

Welcome

to our 2020 interns

Johannesburg

Sifo Ngubo

Sifo joined the Joburg office on 6 January 2020, working in the child law department.

He was born in the Vaal area and has lived in many places around the country, including Matatiele and Queenstown in the Eastern Cape, and in Orange Farm and Soweto. The son of a domestic worker, he was raised by a single parent. His future was reimagined when he obtained an LL.B from the University of Johannesburg.

"There is only one thing that makes a dream impossible to achieve: the fear of failure."



Tebogo Makwala

Tebogo grew up and went to school in Vosloorus on the East Rand. He graduated with an LLB from the University of South Africa, and also holds a National Diploma in Law from the University of Johannesburg. He started work on 6 January in the Refugee department and is looking forward to helping destitute and desperate asylum seekers and refugees to get legal assistance. Tebogo has an interest in community involvement, helping and sharing knowledge to uplift and liberate his community. This helps him achieve satisfaction in life as it feels good to be helpful to others.



Durban

Siyabonga Zondi

Siyabonga Zondi was born and raised in Durban, KwaZulu Natal. He completed his LLB at the University of South Africa (UNISA) in 2018. While completing his Practical Legal Training in 2019 he applied for an internship at ProBono.Org in order to gain exposure to a dynamic legal environment and



to be an active participant in the organisation's mission of providing access to justice to all sectors of society. He has a deep-rooted passion for labour law and wishes to pursue a Masters in Labour Law and ultimately practise as a Labour Practitioner. Having been an avid participant of his University's street law programme, he believes that "In the most unequal society in the world, where access to justice is more the exception than the norm, organisations like ProBono.Org and their various stakeholders play a crucial role in bridging this gap."

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Write for us



We would like to invite legal practitioners to contribute to our bi-monthly newsletters by writing an article of up to 400 words (one page) on a topical issue of law. Please indicate your interest to the editor at margaret@probono.org.za by 15 March 2020.

The deadline for articles for the next issue will be **1 April 2020**.

Nongcebo Charity Mthembu

Nongcebo is an aspirant legal practitioner

who was born in Ndulinde, a small village in Mandeni in northern KwaZulu-Natal. She completed her LLB in 2017 at the University of KwaZulu-Natal (PMB). She is currently completing her LLM in Advanced Criminal Justice.

Nongcebo believes that the law is a tool that can be used to fight injustices and she advocates for the protection of women and children's rights. Her passion for human rights motivated her to write a dissertation on the "Decriminalisation of Adult Consensual Sex Work in South Africa" using a human rights approach. Her future goal is to enrol for a PhD, focusing on land tenure rights in South Africa. She is thankful for the opportunity to work as a legal intern at ProBono.Org as she believes that the organisation will equip her with the necessary skills and knowledge she requires to be a human rights lawyer.

Sinothile Zondi

Sinothile hails from the South Coast of KwaZulu Natal, from a village

called Ezingolweni and moved to Durban for educational purposes. She completed her LLB degree at the University of South Africa (UNISA) in 2019. Her passion and interest for social justice and human rights was ignited when she joined ProBono.Org as a volunteer in 2018, to the extent that she re-joined us as a consultant intern in 2019. She was appointed as a permanent intern in January 2020 and her aim is to promote and advance the right to access to justice for all. In the future she hopes to undertake her articles at an NGO, focusing on human rights.



Cape Town

ProBono.Org Cape Town welcomes Shadreck Masike and Matthew December as our new legal interns who joined us on 6 January 2020. We wish them tremendous growth, learning and development during their tenure with us.

Shadreck Masike

Shadreck attended the University of Zimbabwe where he obtained his LLB in 2018. During his time at university he developed a passion for human rights in general with a specific focus on socio-economic and cultural rights and the rule of law. Upon completion of his degree, he was admitted as a Legal Practitioner, Conveyancer and Notary Public by the High Court of Zimbabwe and briefly practised there before he moved to South Africa. He has participated in a number of symposia and forums hosted by civil society organisations in identifying theoretical frameworks that lay the ground for the full realisation of human rights in Africa in the broader sense. Shadreck is also an avid reader and enjoys legal research and writing and is currently contributing material to a number of journals.

Matthew December

Matthew graduated with an LLB degree from the University of the Western Cape (UWC) in 2018. He is currently pursuing an LLM degree in International Human Rights Protection. His research paper will focus on the fraudulent acquisition of citizenship and will take the form of a comparative analysis between



South Africa and Zimbabwe.

In 2017, Matthew worked at the ANC Parliamentary Constituency office in De Doorns, where his role was to inform farm workers of their rights in terms of key labour legislation, after realising the extent of their exploitation. In the same year, he was elected Secretary of UWC's Black Lawyers' Association Student Chapter, as well as the Chairperson of Weapons of Raising Dreams (W.O.R.D) an on-campus NGO founded by UWC students in order to address the need for mentorship and guidance in high schools. Matthew hopes to complete his LLM during 2020 and is an aspiring human rights legal practitioner who wishes to be of service to his community.

Ongezwa Gontshi

Ongezwa recently joined ProBono.Org as the finance

administrator/project officer on the AFSA/Global Fund project aimed at reducing stigma and discrimination as well as educating and providing legal advice and assistance to persons living with HIV and TB in South Africa. Prior to joining us she was employed as a project accountant at the Legal Resources Centre. Ongezwa chose ProBono.Org because she wanted to branch out from doing solely finance work and the Global Fund project is the perfect opportunity to do that and to expand her career within the human rights space, which is an environment she enjoys working in and is passionate about. ●





Enoch Mpianzi

Parktown Boys High drowning: Who holds the duty of care?

