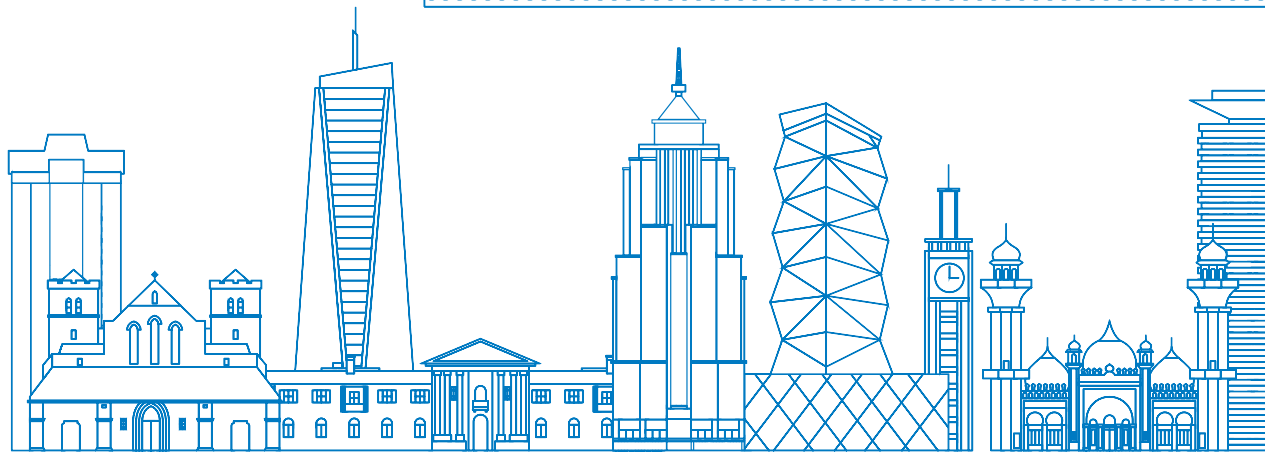
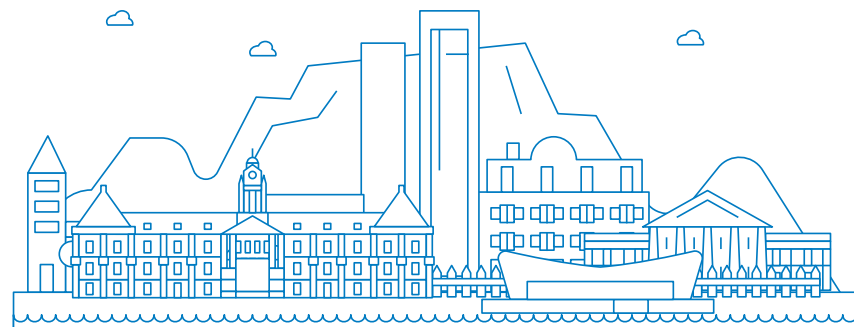
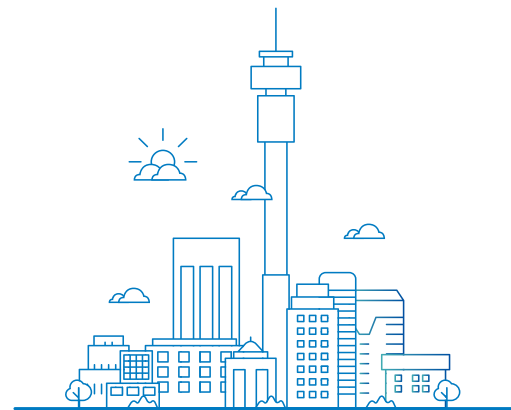


2023 **MAKING AN IMPACT** PRO BONO & HUMAN RIGHTS



CONTENTS





“

The commitment to transform our society into one which respects and observes the values of human dignity, freedom and equality lies at the heart of our constitutional order.

CHIEF JUSTICE
CHASKALSON

”

1 INTRODUCTION

One of the ways Cliffe Dekker Hofmeyr Inc (CDH) demonstrates our commitment to the transformation of our society is through our dedicated Pro Bono and Human Rights Practice.

We provide pro bono representation of the highest standard to deserving individuals, communities, NGOs and other organisations that promote human rights or the public interest. The practice began in 2011 as a one-person unit based in Johannesburg, but has since grown significantly in size, profile, reach and impact; and 2023 was yet another year in which we made significant contributions to a wide range of public interest issues and objectives.

Each of our team members has answered a calling to carry out this work and see it as an incredible honour and privilege to do so, particularly at a firm like CDH. Our passion and dedication, built over several years – and in some instances decades – have led to each of us contributing uniquely to a range of areas of law and of public interest. As you read this newsletter, you will find

summaries of cases and initiatives that concern immigration and refugee law, citizenship laws and regulations, education and housing rights, women's rights and the rights of children, to name just some of our core focus areas. We consider ourselves fortunate to be able to share our expertise, learn from one another, and together form a small but mighty team that is dedicated to making a meaningful impact, pursuing necessary legal reform, and serving our local communities.

We know that these goals cannot be achieved alone, and in 2023 we continued forging relationships and partnerships with like-minded people and organisations, so we could maximise our reach and impact. As well as doing our best to help those most in need, our objective is to promote the rule of law and enforcement of our democracy's founding constitutional principles. The cases and initiatives we have chosen to focus on in this newsletter highlight some of the best of our year's work. I hope you enjoy reflecting on our journey this year as much as we enjoyed doing it.

As always, I thank my dedicated team members and colleagues in other practice areas who have contributed significantly to CDH's truly impressive pro bono achievements during 2023. Collectively, CDH donated over 9,119 hours (in excess of R21 million) in pro bono legal services to deserving individuals, organisations and causes during 2023, and we look forward to even greater efforts in 2024.

Jacquie Cassette

Practice Head

**Collectively CDH
donated over
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02

JOHANNESBURG



Pro Bono &
Human Rights
Practice

Promoting access to
justice for all



Protecting the right to free health services for pregnant migrant women and children under six

Public Interest Issue:

Ensuring Gauteng provincial legislation, policies and practices used to deny migrant pregnant women and children under the age of six access to free healthcare, are brought in line with the National Health Act.

Beneficiaries:

Migrant and/or undocumented pregnant and lactating women and children under the age of six.



Value add in
terms of rands
and hours

Hourly contribution:

563hrs 42mins

Equal to the monetary value of:

R1,919,255

02 JOHANNESBURG CASES

Protecting the right to
free health services for
pregnant migrant women
and children under six
continued



**On 14 April 2023,
we celebrated
victory in a pivotal
case concerning
the right to free
health services.**

We represented the Public Interest Law Centre SECTION27, and three affected individuals to challenge the validity of discriminatory subordinate laws, policies and practices that public health facilities in Gauteng used to deny migrant pregnant and lactating women and children under the age of six, who do not have medical aid cover, the free health services they are entitled to, under section 4(3)(a) of the National Health Act 61 of 2003.

The subordinate law and policy essentially categorised most foreigners (other than permanent residents) as private fee-paying patients (which meant they were charged the highest tariff regardless of their means). This resulted in pregnant women and children either being outright denied access to services or being forced to sign unlawful acknowledgments of debt and undertakings, when in fact they were entitled to the services free of charge.

