ProBono.Org ran a workshop on the 'Rights of Unaccompanied Foreign Children' on 26 June 2013. The workshop was hosted by Norton Rose Fullbright and presented by Kajaal Ramjathan-Keogh from Lawyers for Human Rights.

The workshop was attended by lawyers and representatives from a wide range of organisations that deal with refugees on a daily basis.

Statistics show that of the countries in which refugees sought asylum in 2012, South Africa received the third highest number of new asylum applications. Overall South Africa has had the highest number of refugees in the world for the last 5 years consecutively. It is obvious there is a great need for working procedures and legal infrastructure to support this influx.

Further data illustrates that children under the age of 18 make up 46% of the refugee population. In 2012 alone around 21,300 asylum applications were lodged by unaccompanied children worldwide. These unaccompanied children are mostly of Somali and Afghanistan descent.

When considering these children’s rights, it is paramount to consider the ‘best interest of the child’ principle, as contained in sections 7 and 9 of the Children’s Act 38 of 2005.

Kaajal outlined the procedure on how to identify and treat children who are found to be in need of care and protection; undocumented children with and without a claim for asylum; unaccompanied children who seek asylum; stateless children; children in detention and trafficked children. She also discussed selected rights these children are entitled to, as well as the right to education and social grants.

Various problems faced by these unaccompanied foreign minors were highlighted. For example, older children may often erroneously be detained at Lindela. It was found that these children do not always know their age or cannot communicate the same, and teenagers are sometimes mistakenly treated as adults. However these children are released when it is determined that they are indeed still children.

A further problem addressed at the workshop is the enactment of the right to education. Each province requires parents or guardians to register their children at a school in the year preceding the academic year they wish to enroll. These statistics are used to ensure the schools have sufficient space for learners. Unaccompanied foreign minors are not aware of these processes. When the time comes to attend school they are advised that the school has no space for the child. The time period associated with placing children in the next nearest available school is, unfortunately in practice, a lengthy one. To further compound this problem, Government does not provide the necessary transport needed by learners placed in a school that is fairly distant from their homes. This results in a vast number of unaccompanied foreign children not receiving adequate education.

Although these problems are far from being resolved, the attorneys and organisations that attended the workshop are now better equipped to deal with these children and assist them in the most effective way.