's Office assisted with noting a caveat on the title deed of a house to which the child was entitled, being an heir to an estate, as we found that a family member was trying to take transfer of the property fraudulently.

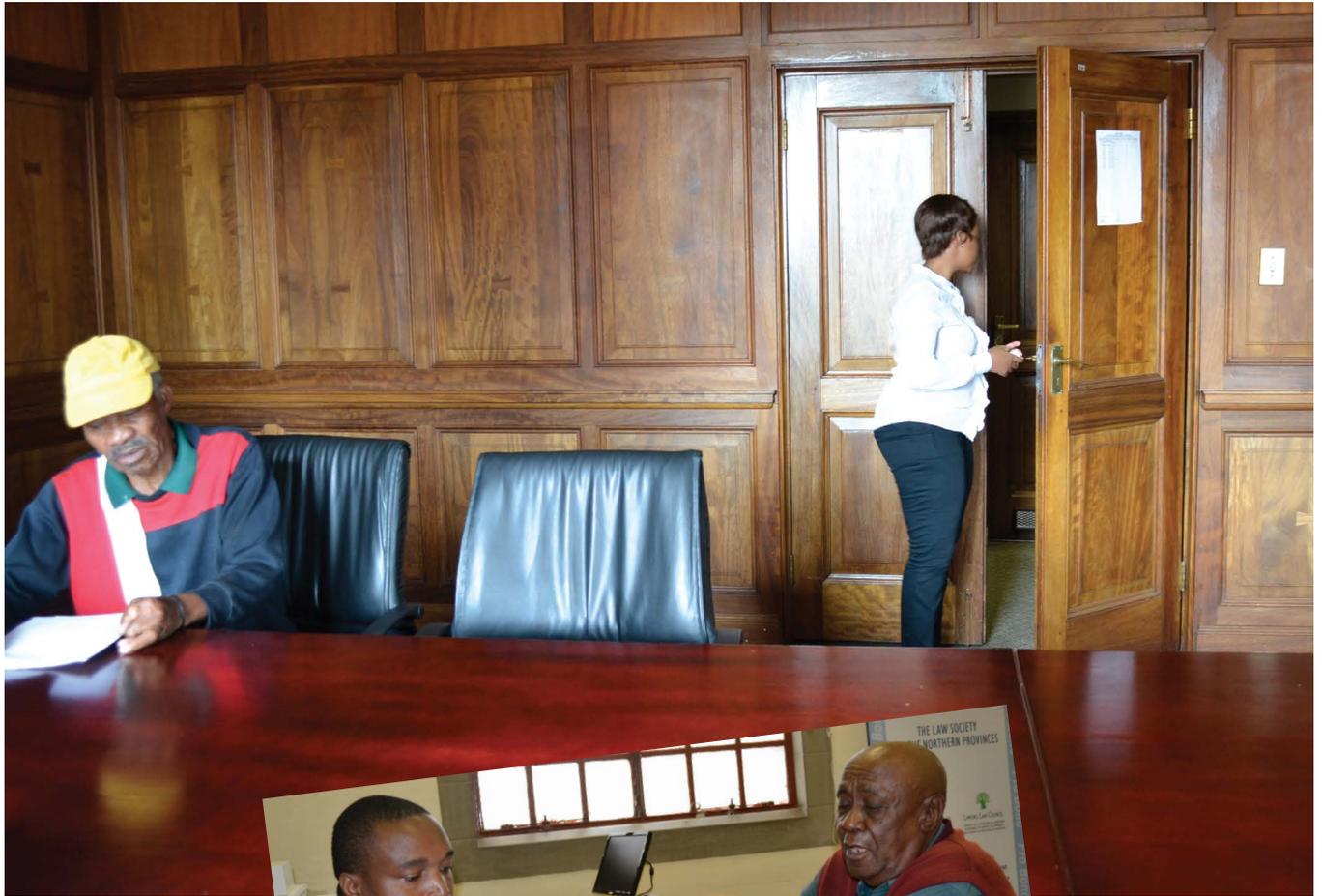
Another completely different kind of collaboration is with Dr Maxim Bolt, reader in Anthropology and African Studies at the

University of Birmingham. Dr Bolt is currently researching kinship and inheritance issues affecting black South Africans. He observes consultations by pro bono attorneys at our Master's Office help desk and attends the hearings at the Black Administration Act Deceased Estates Court at the Johannesburg Family Court and has joined in community workshops when deceased estates are the topic of the day. Through his research and observations, he brings a more sociological perspective to the 'family house' idea, a concept that our office has noted with keen interest.

We held a successful workshop for academics and legal professionals in partnership with the university focusing on this concept of family title. This collaboration has assisted our organisation to bring together different fields of study with the hope of developing a position on this concept in relation to legislative changes that are aligned to African customary social tenure. We are now drafting, in partnership with Dr Bolt, a position paper that will hopefully clarify the position and assist the relevant stakeholders on what their role or input will be.

One of the most important conversations that we have had in 2017 was with conveyancers. We have received valuable insight on what conveyancers experience as blockages and challenges in respect of pro bono instructions. Some of these blockages relate to clients not having an understanding of the role conveyancers play in property registrations, which we attempt to clarify for them. Others are more legislative in nature and will require more strategic interventions. We have many requests for transfers of immovable property that remain unexecutable due to the clients' inability to pay the rates clearance charges. In 2018 we will embark on a process to alleviate this impasse. Partnerships, collaborations and working together continue to be an integral part of the ProBono.Org ethos.

**Tshenolo Masha**



*“The Constitution entrenches everyone’s right to equality in the eyes of the law and, most importantly, the Children’s Act 38 of 2005 strongly protects the rights of children.”*

## Family law partnership

For the past two years we have attended workshops and meetings conducted by the Human Rights Institute of South Africa (HURISA). They recently requested us to provide them with an advocate to assist them in preparing submissions to the Director General of the Department of Women. The purpose of the submission was to address the inconsistencies in legislation regarding the marital consent of children.