The Court Order

The Deputy Judge President of the Gauteng High Court, Johannesburg, who took the matter under case management, handed down an order declaring certain Gauteng legislation

unlawful. The order was unopposed after the respondents (including the Minister of Health and the MEC for Health in Gauteng), who initially opposed the matter, failed for almost a year to file answering affidavits, or take any steps to advance their defence, and eventually withdrew their opposition.

The order included that:

- A 2020 policy introduced by the Gauteng Department of Health must be amended to expressly provide for free services to pregnant and lactating women and children under the age of six, except if they are members or beneficiaries of medical aids or have come to the country specifically for healthcare.
- The Minister of Health had to issue a circular about the free health services to these women and children to all provincial MECs and provincial health departments across the country.
- Posters or notices must be displayed in all health establishments clearly explaining that pregnant and lactating women and children under the age of six years are entitled to free health services.
- The respondents also had to report to the court on their compliance.

Protecting the right to
free health services for
pregnant migrant women
and children under six
continued



Beyond the court order

Monitoring compliance with a court order is almost as difficult as the litigation itself. To make sure that the court order was implemented:

- SECTION27 set up a hotline where individuals could report non-compliance of the court order at public health establishments,
- It visited a number of hospitals and clinics to check that posters are displayed in prominent areas of each facility.



As of 10 November 2023

there had been full and proper compliance with the court order. We will continue to monitor the implementation of the court order and ensure that those who are entitled to free health services are able to access it.

Protecting Ekurhuleni families' rights to housing and dignity



Value add in
terms of rands
and hours

Public Interest Issue:

The importance of effective remedies for the breach of socio-economic rights in cases of prolonged breach and securing the dignity of informal settlement dwellers.

Beneficiaries:

Residents or informal settlement dwellers of Ekurhuleni.

Hourly contribution:

413hrs 30mins

Equal to the monetary value of:

R1,235,862.75



02 JOHANNESBURG CASES

Protecting Ekurhuleni
families' rights to housing
and dignity *continued*



In August 2022 our practice represented ESCR-Net in its intervention as an *amicus curia* in the latest round of High Court litigation in a case with a decades-long history, concerning the enforcement of the right to housing of 133 families living in Ekurhuleni (Thubakgale 4).

A year later, in August 2023, the full bench of the Pretoria High Court finally delivered its judgment in the matter with the majority finding in favour of the applicants and awarding them the relief they sought. The outcome was in line with the international and comparative jurisprudence put forward in ESCR-Net's submissions.

The fundamental question the court had to consider was what effective remedy should be granted to the applicants who had demonstrated that the state has not only

failed to realise their fundamental right to access to housing, but breached a court order delivered in 2015 ordering it to provide them with housing and conducted itself in such a way that leads one to reasonably conclude that it refuses to comply.

Having been denied constitutional damages by a majority of the Constitutional Court in a previous round of related litigation and advised by the majority to instead pursue contempt proceedings, the applicants returned to the High Court to seek an order of contempt and a fine, and in the alternative sought an order of constitutional damages. At the time of the hearing before the full bench in the contempt proceedings, the respondents had still not complied with the 2015 order of the High Court requiring them to provide the applicants houses within a stipulated period. It was this order that the applicants sought to enforce in the contempt proceedings before the full bench. In these proceedings they further sought an order directing the respondents to pay a fine of R1,330,000 within one month because of their contempt of the order. In the alternative, the applicants sought an order declaring that the respondents are liable to compensate the applicants for breaches of their rights under section 26 of the Constitution.



02 JOHANNESBURG CASES

Protecting Ekurhuleni
families' rights to housing
and dignity *continued*

The full bench granted the order sought by the applicants, finding the respondents in contempt of the 2015 order and in breach of their positive obligation under the Constitution. The majority ordered that the respondents, among other things, provide the applicants with housing per the order by 15 December 2023 and further ordered them to pay the fine in the sum of R1,330,000 pursuant to their failure to comply with the order. Importantly, the majority held that if the applicants were not provided with the housing by the 15 December 2023 deadline, the applicants could re-approach the court to seek further appropriate relief, including but not limited to, an order for constitutional damages and an order holding the respondents in further contempt of their order.

According to the majority, it was apparent that the respondents were making excuse after excuse for not complying with the order and that their conduct was repetitive, systematic, and particularly egregious – even though their housing subsidies were long approved, the applicants have remained homeless for over two decades.

The respondents have since filed an application for leave to appeal to the Supreme Court of Appeal and the applicants are cross appealing. It is quite possible that the matter may once again come before the Constitutional Court for it to reconsider the question as to whether aggrieved persons can claim constitutional damages to enforce socio-economic rights in appropriate cases such as this one.

Protecting Ekurhuleni
families' rights to housing
and dignity *continued*

ESCR-Net is a collaborative New York based initiative that connects organisations and individuals around the world working to secure human rights and social justice.

ESCR-Net



Over 230

Organisation Members

50

**Individual Advocates
across more than**

75

Countries

**who all work on issues
related to social justice
and remedies for
violations of economic,
social and cultural rights
(ESCR).**

ESCR-Net has produced and maintains the largest multilingual caselaw database on jurisprudence related to ESCR spanning international, regional and domestic courts and fora.

In its submissions ESCR gave guidance on what would constitute an effective remedy and sought to highlight the importance of effective remedies for socio economic rights as well as the appropriateness and effectiveness of constitutional damages as a remedy for the violation of socio-economic rights.

Helping a bereaved family hold the Department of Education to account for the death of their child at school

Public Interest Issue:

Promoting and protecting the right to basic education by ensuring that the Department of Basic Education in Gauteng honours its constitutional and common law obligations towards learners.

Beneficiaries:

Learners of an under-resourced secondary school in Brakpan township, Benoni.



Value add in
terms of rands
and hours

Hourly contribution:

2,591hrs 36mins

Equal to the monetary value of:

R6,998,621.15

Geluksdal Secondary School is a “no fee” paying coeducational English medium government school situated in Tsakane Township, close to Brakpan in the Ekurhuleni Metropolitan Municipality.

Our practice assisted the parents and siblings of a Grade 12 learner who was tragically electrocuted in her mobile classroom on 30 January 2017 as a result of negligent failure by the Department of Education.

More than six years after launching the claim for damages from the Minister of Basic Education and the Gauteng Department of Education (GDE) for the loss her family suffered, the respondents and the family were able to reach a generous settlement agreement. Although this will never fill the void left by the loss of their loved one, the family has expressed a sense of relief and gratitude in that they will now be able to use the funds from the settlement to invest in their surviving children’s further education.

For the sake of the safety of other learners at the school, we also helped the parents launch further court proceedings seeking systemic relief against the Minister, the GDE and the National Department of Education, requiring them to take all necessary steps to fix the electrical installations and to ensure the safety of learners at the school.