By Melissa Engelbrecht, Cape Town intern

On 15 January 2020 the nation woke up to the shocking news of the disappearance and subsequent death of Enoch Mpianzi, a 13-year old grade eight scholar at Parktown Boys High School in Johannesburg. According to various media reports, Enoch drowned in the Crocodile River when a makeshift raft the pupils were required to build overturned during an orientation camp at Nyati Bush and River Break Lodge. With revelations emerging that the deceased had no life vest and that two days passed before school authorities realised that he was actually missing, eyebrows were raised as to the extent of the negligence implicit herein. Calls were made for the headmaster of the school in question to resign, which were followed by demonstrations and the matter becoming headline news for some days. A large portion of society feels the school authorities abandoned their moral obligation to protect students in their custody; however, it is in fact a legally imposed duty of care. Parktown Boys High hoped to escape liability by raising the issue of a signed indemnity form, but this in itself does not vindicate the school from their duty of care.

One of the most important duties that rests with any school is the responsibility of the physical care of learners. This duty finds its roots in common law and is legally recognised as the duty of

care. It entails that every school, its employees and authority must take reasonable steps to ensure the safety and welfare of learners within their control. It extends - as in this case - to excursions, and any situation that the school can reasonably be deemed to have control over. It should however be noted that breaching the duty of care attracts legal liabilities under the law of delict, hence it is essential to understand instances under which this duty is said to be breached.

One such instance is when there are acts or omissions which give rise to negligence. Negligence is defined as a failure to take reasonable care to avoid causing injury or loss to another person. It is therefore important to note that whenever negligence is raised, the reasonable person's test applies, which is the benchmark used to measure whether conduct is reasonable under the circumstances or not. This question was settled in *S v Burger* where the court proclaimed that a reasonable person is only required to tread life's pathway with moderation and prudent common sense.

As such, where a school arranges an outing and the activities to be undertaken include building a raft and rowing on waters where the current is fairly strong, as was the case in Enoch Mpianzi's matter, it is evident that a reasonable teacher under these circumstances would have exercised prudent common sense by providing adequate

material with which to build such a raft, ensure that every student was wearing a life jacket and guarantee that there were sufficient staff supervising such water activities. Thus, failure to do so would in terms of the reasonable person's test constitute gross negligence and a dereliction of both a moral and legal duty.

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It is therefore safe to conclude that Parktown Boys High were required by law to exercise reasonable apprehension or to foresee that certain activities that pupils participated in attracted greater risk to them and more cautious steps ought to have been taken to prevent potential tragedies. Thus, Parktown Boys' High had in fact failed to uphold the duty of care implicit under the circumstances. ●



International Human Rights Day Public Lecture

By Shamika Dwarika, Regional Director, Durban

It was a dark and stormy afternoon in December 2019 when a number of legal practitioners and public interest law advocates gathered for a public lecture commemorating International Human Rights Day. Despite the load shedding and the storm wreaking havoc in Durban on 10 December, we were able to proceed with this event, and what a worthwhile event it was - with esteemed speakers Judge Johann van der Westhuizen and Advocate Andrea Gabriel SC and Advocate Zak Suleman directing the programme.

Advocate Gabriel was instrumental in the first African translation of the Universal Declaration of Human Rights. She spoke about her days visiting schools and speaking to children about examples of treating each other in a cruel way. Students were then asked to draw a picture depicting something cruel happening to another person. This illustrated the value and concept of pictorial literacy within the rural community.

They then worked with educators and a local artist to draw pictures and murals depicting each of the rights in the Universal Declaration of Human Rights in culturally understandable forms. On the 50th anniversary of the Universal Declaration of International Human Rights 29 years ago, she co-authored a book, "Amalungelo Uluntu" (Human Rights of the People), which was the first African interpretation of the Universal Declaration of Human Rights. This was subsequently translated into isiXhosa and later into all 11 official languages of South Africa.

Judge van der Westhuizen, former Constitutional Court Judge and outgoing Judge of the JICS (Judicial Inspectorate of Correctional Services),

was wonderfully entertaining, informative and a consummate speaker. He spoke about watching the planned execution of a convicted criminal on death row internationally and the inhumanity of this process. He also spoke about the number of people who have been wrongfully imprisoned, sometimes for 20-25 years. He stated that it is not just in the interests of the convicted but also the victim that the correct person be imprisoned, so as not to perpetuate human rights violations.

ProBono.Org (Durban) once again partnered with the SA Human Rights Commission and The Department of Justice and Constitutional Development to host this event, with the IIE's Varsity College joining us as well. We extend our gratitude to the sponsors who supported the event - LexisNexis SA, Origin Water and Virgin Active | Collection.●



Judge Johann van der Westhuizen (JICS)



Each person who attended received a copy of the SA Constitution, as well as a notebook and pen from LexisNexis SA



L-R - Ms Asiya Khan (DOJCD), Adv. Andrea Gabriel SC (Durban Bar), Judge Johann van der Westhuizen (JICS), Shamika Dwarika (ProBono.Org), Fiona Kaplan (IIE's Varsity College), Adv. Lloyd Lotz (SA Human Rights Commission) and Adv. M. Zakaria Suleman (Durban Bar);



Adv. Andrea Gabriel SC (Durban Bar);