The Constitution entrenches everyone’s right to equality in the eyes of the law and, most importantly, the Children’s Act 38 of 2005 strongly protects the rights of children. However, there seems to be a conflict between the Children’s Act and the Marriages Act 25 of 1961 (Marriages Act) in its relation to the girl child. Section 26 (1) of the Marriages Act states that no boy under the age of 18 years and no girl under the age of 15 years may enter into a marriage except with the written permission of the Minister of Home Affairs. By virtue of this section the boy and girl child are not placed on an equal footing in law with regard to their ages.

The submission aims to highlight the manner in which the current legislative framework differentiates between minor children based on their gender, thereby reducing the protection afforded to the girl child.

**Swazi Malinga**

## Collaborating to inform attorneys assisting refugee cases

**The highlight of our refugee work in 2017 was the launch in June of the Pro Bono Guides for legal practitioners in Refugee Law. The production of these guides demonstrated the extent to which our organisation is able to partner with private law firms.**

Cliffe Dekker Hofmeyr, Fasken Martineau and Norton Rose Fulbright SA heeded our call for manuals to assist legal practitioners who are new to refugee law with practical and concise information on this very specialised area of law. These guides were drafted by practitioners who had personal experience of staffing the Refugee Legal Clinic and give the reader practical insight on what to expect and how to respond to the matters brought to them.

Lawyers for Human Rights (LHR) and the Consortium for Refugees & Migrants SA (CORMSA) remain great partners in our work. LHR facilitated a training workshop for pro bono attorneys on the recent Constitutional Court case relating to detentions and deportations. The CORMSA continues to invite and involve our office in events and discussions related to policy development and change.

**Tshenolo Masha**



## Durban partnerships

**With NGOs going through difficult times, we have found that partnering with each other is the best method to further all our aims. The Durban office believes strongly in collaboration and works with various partners in and around KwaZulu-Natal.**

Our partnerships in 2017 with the KZN Blind and Deaf Society, the KZN Deaf Association, Child Welfare Durban and District, the Aryan Benevolent Home (ABH), the Department of Justice and Constitutional Development, the Nelson Mandela Chatsworth Youth Centre, Open Door Crisis Centre, Phoenix Child Welfare, SA Human Rights Commission, Commission for Conciliation, Mediation and Arbitration (CCMA), Cheshire Homes and Community Law and Rural Development have been very worthwhile collaborations.

Of our many projects, the Wills project brings us particular satisfaction. We partner with The Association for the Aged (TAFTA) as part of this project, whereby we assist the elderly citizens of the community with educating them about their estates and with drafting their wills. TAFTA provides us with a venue and audience and we arrange for attorneys on our panel to give presentations on wills and estates. We have partnered with many of the TAFTA residences in and around Durban during the course of the year. TAFTA advertises our services and refers clients to us. We assist further with providing their staff and social workers with legal training on wills, estates and bequests. In addition, we have recently started collaborating with the

Durban Association for The Aged (DAFTA) and Age-In-Action as part of this same project. We have increasingly found the elderly to be susceptible to abuse and deception, many of them being deprived of their income or ejected from their homes.

We are particularly proud of our work in the refugee arena. At our weekly help desk set up to assist those who are seeking refuge in our country, we have come across an issue regarding access that newcomers are facing at the Durban Refugee Reception Office (RRO). The RRO has refused to take in any new asylum seeker applications until they catch up with the backlog of applications, resulting in refugees finding themselves in a situation where they are undocumented and subject to arrest and deportation. In an attempt to resolve this issue, stakeholders such as Lawyers for Human Rights, the South African Human Rights Commission and the Denis Hurley Centre suggested that ProBono.Org assist in making an application for the office to be re-opened and for asylum seeker applications to be processed.

None of what we do however, would be possible without our collaboration with attorneys in private practice who give so freely of their time to undertake pro bono work. Their involvement enables us to assist the huge numbers of clients and organisations that we do. In 2017, our office saw over 3 500 clients, which would not have been possible without this very important partnership. We look forward to a fruitful 2018 with all our partners and hope that this spirit of collaboration continues.

**Shamika Dwarika, Director, Durban**

## Cape Town Collaboration

**During October 2016 we celebrated ProBono.Org's tenth anniversary, which coincided with the official launch of a new office in Khayelitsha, Cape Town.**



The idea behind the office being situated in a township and housed in a new building housing other social justice organisations was to make access to justice realisable for the marginalised. However, by the end of February 2017 we had to admit that it was not sustainable with our model of operation, since we experienced a reluctance from private attorneys to join our pro bono panel and travel to the township. This was predominantly because we were situated quite a distance from most law firms and other service points, and attorneys who were willing to volunteer their time and expertise would not be compensated for additional traveling expenses. Furthermore, our model requires members of the public to walk in, and the idea behind the office was never to service only the Khayelitsha and Mitchells Plain areas. Members of the greater Cape Town area expressed a reluctance to come out to Khayelitsha, as it is not easily accessible via public transport. It was therefore decided to move the office into the Cape Town Central Business District (CBD), where we took occupation at 57 on Strand on 1 August 2017.

The Cape Town office has experienced various challenges and unforeseen operational delays associated with getting a new office off the ground, but despite this has made remarkable progress. The staff complement has also grown internally, alleviating capacity issues and we are now seeing the office starting to function.

Being the new kid on the block, it was of paramount importance to establish and develop relationships with fellow NGOs, CBOs, Community Advice Offices, the Cape Law Society, the Cape Bar Council and the bigger law firms in order to

enter into possible areas of collaboration and support in a joint effort to make access to social justice more easily accessible to the poor of Cape Town, as well as continuing the efforts we had made during our time in Khayelitsha.