These proceedings will help ensure that no further learners suffer harm at our schools due to state education authorities not adhering to their constitutional and statutory duties to ensure a safe learning environment. Eventually, after years of unrelenting pressure through this litigation, the GDE has attended to all of the main infrastructural, safety and security related defects that compromised the safety of more than 1,000 learners at the school.

Helping several young adults to enforce their right to citizenship

Public Interest Issue:
Promoting access to the right to citizenship.

Beneficiaries:
A class of young adults born and raised in South Africa struggling to enforce their rights to citizenship.



**Value add in
terms of hours
and rand**

Hourly contribution:

1,471hrs 48mins

Equal to the monetary value of:

R3,987,480

02 JOHANNESBURG CASES

Helping several young adults to enforce their right to citizenship
continued



Citizenship is about being accepted, welcomed and recognised as being part of a community.

When we are part of a community, we can influence it, participate in its development, and contribute to its well-being. We can thrive and help others thrive.



Citizenship is thus not just about our own legal protection, but also about our right and ability to contribute and play an active role in our democratic society. Such participation might be within our neighbourhood, in a formal or informal social group, in our country, or in the world more broadly.

In 2010, the South African Citizenship Act was amended to give effect to section 20 of the Constitution, which provides that no citizen may be deprived of their citizenship, and section 28 of the Constitution, which protects the right of every child to a name and nationality.

The amendments sought to provide various pathways to citizenship to children who fall into the following categories:

- children born in the country to at least one South African parent;
- children born in the country who would otherwise be stateless; and
- children born in the country to non-South African parents, where they have resided in the country from birth to age of majority, and their birth has been duly registered in South Africa.

However effective implementation of these provisions has been hindered by systematic failures on the part of the Department of Home Affairs (DHA) to put in place appropriate regulations and the necessary administrative procedures to enable beneficiaries of these extended categories of citizenship to apply for and obtain the citizenship to which they are entitled. This has resulted in a situation where people have either been unable to submit applications, or in many instances where they have managed to submit applications (often with the assistance of lawyers) their applications have not been attended to or finalised for prolonged periods of time, and in many instances several years.

More recently the Minister has sought to try and introduce Regulations which place onerous restrictions on these rights.

Helping several young adults to enforce their right to citizenship
continued

Our practice has been assisting several individuals to enforce their right to citizenship under some of these provisions for many years now.

In doing so we have assisted a number of clients to finally obtain South African identity documents, and through the court cases we have had to institute on behalf of clients, helped to develop our jurisprudence.



One of the clients we have managed to assist through ongoing litigation is a talented young woman who comes from a family of modest means.

Despite all the obstacles she has encountered she recently obtained her LLB degree, served as a research assistant at the Constitutional Court and is now serving her articles of clerkship. She is also the recipient of a Mandela Rhodes Scholarship and is pursuing further studies at the same time.

Our client is just one of many young South Africans with so much potential who may have found their aspirations limited due to birth circumstances they had no control over.

We are currently working with other public interest organisations to consider what remedies are available to correct these systemic challenges.

This not only for the sake of our individual clients, but for the sake of the broader class of impacted people, and to ensure that the rule of law is upheld.



Value add in
terms of rands
and hours

Hourly contribution:

458hrs 54mins

Equal to the monetary value of:

R1,630,520

Seeking justice for the families of victims of apartheid era atrocities



On 18 August 2023, CDH hosted an event on behalf of the Foundation for Human Rights (FHR) entitled, **Strengthening Legal Efforts in Pursuing the TRC Cases.**

The event brought together various law firms and partner organisations to engage in a meaningful discussion about the current challenges surrounding cases in which family members of victims of some of the most heinous and well documented apartheid atrocities investigated by the Truth and Reconciliation Commission (TRC), have sought to have perpetrators (who were not granted amnesty), prosecuted. Sadly, because of a complex set of factors, few of these prosecutions have taken place, leaving victims' families with no sense of justice. CDH has dedicated significant resources to assist with several such cases,

including the Cradock 4 case. The diverse perspectives shared during the meeting underscored the significance of collaboration in addressing the complex issues faced in the unfinished business of the TRC programme.

The meeting focused on a progress report from the FHR, which has spent considerable resources in seeking to bring justice for the victims of apartheid atrocities families; the challenges faced by most attorneys assisting the FHR; and potential strategies moving forward.

Throughout the session, it became evident that many attorneys working with the FHR were encountering similar issues and challenges. These challenges ranged from difficulties in working with members of the National Prosecuting Authority (NPA) to broader issues such as the state's failure to address TRC cases and administrative hurdles like missing dockets.

A key takeaway from the meeting was the commitment among stakeholders to work closely together and find connections between the TRC cases.

Discussions also centred on how to improve communication and collaboration with the NPA.



Human Rights Day

Each year our practice is concerned to make a meaningful contribution in honouring Human Rights Day.



Public interest issue:

Educating primary school learners about the Constitution and their Human Rights.

Beneficiaries:

Children.



**Value add in
terms of hours
and rand**

Hourly contribution:

41hrs 40mins

Equal to the monetary value of:

R117,815

Human Rights Day
continued

Our practice partnered with the South African Human Rights Commission to create a fun-filled day for Grade 6 and 7 learners at Ikenang Primary School in Soweto.

The celebration entailed a competition between the two grades, in which they were asked to design a logo that represents the meaning of human rights in our country.

The Grade 7s were the winners of the competition and designed a logo that truly represents the South Africa envisioned by the Constitution.



Winning Design:

The flag represents the nation at large, the shield represents the South African Human Rights Commission, and the designs on the shield represent different human rights: the rights to health (H), shelter (S), education (E), and safety and protection (P). The logo intends to communicate that the protection of rights requires everyone's efforts (ubuntu), and that the nation (represented by the different shades of hands) must work together, to ensure the enjoyment and protection of rights.



Our Build A Library Project reaches a milestone

Public interest issue:

Providing and protecting the right to basic education, access to literature and promoting literacy.

Beneficiaries:

Learners of an under-resourced high school in Jabulani township, Soweto.



Value add in
terms of hours
and rand

Hourly contribution:

283hrs 42mins

Equal to the monetary value of:

R792,645

Our Build A Library Project
reaches a milestone
continued

Education is one of CDH's core CSR focus areas, and some years ago our practice became involved in an initiative to help build and improve libraries in underprivileged public schools in townships. The Build A Library Project has since become one of our practice's key and long-standing CSR projects. Our hope is to build and expand this project with the assistance and collaboration of key corporate partners.

When we launched it, our primary goal was to find a niche role through which we could contribute in a long-term, sustainable and impactful manner to disadvantaged learners and schools. Through our work we have become acutely aware of the challenges facing our public schooling system and appreciate that as a responsible corporate citizen, we must play our part in helping to make a meaningful difference.

In 2022 we adopted Letare Secondary School in Jabulani Soweto as a beneficiary school for the project. The school has approximately 900 learners and 32 educators.

In June 2023, as part of our Youth Month initiative, CDH, led by the Pro Bono and Human Rights Practice, completed setting up Letare's revamped library.

When we began working with the school, its library was used as a tool storeroom and was derelict, and non-functional. We are honoured to have contributed to a now refurbished library with painted walls, a ceiling, a fully furnished and stocked library, electricity supply, a few computers for research, and Wi-Fi connection and supply.