One such area of collaboration is the presentation of legal education community workshops held in Khayelitsha with ENSAfrica the main aim of which is to educate community members on their legal rights and responsibilities, the legal services available to them, and the relevant areas of the law that affect their lives.

At the same time, a memorandum of understanding was entered into as part of a special collaboration with the College of Cape Town where we will have a marketing intern placed at our office who will be paid a stipend directly from the CATHSSETA. This intern will assist with the marketing and advertising of the office and the services offered to the general public, as well as to the legal profession, which ought to help with recruiting private attorneys for our pro bono panel. This in turn provides the intern with a platform to showcase their skills and to gain practical experience within their related field of study.

The central focus of the Cape Town office going forward is to set up further legal clinics, arrange legal seminars for attorneys as part of a strategy to recruit private law firms, and to organise further legal education community workshops. The office itself attempts to attract lawyers to staff these clinics and workshops but has found it challenging to recruit volunteers. For this reason, the Cape Town office has made a concerted effort to engage in collaborations with the bigger law firms who have the capacity and resources available to lend support in this regard.

**Uzair Adams, Director, Cape Town**



*Photograph: Carolyn Raphaely*

## Our clients' stories

*“... in September 2017 North Gauteng High Court judge Peter Mabuse ruled that Kgatle’s arrest and detention was unlawful. He finally walked out of Baviaanspoort a free man after more than two years.”*

### A missing electronic tag case

A collaboration between ProBono.Org, the Wits Justice Project and Bowmans Attorneys

**Bowmans Attorneys and the Wits Justice Project worked on the tragic case of Dineo Kgatle, who was wrongfully arrested and incarcerated for 26 months after his electronic monitoring device (EMD) was inadvertently lost.**

Kgatle was convicted in 2002 on charges of armed robbery, housebreaking, attempted murder and rape and sentenced to 28 years in prison. He was granted parole after 12 years and was fitted with an EMD. Having qualified as a plumber in prison, he got a job on a construction site in Pretoria and started to rebuild his life. Some months later he mistakenly left the base station with the GPS tracker that is attached to the EMD in a bakkie, which then drove off with it. He immediately reported this to his parole officer and the two of them went in search of the device, only to find it was locked up in an office in Pretoria and they abandoned the search.

Later that day Kgatle was arrested and his horror story began. He spent the next 26 months behind bars in Baviaanspoort Prison. When he appeared before the Parole Board three

months after his arrest he was told he had violated his parole conditions and would spend at least seven years in prison before being considered for parole again. One day he read about the Wits Justice Project in a newspaper. They contacted ProBono.Org on his behalf, who asked the pro bono coordinator at Bowmans for assistance. Bowmans put partner Mandisi Rusa and candidate attorneys Werner van der Westhuizen and Stuart Payne on the case.

Eventually, in September 2017 North Gauteng High Court judge Peter Mabuse ruled that Kgatle’s arrest and detention was unlawful. He finally walked out of Baviaanspoort a free man after more than two years.

The Department of Correctional Services (DCS) abandoned the Electronic Monitoring Project in July 2017 due to the many cases where the devices proved faulty and those wearing them were wrongfully arrested, as well as issues relating to possible tender irregularities in the appointment of the service provider.

This story is not over, however, as the DCS is now appealing the judgment, possibly in order to prevent or delay a hefty claim for compensation on the part of Dineo Kgatle.

**Margaret Fish**



## The Kromkrans Community Case - in collaboration with Baker McKenzie

**This matter was referred by ProBono.Org to Baker McKenzie Attorneys for an application to be brought on behalf of the 'Kromkrans Community'. The community is a Communal Property Association (CPA) in terms of the Restitution of Land Rights Act ("the Land Act").**

The applicants (and in certain cases, their ancestors) were dispossessed of their property in the late 1970s as a function of racially discriminatory legislation in operation under the apartheid regime. With the advent of democracy and the Land Act, the individual members of the community submitted land claims to the Land Claims Commission ("the Commission") in the late 1990s.

The individual claimants were told by the Commission that they should bring a communal claim, as the Commission did not have sufficient resources to investigate and process individual claims. The claimants duly organised themselves as the Kromkrans Community, which is the first applicant represented by Baker McKenzie. The community successfully lodged a claim and in 2002 and 2004 agreements were reached with the Government of RSA to transfer their former land back to the community, to be distributed among its members.

The land claimed by the community was purchased by the Government and placed in a trust, pending its transfer to the community. But, for reasons which remain unclear, the land was never transferred to the community and has still not been transferred to date. The situation is complicated by an influx of third party occupants onto the land, who have settled there in the last decade.

Following years of enquiries and bureaucratic wrangling, the applicants chose to pursue legal action. In early 2016, Baker McKenzie was appointed as the attorneys of record for the community on a pro bono basis. Accordingly, Baker McKenzie launched an application in the Land Claims Court ("LCC"), seated in Randburg, seeking an order compelling the Government to abide by its agreement to transfer the land to the community. This was initially not opposed by the Government until the hearing date in May 2016. Government's conduct in this matter was largely dilatory and obstructive. It opposed the application for specific performance on three grounds:

- The Kromkrans Community is not a validly constituted community;
- That no agreement was ever validly concluded between the community and the Government; and
- Any award of land will be to the prejudice of other land



claimants for the property in question (Government has conceded that it did not process all the claims for the land in question).

These grounds of opposition were formalised into a 'review' application which the Government launched on the day the applicant's application was to be heard, in March 2017. The matter was accordingly postponed while submissions were exchanged in respect of the state's review application.