Our goal is to grow the project incrementally, one school at a time. We aim to focus on helping primary schools in 2024, as research shows that it's in this early stage of development that many learners get left behind due, in part, to a lack of access to adequate resources.



CDH employees after completing refurbishing the library at Letare Secondary School

Launching the Refugee Manual for Legal Practitioners

Public interest issue:

Developing material to aid legal practitioners when providing legal advice to asylum seekers and refugees.

Beneficiaries:

Legal practitioners in South Africa, including paralegals at community advice offices across the country.



**Value add in
terms of rands
and hours**

Hourly contribution:

237hrs 42mins

Equal to the monetary value of:

R930,185

This year, in celebration of World Refugee Day, our practice collaborated with our long-standing partner, Probono.org, to create the Refugee Manual for Legal Practitioners 2023.

The manual is for legal practitioners and unpacks refugee law into a more understandable format to equip practitioners with a knowledge base when dealing with issues affecting asylum seekers and refugees.

The objective of the manual is to encourage more legal practitioners to offer their time and staff to the refugee clinic at Probono.org, in order to fulfil their pro bono mandate. This is important given the vulnerability of refugees and asylum seekers in South Africa, and the diminishment of their rights through the policies and practices of the DHA and amendments of laws.

On 28 September 2023, Probono.org hosted the launch of the manual, where the head of our practice, Jacquie Cassette, gave the keynote address and reflected on the status of refugee law in South Africa, its history, and the challenges faced by refugees and the legal practitioners assisting them. The event was well attended by various legal practitioners who volunteer their time and staff the refugee help desk at Probono.org, and paralegals from community advice offices.



To download a digital copy
of the guide, please click here

Participating in the National Schools Moot Court Competition



This year we were proud to assist again with the rollout of the National Schools Moot Court Competition. Annually, hundreds of high school learners participate in the National Schools Moot Court Competition.

The competition began in 2011 and is a joint initiative by the Department of Basic Education, the Department of Justice and Constitutional Development, the South African Human Rights Commission, and the University of Pretoria. The competition's main objective is to bring greater awareness in schools and communities about the Constitution and the values that it embodies – values that should underpin every legal and social decision made in the country. It also seeks to encourage learners to pursue careers in law.

Shandré Smith who is an associate in our Competition Practice, and a former finalist of the competition, conducted two training sessions for participants.

A number of our associates also assisted with adjudicating the national rounds of the competition, while our National Practice Head, Jacquie Cassette, acted as an adjudicator in the final held in the Constitutional Court on 10 October 2023. As usual the standard was exceptionally high and the final was a fiercely contested event.

Protection Order Guide in support of Women's Month

This year, in commemoration of Women's Day, our practice partnered with Champions4Change to host a workshop focused on explaining and taking questions on the process of applying for a protection order in terms of the Domestic Violence Act 116 of 1998.



Value add in
terms of rands
and hours

Public interest issue:

Developing material to assist and educate the public on the process of applying for a protection order in terms of the Domestic Violence Act.

Beneficiaries:

Survivors and those at risk of domestic violence.

Hourly contribution:

33hrs

Equal to the monetary value of:

R125,400

To support the workshop, we also developed a guide booklet that will help people understand the process of applying for a protection order.

Champions4Change is a grassroots organisation that builds and supports stronger communities on the West Rand and beyond by sharing strong safeguarding practices in schools, churches and communities. Its goal is to change the manner in which victims of rape, domestic or community violence are treated and supported at police stations.



To download a digital copy
of the guide, please click here

Collaborating with our Real Estate Practice to launch a community outreach programme

Public interest issue:

Protecting and promoting the right to adequate housing; and providing legal education on issues relating to property/family house maintenance and management.

Beneficiaries:

Community members (the majority of which are pensioners) of Orlando West, Soweto and Dube township, Soweto.



Value add in terms of hours and rand

Hourly contribution:

58hrs

Equal to the monetary value of:

R166,000

Collaborating with our
Real Estate Practice to
launch a community
outreach programme
continued



**Houses in
historically
Black townships
(overwhelmingly
former rental
properties) over
the years came
to be known as
'family houses'.**

This was partly because circumstances resulted in residents living in these houses according to Black African kinship-based residence norms and customs.

But it was also because apartheid laws denied Black people the right to own urban property, while regulating residence through permits that listed all family members and relatives as occupants.

When the new democratic dispensation came into effect, the South African government enacted a series of overlapping processes through which rented and quasi-owned family houses in Black townships would become private property. This meant registering individual owners who came forward on the basis of permits listing multiple family members. These permits were either converted or upgraded to title deeds but the process through which this was done has now proved to be problematic – as available data and heightened levels of litigation show that it was susceptible to misrepresentation.

Decades later, an increasing number of title holders are passing away and are unfortunately, largely because of a lack of access to information, passing away without a Last Will and Testament, which means that their estates must be wound up through Intestate Succession Law.

Disputes over the legitimate ownership of these houses have become frequent – exacerbated by a lack of knowledge in property (family house) management. The formalities involved in reporting deaths at the Master of the High Court (the Master) has become a cause of intense disagreements amongst surviving family members or beneficiaries, who become locked in long and complicated (family) disputes about who is/are the rightful beneficiaries of the estate. This, in turn creates a massive backlog for the Masters office in the winding up of deceased estates. The process often takes years, and has been rendered susceptible to acts of misrepresentation and fraud – which often results in the estate and the family home being inherited by persons who are not the rightful beneficiaries in terms of the law and intestate succession.

These challenges reveal the huge gap between popular understandings of property (family house) and the legal frameworks of individualised property ownership, land registration and intestate succession – which has created what is now a clear housing crisis in townships.

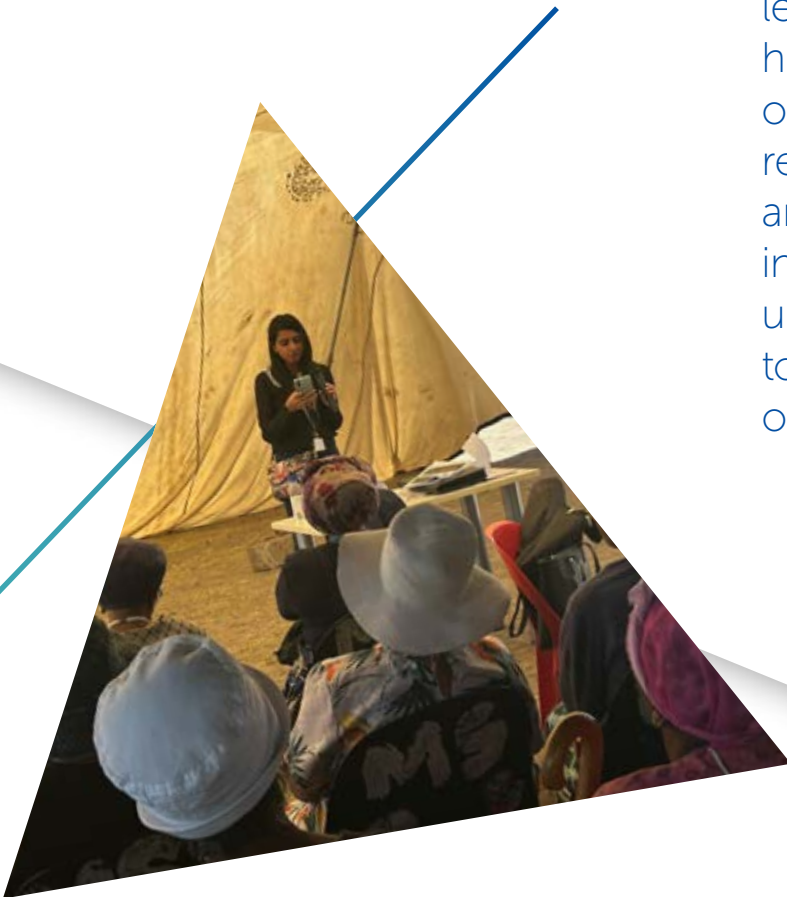
Collaborating with our
Real Estate Practice to
launch a community
outreach programme
continued

Within this context, our Pro Bono & Human Rights, Real Estate Law and Trusts & Estates practices have collaborated to introduce a property initiative with a particular focus on the family house and the housing crisis in City of Joburg townships which is partly caused by the lack of legal recognition of the family house, coupled with the lack of knowledge of residents in respect of property management and maintenance, the law of intestate succession and lack of understanding of their obligations to the city council, amongst others to pay rates, taxes.

On 19 October 2023 these three practices conducted a Property/Family House community outreach workshop in Orlando West, Soweto. The area, like many other townships in Gauteng, has numerous residents and property owners grappling with issues relating to property (family house) management and succession, which has gradually over the years created a housing crisis in the area.

This community outreach workshop, which was the first of a series, was aimed at educating residents on how to best manage their properties/the family house which will in turn enable families to maintain and pass over this generational wealth to generations to come.

A further workshop was held in Dube Soweto on 29 November 2023. In this instance we were delighted to partner with AON plc (NYSE: ANO) (a leading global professional services firm providing a broad range of risk, reinsurance, retirement, and health solutions) to broaden the content of the workshop to include a presentation on the basics of insurance, including personal insurance, business insurance, trust property control, and important provisions of the Protection of Personal Information Act (POPIA). The interactive presentations helped residents to better understand significant aspects of property/family house maintenance & management and the importance of insurance in general as it pertains to individuals and small business and start-ups. We look forward to expanding the programme to many townships within Soweto and surrounds in the year 2024.



Our practice, in partnership with the Mail & Guardian, had the privilege of hosting prominent speakers Bonang Mohale: President of Business Unity South Africa (BUSA);

Athandiwe Saba: Mail & Guardian Deputy Editor; Dr Faranaaz Veriava: Head of the Education Project at SECTION27; and Prof. Tshepo Madlingozi: Director of the Centre for Applied Legal Studies at Wits University, in an inspiring panel discussion held at our Johannesburg office in commemoration of Freedom Day.

Mail & Guardian and CDH commemorate Freedom Day



Some of the panelists' main reflections...



Bonang Mohale: President of Business Unity South Africa (BUSA)

If South Africa is ever going to get out of this deep hole, it is because business has decided that it will make South Africa work ... But to do that, business needs serious intervention to steer it back. Because it is incongruent to speak of a just society when business is seen to be at the apex of injustice. Business must reclaim its voice, integrity, reputation, and credibility.



Athandiwe Saba: Mail & Guardian Deputy Editor

The media industry is not only vital in holding the powerful accountable and ensuring freedom of speech but for robust engagement to ensure our society is actively engaging in our democracy. The media is one of the most important ways of strengthening our democracy and putting our constitution to work.

Dr Faranaaz Veriava: Co-Acting Executive Director of SECTION27

Lawyers in firms should not only be representing the state and the private sector but should provide access to justice for poor and vulnerable clients ... Law firms and their clients can support the rule of law and accountability work of public interest organisations. This can be through funding, including core funding, but also through other forms of support.

Prof. Tshepo Madlingozi: Director of the Centre for Applied Legal Studies at WITS University

Freedom is meaningless without social justice; however, it's important that social justice include historical justice and redress.

The panellists were asked to consider some of the challenges confronting our constitutional democracy nearly 30 years after our transition to freedom, and share ideas on the role the legal profession, civil society, business, and the media can play collectively as agents of change.



SECTION27 Remedies Workshop



Justice Froneman

On 5 December we collaborated with SECTION27 and Professor Sandra Liebenberg, the HF Oppenheimer Chair in Human Rights Law in the Faculty of Law, University of Stellenbosch, to host a workshop on Remedies for Socio-economic Rights Violations.

The purpose of the workshop was to discuss how to make orders of the court more effective in matters concerning socio-economic rights (such as the right to basic education, access to healthcare, housing, and social security, amongst other rights).

The workshop included members of civil society, judges (both domestic and international), and academics. Justice Froneman, former Justice of the Constitutional Court, gave the keynote address in which he provided some sage advice to civil society and public interest lawyers on how to successfully litigate socio economic rights cases, while Justice Cabo from the Colombian Constitution court gave an inspiring account of how the Colombian courts have sought to deal with systemic breaches of socio-economic rights in Columbia.

While the government has made progress in furthering socio-economic rights, progress has been slow and uneven within and across provinces. Many South Africans still live in abject poverty, with no access to quality basic education, health care, adequate

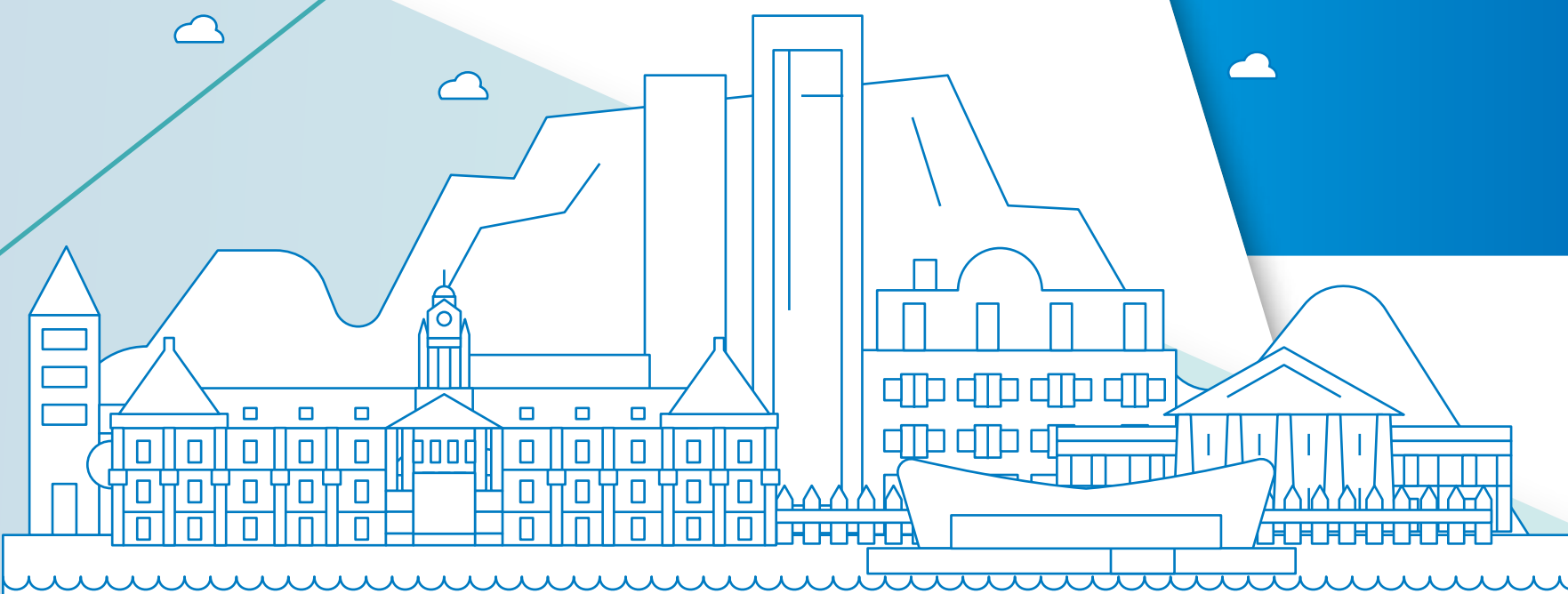
housing, water and food. It is thus fair to say, government has, to a significant extent, failed to fulfil the promise of the socio-economic rights in the Constitution. For this reason, communities in South Africa have turned to social mobilisation, activism and, in many cases, litigation, to push government to act in accordance with their constitutional obligations.