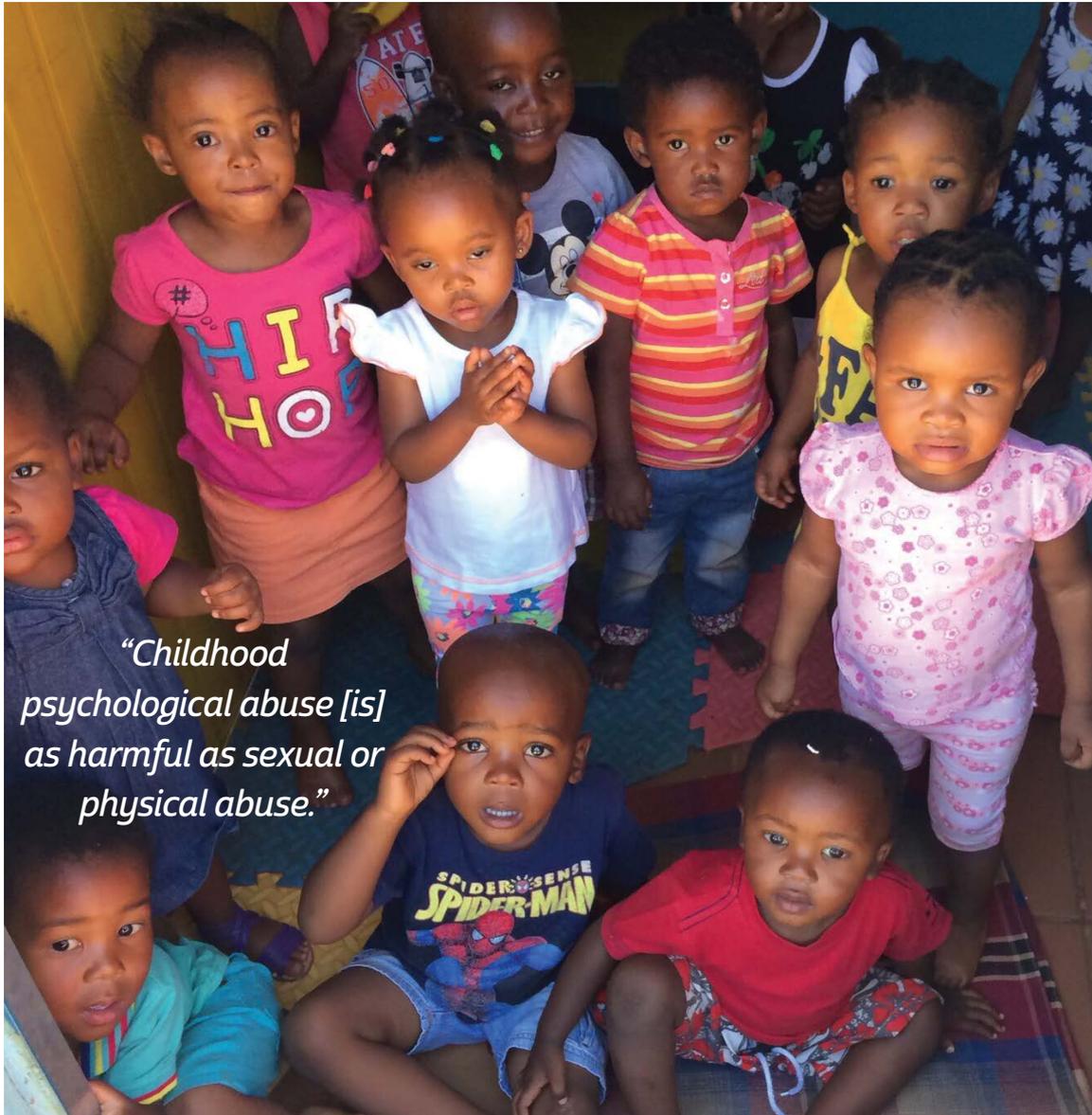
Both applications (that of the applicants and the counter-application brought by the Government) were argued in the LCC on 23 June 2017. Counsel for the applicants are Adv Jasper Daniels and Adv Cherie de Villiers-Golding. Acting Judge Barnes presided over the matter. Judge Barnes delivered the court order on 14 December 2017, despite the customary period being three months for a court order. In short:

1. The court ordered the Minister of Rural Development and Land Reform (the Minister) to comply with its obligations in terms of the agreement concluded between the community and the Minister in terms of section 42D of the Land Act on 25 May 2004;
2. The Department of Rural Development and Land Reform are to take all steps necessary to ensure that the Kromkrans Community is registered as a Communal Property Association;

3. The Constitution of the Kromkrans Community Communal Property Association shall make provision for the inclusion of the persons contemplated in clause 4.7 of the agreement; and
4. The Government have been ordered to pay the costs of the application and the counter application.

It has been noted that people continue to move onto the land while the matter progresses. Baker McKenzie are looking at writing to the Department to prevent this or possibly going forward with the registration of the CPA while we await the full reasoned judgement from the Registrar of the Land Claims Court.

The Government will have a further 15 days after the full (reasoned) judgment is handed down to apply to the LCC for the right to appeal. We anticipate that the judgment in favour of the applicants will be taken on appeal. We note that the enforcement of the court order and judgement is suspended whilst the appeal is being heard. However, the LCC Court Rules provide for the possibility of approaching the LCC for an order to lift the suspension while the appeal is heard.



*“Childhood  
psychological abuse [is]  
as harmful as sexual or  
physical abuse.”*

## Children's cases

**The nature of children's matters in 2017 differed vastly. In two matters, women requested assistance with finalising their defended divorce cases that had been ongoing for almost ten years. Both cases involved minor children whose rights were seriously jeopardised.**

In one case the OCAY project secured an attorney for the child, but had to appoint an additional attorney as counsel for the mother. The divorce trial was concluded and the parties had to return to court for judgment. Based on the sterling argument of the attorney for the child and his attack on the justice system for failing the child and the mother who represented herself whilst her husband had a specialist divorce attorney, the Somerset West Regional Divorce Court ruled that the Family Advocate had to be recalled as a witness regarding the contact rights of the father and the rights of the child, and that the mother may apply in terms of Rule 29(11) to lead further evidence on the division of the accrual system.