Litigation has resulted in numerous court orders obliging government to take action. However, there has been increasing non-compliance by government with these orders. There are several reasons for non-compliance, including individual malfeasance amongst public officials and a lack of political will. However, in many instances noncompliance has been caused by systemic dysfunction and a failure to coordinate between different government departments on the local, provincial and national levels.

Non-compliance results in multiple rounds of litigation in which parties attempt to enforce court orders against government and courts having to issue stronger and more robust orders, including supervising compliance by mandating that the government reports back to court on the steps it has taken to comply with court orders. This has, in some cases, still failed to induce compliance and, as a result, there is a need for courts to tailor their orders to address the causes of government non-compliance in different cases.

The workshop was convened to discuss how that can be done in a way that promotes good relations between the government, the courts, and civil society.

03 CAPE TOWN



Our economy's
impact on young
girls: Rape and
sexual abuse the
consequence of
a family's financial
struggles

**This devastating
dynamic silently
creeps through
countless communities
across our country.**

Public Interest Issue:

Protecting and promoting the rights of children to be free from all forms of violence, with a focus on redressing sexual abuse and rape.

Beneficiaries:

Plaintiff, a 15-year-old girl, and possibly two further teenage girls.



**Value add in
terms of hours
and rand**

Hourly contribution:

82hrs 6mins

Equal to the monetary value of:

R168,085

Our economy's impact on young girls: Rape and sexual abuse the consequence of a family's financial struggles
continued



A mother, father and their three children find themselves struggling to make ends meet in our worsening economic climate.

Each year their circumstances become more dire, and alcoholism enters their home as a coping mechanism and escape. The father befriends a man of far, far greater financial means, and with some political affiliations to boot.

Their friendship blossoms over the years, and slowly but surely this family friend provides much needed financial support, by way of the most basic household and personal items as a start, but in time, with more extravagant gifts for each member of the family. Soon enough, there is reliance placed on this financial support and the dynamics become set. But after years it becomes clear that the support was not without a price tag. It is the family's only daughter who must pay the ultimate cost of her family's financial hardship: years of grooming, sexual assault and rape.

This devastating dynamic silently creeps through countless communities across our country. Families, desperate to survive one month to the next, are at the mercy of those with comparatively endless means who can effectively name the price for their financial support, and all too often set their sights on the most innocent of all. It is an awareness of this far-reaching injustice that has led the Cape Town practice to pursue civil proceedings against one such man.

By the time the request for assistance in this matter reached our offices, attempts had already been made to pursue criminal proceedings against the perpetrator.

However, the prosecuting authority has, for unknown reasons, elected not to prosecute the two separate criminal proceedings instituted against the perpetrator for his repeated – and continuing – sexual assault and rape of a teenage girl. Given the scourge of gender-based violence throttling our country and the duty of state officials and all persons to ensure the best interests of our children, it is imperative to establish why prosecutions are not being pursued and whether these reasons are justifiable and based on a lawful and reasonable application of prosecutorial discretion. In the absence of legitimate reasons, a failure to prosecute in this instance would fly in the face of the state's constitutional obligations and betray our client, a vulnerable teenage girl.

We are also pursuing civil proceedings against the alleged perpetrator, which may in time also be brought in the name of at least two other teenage girls who we have been told are victims of the accused's *modus operandi*.

The detention of a transgender, teenage girl: **The failure of SAPS**

Public interest issue:

Protecting and promoting the rights of transgender persons, with a focus on redressing sexual abuse and rape. Holding state officials and departments accountable for their duties owed to the public.

Beneficiaries:

Plaintiff, an 18-year-old transgender woman.



Value add in
terms of hours
and rand

Hourly contribution:

382hrs 18mins

Equal to the monetary value of:

R698,790

The detention of a
transgender, teenage
girl: The failure of SAPS
continued

We represent a transgender woman, Ms B. In December 2016, when she was just 18, Ms B was arrested by the South African Police Service (SAPS) after a physical and verbal assault instigated by her family at her family home.

At the SAPS detention facility, Ms B was placed in a cell with three men. This, despite her protesting that she identifies as female and that she very obviously presents as female. That night, Ms B was sexually assaulted and raped by her cellmates.

Placing her in a cell with men was in contravention of SAPS' own Standard Operational Procedure for the Detention of Transgender Prisoners. This procedure prescribes that all transgender people must be detained in separate detention facilities at the police station where they are arrested, and that if a separate detention facility is not available there, then the transgender person must be transported to and detained at an appropriate facility within the cluster. This is the extent of the protection meant to be afforded to transgender persons by SAPS. On the night of Ms B's arrest, as many as six other cells, some completely empty, were available at the local police station in question. SAPS officials chose to ignore this and placed her in an environment that would result in one of the most profoundly traumatic experiences of her life.

The damages claim and application for default judgment

In November 2019 Ms B launched a damages claim against the Minister of Police (Minister) for his vicarious liability for the acts committed by the SAPS officials on the night in question. What followed were nearly three years during which the Minister took no substantive steps whatsoever in the matter. In a grave dereliction of duty he effectively ignored a case of extreme sexual violence perpetrated under his officials' control and their disregard for SAPS' governing procedure.

The application for condonation

After several failed attempts to engage the state attorney and extract the Minister's plea, our practice set Ms B's application for default judgment down for hearing in February 2022. This hearing did not proceed because of a last minute postponement by the Minister, followed eventually by a belated application to condone a then nearly three-year delay in the delivery of his plea.

The application for condonation, which we opposed on Ms B's behalf, came before Western Cape Division Acting Judge Van Heerden on 8 February 2022. Van Heerden AJ was tasked with determining whether the Minister's application met the requirements for condonation, namely: good cause for the delay; a *bona fide* defence; and that it was in the interests of justice that condonation be granted.

The court concluded that the Minister did not have any *bona fide* defences and the judgment handed down in September 2023 succinctly but persuasively dismissed the Minister's application for condonation with costs.

Sadly, the Minister has not been deterred, and the judgment has been appealed.

It is hard to reconcile the conduct of the state in this matter with one that is genuinely committed to upholding constitutional values and eradicating gender-based violence.

Protecting school students who have been abused

Public interest issue:

Protecting and promoting the rights of children to be free from all forms of abuse, with a focus on redressing sexual abuse. Holding state officials and departments accountable for their positive duties owed to children.

Beneficiaries:

All children affected by Department of Education protocols.



Value add in
terms of hours
and rand

Hourly contribution:

10hrs 12mins

Equal to the monetary value of:

R28,620

The Western Cape Department of Education's (WCED) Abuse No More Protocol is intended to "*Deal effectively with child abuse, deliberate neglect and sexual offences against children*". The protocol requires all WCED employees to ensure that they clearly understand their roles in combatting child abuse and sexual offences against children.

Yet, it has become apparent that members and educators within the WCED and South African Police Service (SAPS) officials are commonly misunderstanding or worse, deliberately ignoring, the positive legal duty that rests upon them, not only in terms of the protocol, but also in terms of common law, criminal law, and child protection laws. Members, educators and officials are regularly interpreting the protocol to mean that they must first get consent from a learner's parent(s) before they report and take steps to address instances of abuse made known to them. They are adopting the position that if consent is not provided by the parents, they are prohibited from taking any necessary steps.

From our reading of the protocol and applicable laws, this is incorrect and in fact, there is a positive legal obligation upon all people, including members and educators of the WCED, to take immediate steps to report abuse of children. These sections mandate a positive legal duty on "*every person*" and "*teachers*", respectively, demanding that all instances of knowledge of, or on reasonable grounds to conclude that, a committed offence against a child, must be immediately reported.

It appears there that there is a concerning disconnect between the positive, mandated legal duty and the actions of members and educators within the WCED and SAPS. Together with our public interest partner, we are therefore, as a first step, requesting constructive engagement with senior officials within the WCED to discuss how best to address this in order to protect and advance the interests of children.

The concern at the heart of this matter is the very real risk that requiring parental consent may create a barrier to justice for an abused child.

CSR Donations

Several CSR donations were made throughout 2023 to deserving organisations serving vulnerable groups.



Christel House

Christel House is a global NPO that operates nine schools around the world. It assists where the need is most desperate, and where basics human rights are under the greatest threat.



Solomons Haven is an NPO that works with physically and sexually abused children placed in its care. The haven has been operating in and around Mitchells Plain for the past 30 years and houses up to 20 children at any given time.



To commemorate Youth Day, as part of our CSR contributions and on behalf of the firm, our practice facilitated a R15,000 donation to Leilebloem House. Leilebloem House is a Western Cape residential child and youth care centre that provides a residential care programme to around 60 children between 5 and 18 years of age.



As part of our contribution to Mandela Day, our practice, in collaboration with the Cape Town first year candidate attorneys and supported by the rest of the Cape Town office, donated R10,000 for blankets and LED lights to be used by the South African Children's Home to help combat the harsh winter and loadshedding. The Cape Town office also donated other non-perishable food items needed by the home. The home provides a secure environment for its family of 44 boys and girls.



To mark Women's Day, we facilitated the donation of R20,000 to the Islamic Resource Foundation of South Africa's Shelter for Abused Women and Children. Since inception, the shelter has directly helped more than 4,000 women with empowerment, counselling, sheltering, clothing, food and protection, and assisted countless other individuals seeking support. Based in Heideveld on the Cape Flats, the shelter is open to all women affected by abuse regardless of their race, religion or socio-economic status.

Bringing women justice: Hackathon and chatbot soft launch

Public interest element:

Women and girls' empowerment
and gender-based violence support.

Beneficiary:

Predominantly women and
girls, nationally.



The Hackathon

Kwanele is a non-profit organisation that works to increase conviction rates for gender-based violence (GBV) through collecting, organising and presenting admissible evidence to legal authorities.

It has created the Kwanele App, which provides victims with access to help in emergency situations, and a toolbox of resources for use in court cases.

The app also has functionalities like a panic button, location services, a video and audio stream, a step-by-step guide on how to access help and a chat service to respond to GBV-related queries. The app also assists victims in finding the necessary services by using the victim's location and providing information to counselling services, medical services, local police stations, as well as court preparation.

On 19 May 2023, our practice was proud to host Kwanele's "*hackathon*", an event with the aim of providing the attendees with information regarding AI, ethical AI and GBV support services, and to gather insight and information to be used in the development of the app's chatbot.

The event was attended by high school students, law students from a selection of universities and CDH and Kwanele staff. Attendees were involved in several activities, with the last activity for the day being the students drawing what they envision the bot to look like and how it can help others. The event balanced providing education about AI with allowing them to have input in the development of the app that can expand victims' access to justice and empowerment in GBV cases.

03 CAPE TOWN EVENTS

Bringing women
justice:
Hackathon and
chatbot soft
launch *continued*



Chatbot Soft Launch

Based on the input from the hackathon, Kwanele progressed the development of the chatbot component of its app, with the bot since being named ChatGBV. ChatGBV provides survivors of GBV with a platform to ask questions about where to go and what to do if they wish to pursue criminal or civil charges, where to receive physical healthcare and emotional support, and many more questions frequently asked by survivors of GBV.

The bot responds to everyday speech, and provides a wide range of responses, appreciating that a user may not always know the right question to ask to get the help they desperately need. The bot has been designed to be as appropriately responsive, sensitive and helpful as possible.

ChatGBV has been showcased at three international conventions and award ceremonies, and was awarded the following prizes:



Tech For Good Award: Kwanele was a recipient of a 2023 Zendesk Global Tech For Good Award as recognition of their work in leveraging technology in the anti-GBV space, and was awarded USD15,000 in prize money.



Mozilla Responsible AI challenge in San Francisco: Kwanele won second place specifically for ChatGBV.



Winner of the Ethical AI Grand Challenge with the Bill and Melinda Gates Foundation: In June 2023 Kwanele was announced as one of the winners of the Gates Foundation Generative AI challenges. As a part of this Kwanele was given funding to further build and test ChatGBV.

Following these successes, and in honouring the annual and internationally recognised 16 Days of Activism for No Violence Against Women and Children, Kwanele afforded the Practice and CDH the privilege of hosting the soft launch of ChatGBV at its Cape Town offices on 6 December 2023.