When the husband continued with his usual delaying tactics, the child's attorney brought a Rule 58 which was argued on 28 March 2017. Judgment was handed down on 5 April 2017, ordering contact rights for the father only when desired and approved by the child.

The divorce action proceeded with numerous steps taken by both sides, and the case will be heard in April 2018.

In the second matter, the intervention of a pro bono attorney secured the teenage daughter's return to her mother. The child was subject to acrimonious litigation and extreme financial hardship suffered by her mother since 2012. At least the child could write her grade twelve examinations in the comfort of her mother's care.

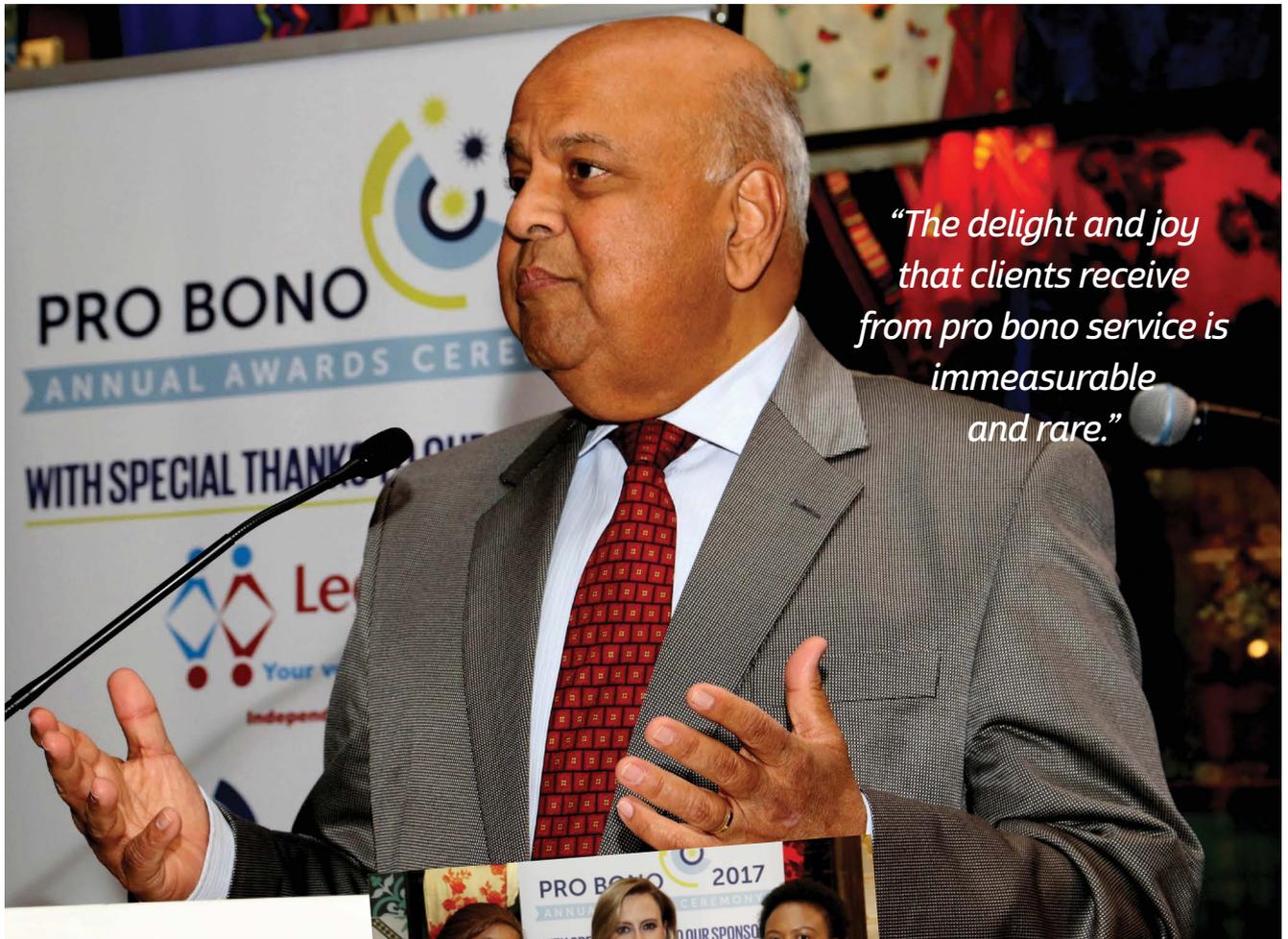
ProBono.Org advised both mothers to report their attorneys to the Law Society for, inter alia, dragging out the proceedings and having caused the sequestration of two women that were once well-off, let alone prolonging the hardship for the children involved.

Two cases are examples of collaboration between ProBono.Org lawyers and social workers and the Department of Home Affairs in getting the rights of children enforced. Both cases involved children with one South African parent and one foreigner. The cases were complicated by either the absence of one or both parents, or the South African father who refused to co-operate whilst the foreign mother struggled to safeguard her child. In both cases, the lawyers and the staff of the OCAY project gathered information about immigration, refugee and asylum procedures from Home Affairs and information on the whereabouts of the father for the social worker. This information assisted the social worker in resolving certain issues. Both cases are ongoing.

In many referred cases, the attorney and/or counsel need support and advice from the OCAY staff. There are various reasons for this. In the main it occurs because lawyers are not exposed to children and the law in either their academic or practical training. Secondly, cases involving children are complex, ongoing and relentless. Thirdly, children and the other parties involved in these types of cases usually need psychological and psychiatric intervention which is not freely available on a pro bono basis, let alone parental therapy and services rendered for forensic purposes. Examples include a case of two young children with their grandparents who are opposing the father's claim of primary residence of the two boys after he murdered their mother; and a case of two sisters who were removed from their grandmother and aunt after their drug addict mother convinced a corrupt social worker to remove them.

In South Africa, the life of a child in terms of the Law of Delict has very little value, if any. According to the American Psychological Association (APA): "Childhood psychological abuse [is] as harmful as sexual or physical abuse." In the United States, state laws vary, but most have laws against "mental injury". Until adults in South Africa are held responsible in both a physical and financial way, abuse in the wide sense of the word will continue.

**Elsabe Steenhuisen**



# Pro bono awards celebrate legal collaborations



**The Johannesburg 2017 annual Pro Bono Awards had a slightly different approach. Instead of calling for nominations and submitting these to a judging panel by way of a competition, we chose winners from our list of over 85 legal practitioners who volunteered at our legal clinics and help desks and took on referred cases in 2016 from our Johannesburg office. We looked for those who had made an outstanding effort in the various areas of law that we deal with.**

Former Minister of Finance, Pravin Gordhan gave the keynote address at the event. He remarked that organisations like ProBono.Org should be nurtured. The lawyers acknowledged for their pro bono contribution represent the spirit of activism and the spirit of the integrity of the profession. The delight and joy that clients receive from pro bono service is immeasurable and rare. Despite having a good Constitution, good laws and a modern society, transformation has been lagging behind. We have to address the state of inequality in our society. Solidarity with the poor is key, and the offer of pro bono assistance is a show of the calibre of the legal profession. Gordhan stressed the need to regenerate legal professionals, especially the younger generation, to participate in social justice initiatives.

These were the winners in the various categories:

- Refugee Law – Cliffe Dekker Hofmeyr
- Housing Law – Sanele Sonkozi, Sonkozi & Ngalonkulu Inc.
- Deceased Estates – Majara Mojela, Mojela Hlazo Attorneys
- Community Advice Office – Seth Mnguni, Ntsu Advice Office, Mabopane
- Family Law – Riva Lange, Riva Lange Attorney
- Labour Law – Naledi Motsiri, Werksmans
- Wills – Norton Rose Fulbright SA
- Police Brutality – Hogan Lovells
- Child Law – Suné Bosch, Ramsden Small Attorneys
- Advocate Award – Carol Steinberg, Musa Musandiwa and Hephshibah Rajah of the Thulamela Group
- Large Law Firm – Fasken Martineau
- Medium Law Firm – Schindlers
- Small Law Firm – Boela van der Merwe Attorneys
- Law Student at a University Law Clinic – Lutho Klaas, University of Fort Hare
- Law Society of the Northern Provinces Award – Serialong Lebasa
- Legal Aid South Africa Award – Khanyisa Ngobeni

In addition, there were a number of Director's Special Mentions: Reg Joubert of Reg Joubert Attorney, Claire Thomson of WCIS Attorneys, Susan Harris of Susan Harris Attorney, Leana Elliott of Klopper Jonker Attorneys and Robin Twaddle of Robin Twaddle Attorneys have all given consistent support to ProBono.Org's clients at its help desks, by taking on matters, giving presentations at workshops and by always being available to assist our clients.



Baker McKenzie Attorneys were recognised for the firm’s willingness to provide ongoing legal support to ProBono.Org in the form of labour policies, staff contracts, pro bono advice and general legal work. Fatima Laher of Bowmans received a mention for her outstanding support and involvement in help desks, children’s matters and NGO support.

Four people who were given awards at the 2014 Pro Bono Awards Ceremony were awarded again this year. This indicates that all four have continued to remain involved and committed, as much now as they were then. Alfred Wolpe received a Special Mention for his continual work in providing pro bono mediations and mediation training. Clarks Attorneys was acknowledged for its availability and willingness to take on our clients’ cases and its consistent stance in championing the rights of women and children. Hoossen Sader was once again awarded for repeatedly taking on family law matters. At the 2014 event he was mentioned because of “his long-standing and lifelong dedication to pro bono work, which started during the apartheid years, and has continued unabated.” Patrick Bracher of Norton Rose Fulbright was recognised as before for hosting Pro Bono Law, our constitutional law radio programme on Radio Today.

**Margaret Fish**

**The Durban office held its second annual Appreciation Day event on 9 June, which was attended by some of the Johannesburg staff. It is an opportunity for the staff to meet some of the attorneys that they do not have an opportunity to work with.**

The keynote speaker was Professor David McQuoid-Mason of the University of KwaZulu-Natal and the founder of the Street Law Programme. Professor Mason embodied the spirit of the event and came appropriately and amusingly dressed with a “Keep Calm and Do Pro Bono” t-shirt.

The highlight of the event was the handing out of the Certificates of Appreciation. Some of the attorneys and firms that were recognised were Carol Holness from Norton Rose Fulbright SA for her continuous support and assistance in refugee work; Kerry Forbes for helping the most as an individual attorney; Tate, Nolan & Knight Attorneys who completed the highest number of pro bono hours for a medium firm; and Shepstone & Wylie Attorneys as the large firm that has assisted the office the most.

**Shamika Dwarika**

# Pro Bono Law - a collaboration with legal practitioners, NGOs and radio



The programme Pro Bono Law is now in its eleventh year on the community station Radio Today, which is broadcast on alternate Thursday evenings. Patrick Bracher of Norton Rose Fulbright SA has been the gracious host of this show since inception. He and our guests discuss issues to do with the Constitution and the Bill of Rights in an engaging and down to earth way that informs and often entertains. Apart from attorneys and advocates, the guests also include experts and lawyers from NGOs such as Lawyers for Human Rights, the Legal Resources Centre and also universities and think tanks.