03 CAPE TOWN EVENTS

Bringing women
justice:
Hackathon and
chatbot soft
launch *continued*

The event featured prominent voices in the gender rights and anti-GBV space: event speakers were Mmusi Maimane and Nobuntu Hlazo-Webster of Build One South Africa (BOSA) who spoke to the role government and the private sector can play in supporting women, and in the fight against GBV; Anne Isaacs: Project Manager and Legal Officer - Tribunal for Sexual Offences and Gender Based Violence at University of Cape Town, who spoke to trauma informed evidence and the critical need for technology/AI in improving outcomes for survivors; and Tayyibah Suliman, CDH: Head of Tech Law who spoke on the importance of ethical AI and of lawyers' commitment to contributing to ethical AI. The highlight of the event was the App

demonstration from Kwanele, showcasing its impressive capabilities and the various ways in which it aims to support GBV survivors and those at risk. The App presentation was met with emphatic support and gratitude from those in attendance, who all agreed that this work being done by Kwanele has the potential to make a significant contribution in the fight against GBV.

The event was very well attended by members of the South Africa Police Service, state department representatives, public interest organizations and human rights lawyers and activists. The event successfully created a platform for further important conversations around GBV support services, and the role to be played by technology and law in supporting survivors and increasing the protection of those under threat of GBV.



CDH is proud to partner with and provide support to Kwanele, and to play a role in the continued fight against the scourge of GBV in South Africa. We look forward to rolling out further initiatives with Kwanele in 2024.

Tore's Foundation social impact debate hosted at Stellenbosch Business School

Public interest element:

Children's empowerment
through education.

Beneficiary:

Various Western Cape high schools
supported under the Tore's
Foundation programmes.

**The Tore's
Foundation's
mission is to create
citizens who are
critically engaged
and active in their
communities. It
focuses on young
people; seeding and
growing debating
skills, independent
thinking and
democratic values.**

It aims to give students the
self-confidence and tools needed
to express their views, first within
their schools and then ultimately
within their wider communities.

Throughout the second half
of 2023, our practice had the
pleasure of judging Tore's
Foundation debates and sharing
words of motivation and
encouragement with the students.
In October 2023, Brigitta Mangale
of our Cape Town practice was
invited to judge an inter-schools
debate hosted at Stellenbosch
Business School in which the
motion was: *"The effectiveness of
a social impact programme should
be determined by the extent
to which it addresses systemic
inequalities and empowers
disadvantaged individuals to break
the cycle of poverty"* with teams
proposing and opposing the topic
of the debate.

The event showcased the students'
exemplary debating skills, acquired
through their participation in the
Tore's Foundations' programmes.

It was an inspirational morning
which showed that our next
generation of leaders will be
made up of an intelligent, skilled
cohort of people dedicated to
social justice and meaningful
transformation.



Empowering women through our **podcast series**



Podcasts are one of many ways in which our practice shares its work and knowledge database, and we hope that this serves to empower others.



In 2023 we commemorated 100 Years of Women in Law.

One of the ways CDH marked this important milestone was through a series of podcasts hosted by some of CDH's women attorneys, ranging in seniority.

On the podcasts, accomplished women in law and business were invited to discuss important issues affecting women in the sector. These podcasts were rolled out under two streams, one of which is an ongoing CDH women's empowerment initiative, and the other a three-part series in partnership with WOZA Women in Law.

CDH and our practice are committed to promoting access to legal knowledge and prevailing legal issues in a manner that is easily understood by the public. We appreciate the profound empowerment that can result from understanding one's rights, and from understanding when those rights may be under threat, or may soon face development. Podcasts are one of many ways in which our practice shares its work and knowledge database, and we hope that this serves to empower others. All of the podcasts mentioned and more are available on the CDH Conversations channel on all popular podcasts platforms.

04 NAIROBI



Nairobi

Cases, CSR Initiatives and Events

Motivated by the belief

that every lawyer has the responsibility to use their legal knowledge on a pro bono basis to improve the lives of those individuals and communities around us, our Nairobi office dedicated numerous hours in pro bono legal services over the course of the year.

Sammy Ndolo, Managing Partner of the Nairobi Office, receiving the Trust Law Award, 'Regional Law Firm of the Year'.

As a testament to our dedication, expertise, and unwavering commitment to doing this, our firm was awarded the 2023 Pro Bono Regional Law Firm of the Year at the Trust Law Awards, which was hosted by the Thompson Reuter's Foundation. This award recognises the role that we have played in addressing social issues, promoting access to justice, and supporting underserved populations.

In 2023, we provided pro bono legal research services assessing laws and regulations that affect sexual and gender minorities' lives in Kenya, for a World Bank report. Our review put forward a bold ambition to accelerate the inclusion and protection of these minorities through the enactment and implementation of an inclusive legal framework, abolition of laws and legal provisions that are discriminatory, and provision of non-discriminatory services.

Our legal team, in support of our long-standing relationship with the Thompson Reuter's Foundation, drafted an online harassment guide to strengthen media's resilience to online violence amid a climate of escalating threats and targeted attacks. The guide acts as a tool for documenting, and managing online

harassment and abuse, and our work contributes to the protection of the right to information, freedom of media, and accurate and independent reporting.

We are also drafting a legal guide simplifying Kenya's legal landscape for not-for-profit organisations on behalf of the Thompson Reuter's Foundation. The guide aims to simplify the complex legislative process that may consume non-profits' limited time and resources, thus enabling them to focus on their core activities and mission so as to better serve their beneficiaries.

Our Data Protection, TMT and Intellectual Property Practice has obtained trademark and patent registrations for upcoming innovations, provided legal support

Nairobi Cases, CSR Initiatives
and Events *continued*

**Our team of lawyers
is proud to have made
a positive impact on our
community this year and
we remain committed to
continuing this important
work in the years to come.**

on the potential infringement of a non-profit's registered trademark by other entities using its name to trade within the country, and advised on anti-counterfeiting with the sole aim of protecting consumers from the effects of counterfeit goods.

On the environmental front, we provided legal advice on the setting up of the Nairobi Climate Network, a platform where organisations, individuals and entities can raise awareness on climate change and its consequences, advocate for strong

policy and legislative frameworks that address climate change, promote technological advancements and knowledge sharing, and generate valuable insights that inform climate projections and solutions.

In addition to providing legal advisory services, we also sponsored the University of Nairobi's Students Association's intervarsity debate on the environment and climate change. The debate presented an opportunity for the youth to engage in thoughtful discussions, explore innovative solutions, and raise awareness on the critical issues surrounding the conservation and protection of the environment and climate change.

Our team of lawyers is proud to have made a positive impact on our community this year and we remain committed to continuing this important work in the years to come.

Conclusion

Successful year for our Pro Bono & Human Rights Practice

We are grateful to have closed off a successful year for our Practice, and we are honoured to have made positive and meaningful contributions in support of several vulnerable groups in both South Africa and Kenya.

We, the Pro Bono & Human Rights Practice, thank you for taking the time to read this newsletter, and we thank you even more for your continued support of our Practice.

As mentioned at the beginning of this newsletter, our goals are achieved not only through each member of our Practice's continued and fierce determination to best serve our clients, but also through collaboration and support. We look forward to building on the success of 2023 in 2024, and look forward to doing so with your support as we play our part as responsible lawyers and citizens.

Our Team

For more information about our Pro Bono & Human Rights practice and services in South Africa and Kenya, please contact:



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