These are just a few of the topics explored this year:

- Child statelessness - Liesl Muller, Lawyers for Human Rights
- The State of Capture Report and the way forward - David

Lewis, Executive Director, Corruption Watch

- Violence against Women and the Domestic Violence Act - Claire Thomson, WCIS Attorneys
- The rights of refugees and the refugee manuals for practitioners - Nicki van't Riet, Norton Rose Fulbright SA and Nasipi Mantshule, Fasken Martineau
- Mining rights in light of Mining Charter III - Jonathan Veeran, Webber Wentzel
- The right to privacy of children in court cases - Ayabulela Poro, Media Monitoring Africa
- Protection of water source areas - Amanda Mkhonza, Centre for Environmental Rights

**Margaret Fish**

"THE FESTIVE HEART KNOWS THAT  
IT IS ALWAYS POSSIBLE TO DO MORE  
OF WHAT YOU MUST DO  
AND TO DO IT BETTER, ALWAYS."

KEORAPETSE KGOSITSILE



# Johannesburg Office 2017

## Staff during 2017

<b>Erica Emdon</b>	National Director
<b>Annelie du Plessis</b>	Head Staff Attorney
<b>Margaret Fish</b> Manager	Operations, Grants & Communications
<b>Elsabie Steenhuisen</b>	OCA Y Project Consultant
<b>Nomaswazi Malinga</b>	Family, Labour and Deceased Estates unit head
<b>Tshenolo Masha</b>	Housing, Refugee and CAO Project head
<b>Pretica Singh</b>	Financial Manager
<b>Phumzile Ngenelwa</b>	Office Manager
<b>Lorraine Mashaba</b>	Data Capturer
<b>Fina Diba</b>	Administrator
<b>Nonkulumo Zuke</b>	Receptionist
<b>Nonkululeko Nomatshaka</b>	General Worker

## Interns during 2017

Koketso Molotsi  
Masechaba Modise  
Lesego Vakalisa  
Nolia Langa



## Volunteers

Ntie Moabi  
Motlatsi Mogabe  
Devaon Eilers  
Lizo Fikeni  
Abegail Ligunya  
Sibongile Malinga  
Charmaine Masake  
Kgomotso Molema  
Raees Naik  
Ruth Nalumango  
Chanel O'Carroll  
Kaymin Ormerod  
Busi Radebe  
Simone Rens  
Mojalefa Taba  
Favour Nwanezi  
Ntshilo Papola  
Daphne Makombe  
Liepollo Selatile

## Durban Office 2017



### Staff during 2017

<b>Shamika Dwarika</b>	Regional Director
<b>Petrina Chetty</b>	Staff Attorney
<b>Trisha Dhoda</b>	Staff Attorney
<b>Gugulethu Makhanya</b>	Administrator

### Interns during 2017

Welile Mtolo  
Zandile Nxumalo  
Nolwazi Mathebula

### Volunteers

Lillian Chakabva	Nokuthula Mtshali
Sinenhlanhla Shezi	Lovemore Hadebe
Prenola Naidoo	Katelyn Narisimulu
Halalisa Moloji	Zayn Sachin
Nomthandazo Mndaweni	Nolwazi Ncongo
Gracia Biganda	Nomathemba Mchunu
Thina - Bakho Dukada	Nicholene Naidoo
Thandi Mkhize	Micaela Brown
Wenzile Ntetha	Siphesihle Hamilton
Zahrah Ebrahim	Jade Faltain
Thabani Njozela	Whitney Manana
Lucrecia Sadhaseevan	Palesa Kekena
Khethiwe Shange	Sinothile Mhlaba
Nelson Xaba	

## Cape Town Office 2017



### Staff during 2017

Uzair Adams	Director
Naeelah Williams	Staff Attorney
Ellen Boriwondo	Legal Intern
Asanda Conjwa	Administrator/Receptionist



# Directors 2017

Andy Bester (resigned 15 June 2017)

Ayanda Ngubo

Erica Emdon

Ilan Lax

Jacqueline Cassette

Janet Love

Liesl Williams (resigned 3 April 2017)

Masizakhe Mathai

Mohamed Randera

Seleka Morwe

Sushila Dhever





# Financials 2017

## STATEMENT OF FINANCIAL POSITION AS AT 30 SEPTEMBER 2017

PRO BONO  
ORGANISATION  
NON PROFIT COMPANY  
REGISTRATION NO.  
2007/002099/08

	2017 R	2016 R	2015 R
<b>ASSETS</b>	<b>12 415 444</b>	<b>12 274 429</b>	<b>10 328 681</b>
<b>Non current assets</b>	<b>180 307</b>	<b>127 070</b>	<b>57 694</b>
Equipment	180 307	127 070	57 694
<b>Current assets</b>	<b>12 235 137</b>	<b>12 147 359</b>	<b>10 270 987</b>
Accounts receivable	173 273	130 074	202 979
Investments	8 611 111	8 143 896	4 837 356
Cash and cash equivalents	3 450 753	3 873 389	5 230 652
<b>Total assets</b>	<b>12 415 444</b>	<b>12 274 429</b>	<b>10 328 681</b>
<b>RESERVES AND LIABILITIES</b>	<b>12 415 444</b>	<b>12 274 429</b>	<b>10 328 681</b>
<b>Reserves</b>	<b>2 764 706</b>	<b>2 174 641</b>	<b>1 988 055</b>
Accumulated surplus	2 584 399	2 047 571	1 930 361
Equipment fund	180 307	127 070	57 694
<b>Current liabilities</b>	<b>9 650 738</b>	<b>10 099 788</b>	<b>8 340 626</b>
Accounts payable	159 062	159 828	54 665
Deferred income	9 290 000	9 706 441	8 128 398
Provision for leave pay	201 676	233 519	157 563
<b>Total reserves and liabilities</b>	<b>12 415 444</b>	<b>12 274 429</b>	<b>10 328 681</b>

# STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 SEPTEMBER 2017

PRO BONO ORGANISATION  
NON PROFIT COMPANY  
REGISTRATION NO.  
2007/002099/08

	2017 R	2016 R	2015 R
<b>INCOME</b>	<b>11 713 881</b>	<b>10 022 580</b>	<b>8 198 836</b>
Grants and donations	11 059 508	9 433 903	7 487 728
Interest received	654 373	588 677	655 331
Administration fees received	-	-	55 777
<b>EXPENDITURE</b>	<b>11 061 207</b>	<b>9 789 874</b>	<b>8 198 836</b>
Accounting fees	357 842	292 478	249 020
Advertising and marketing	1 961	53 513	67 890
Annual report	58 701	46 112	54 619
Assets expensed directly	32 591	18 310	22 901
Audit fees	80 480	36 524	34 733
Award ceremony	127 998	237 395	202 242
Bad debts	1 558	-	-
Bank charges	21 522	18 534	18 012
Computer expenses	48 475	27 212	25 205
Consulting fees	374 337	118 219	182 960
Courier and postage	6 708	3 836	11 200
Directors emoluments	1 215 795	1 119 136	1 006 488
Equipment hire and maintenance	252 532	218 172	182 235
Evaluation	31 500	25 500	-
Insurance	54 561	47 377	38 963
Interest and penalties - SARS	116 497	55 514	4 727
Office supplies	74 441	97 657	74 441
Printing and stationery	53 124	52 945	62 505
Provision for leave pay	-	-	53 284
Refreshments and entertainment	24 538	17 743	18 031
Rent, parking, water and electricity	1 068 583	1 004 285	950 929
Repairs and maintenance	14 765	7 611	7 802
Salaries, wages and contributions	5 086 272	4 412 037	3 596 845
Secretarial fees	4 921	4 488	9 961
Seminars and workshops	1 266 801	1 301 340	793 972
Staff recruitment	63 596	47 971	92 839
Staff training	58 568	57 367	64 604
Subscriptions	18 239	26 116	24 459
Telephone	392 708	301 700	230 217
Travel and accommodation	175 977	103 212	97 254
Website costs	42 974	37 570	20 498
<b>(DEFICIT)/SURPLUS FOR THE YEAR</b>	<b>652 674</b>	<b>232 706</b>	<b>- 0</b>
<b>BALANCE AT BEGINNING OF YEAR</b>	<b>2 047 571</b>	<b>1 930 361</b>	<b>1 943 239</b>
<b>TRANSFER TO EQUIPMENT FUND</b>	<b>(115 846)</b>	<b>(115 496)</b>	<b>(12 878)</b>
<b>BALANCE AT END OF YEAR</b>	<b>2 584 399</b>	<b>2 047 571</b>	<b>1 930 361</b>

**GRANTS AND DONATIONS FOR THE YEAR ENDED 30 SEPTEMBER 2017**

PRO BONO ORGANISATION  
NON PROFIT COMPANY  
REGISTRATION NO.  
2007/002099/08

**GRANTS AND DONATIONS RECEIVED**

	2017 R	2016 R	2015 R
<b>GRANTS</b>			
Anglo American Chairman's Fund	200 000	-	100 000
Claude Leon Foundation	400 000	400 000	400 000
Constitutionalism Fund	983 586	2 000 000	-
CS. Mott Foundation	757 485	757 485	573 540
DG Murray Trust	-	-	405 000
Ford Foundation	942 199	-	1 057 406
Foundation for Human Rights	-	109 000	-
Freedom House	-	2 886	222 633
H C I Foundation	50 000	100 000	100 000
Legal Resources Centre - ELMA Foundation	-	-	119 301
Millennium Trust	1 236 800	1 423 600	701 243
Open Society Foundation	650 000	800 000	800 000
Raith Foundation	1 625 000	1 625 000	1 506 522
The Atlantic Philanthropies	2 306 522	-	-
The ELMA Foundation	1 520 000	1 500 000	-
<b>DONATIONS</b>			
Bowman Gilfillan	200 000	400 000	-
Cliffe Dekker Hofmeyr	-	200 000	175 000
Fasken Martineau	140 000	135 000	135 000
Foundation for Human Rights	11 000	298 000	-
Hogan Lovells	-	100 000	100 000
R B Hagart Trust	-	250 000	200 000
Johannesburg Bar Council	200 000	-	100 000
KwaZulu-Natal Law Society	42 000	-	162 000
Legal Resources Centre - Bertha Foundation	-	150 000	-
Norton Rwose Fulbright SA	-	150 000	150 000
Open Society Foundation for South Africa NPC	-	145 000	-
Webber Wentzel	-	250 000	200 000
Werkmans Attorneys	40 000	40 000	80 000
Sundry donors	137 401	184 975	200 083
	<b>11 059 508</b>	<b>10 377 946</b>	<b>7 487 728</b>

## Donors 2017



Anglo American Chairman's Trust  
Bowmans  
Claude Leon Foundation  
Constitutionalism Fund  
Elma Philanthropies  
Ford Foundation  
Foundation for Human Rights  
HCI Foundation  
Johannesburg Bar Council  
KZN Law Society  
Millennium Trust  
C S Mott Foundation  
Open Society Foundation of South Africa  
Raith Foundation  
Werksmans

Constitutional Court ←

↗  
Womens Jail

CHECK YOUR  
PRIVILEGE  
AT THE DOOR

DEYİŞTİRME BERSİMİ  
STOP THE ATTACK ON AFRICA  
STOP TURKISH ARMY

PEACE  
EQUALITY

ALUTA  
CONTINUA





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**DURBAN:** 9th Floor, Nedbank Centre,  
Durban Club Place, Durban  
**telephone:** 031 301 6178 **fax:** 031 301 6941

**CAPE TOWN:** Suite 200, 57 on Strand,  
Strand Street, Cape Town, 8001  
**telephone:** 087 806 6070 **fax:** 086 665 6740



[www.probono.org.za](http://www.probono.org.za)