

## IN THIS ISSUE • OCTOBER 2019

- New appointments
- Death Penalty for Femicide?
- Xenophobia in the spotlight once again
- Civil society focus on refugees



## Our New National Director- Teresa Yates

Teresa Yates has been appointed as the National Director of ProBono.Org. She was until recently Deputy National Director of the Legal Resources Centre (LRC). Besides legal training, she has a background in human rights and development on the continent. In her 22 years of experience she has worked in NGOs, for government and as an independent researcher and evaluator. She has acquired not only a range of important management skills, but has also been directly involved in strategic planning, law reform and policy development, fundraising and budgeting,

monitoring and writing, and leading diverse teams. Teresa led substantial design work on Alternative Dispute Resolution in the Department of Land Affairs in the 2000s, where she worked in the Tenure Directorate. She has also worked as gender justice coordinator with Oxfam in Tanzania, the South African government and Nkuzi Development Association, a South African land organisation focusing specifically on farm workers, land rights and land reform.

**We are honoured to have Teresa join the ProBono.Org team. ●**



## Mpho Mogodi

After matriculating from King Edward VII High School, Mpho enrolled for a BA at Wits University to major in International Relations and Political Science. He then graduated with an LLB degree from the University of South Africa in 2017.

Mpho's love for the law stems from wanting to bring about positive change and to advocate against social ills and injustices. He also strongly believes in the value of being of service to others.

In his spare time Mpho enjoys mountain biking, meditating, studying philosophy and trying out Johannesburg's restaurants.

Mpho initially joined the organisation on a three-month contract to take on the land and housing and deceased estate matters. This contract has been extended for a further nine months and we are very pleased to have him as part of the ProBono.Org team. ●

# Is the Return of the Death Penalty a Viable Sentencing Option In South Africa's Constitutional Dispensation?

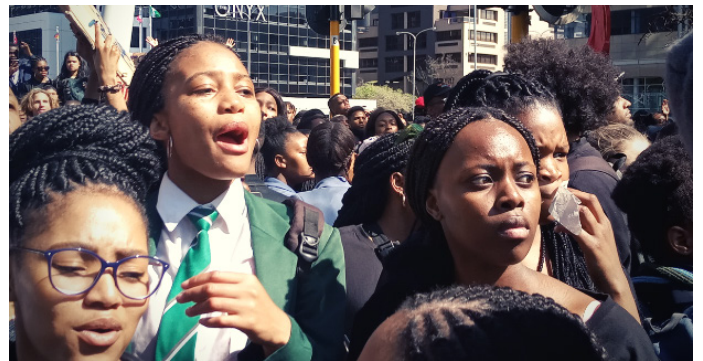
By Yolanda Mnyengeza, Cape Town intern

In early September 2019, residents of Cape Town took to the streets after a series of gruesome murders of women during National Women's Month, many of them demanding that the death penalty be reinstated as a form of punishment for those who commit violent crimes against women and children. After a three-day protest from 3 to 5 September 2019, President Cyril Ramaphosa eventually addressed the crowd outside Parliament but he did not engage the protesters on their call for the death penalty. Instead, he proposed, amongst other things, that Parliament increase minimum sentences for serious crimes. He further averred that he concurred with the masses that bail and parole be opposed in order to fight the crimes committed against women and children. However, the general public remains largely unaware that minimum sentencing requirements already exist within our legislation, but that in itself has not deterred accused persons from committing serious offences. Moreover, the call to oppose bail will be quite problematic, bearing in mind that the Criminal

Procedure Act states that an accused is entitled to be released on bail should he/she meet the requirements imposed by section 50(6). This contention has been expressly upheld by the courts, who stated that no one ought to be deprived of his/her freedom arbitrarily and, if the interests of justice so permit, the arrested person is entitled to be released.

Thus, the question remains whether the death penalty is a viable sentencing option in South Africa's constitutional dispensation. Section 11 of the Constitution guarantees the right to life to all within the Republic. Section 37(5) further states that this right to life is a non-derogable right in its entirety, and therefore no limitation can be imposed on it, whether by legislation or the Constitution itself.

In the case of *S v Makwanyane*, the Constitutional Court found it imperative to abolish the death penalty as a form of punishment and held that it directly infringed on the right to life, guaranteed under section 11. It is important to note that the court when making this decision also considered the adverse effect on the



right to dignity provided for in section 10 of the Constitution. Thus, the court held that it cannot be right that a person be punished in such an inhumane and unnatural manner under a constitutional dispensation.

It is understandable that as a result of the prevailing violent crimes committed against women and children there is wide contention for the reinstatement of the death penalty to serve as a deterrent form of punishment. However, as the court stated in the case of *Makwanyane*, even though wide contentions may be held by a majority of the people, the court's duty is only to act as an

independent arbiter of the Constitution and not merely as an agent for public opinion.

As provided above, constitutional sovereignty does not operate on an eye for an eye basis. As such, it is safe to conclude that the return of the death penalty is not a viable sentencing option under South Africa's constitutional dispensation. It is therefore evident that a lot more work needs to be done in relation to crime prevention strategies, rehabilitation and the sustainability of the reintegration of offenders into communities. ●



# March against Xenophobia

By Muchengeta Hwacha, Johannesburg intern



On 4 September 2019, Lawyers for Human Rights (LHR) and the Consortium for Refugees and Migrants in South Africa (CoRMSA) called an emergency meeting to address the spate of violence that had erupted against foreign nationals. Civil society, faith based organisations, trade unions and community leaders heeded the call and gathered at Constitution Hill. The large turnout was unexpected and the organisers were forced to change the venue twice to accommodate the numbers.

The gathering was eventually ushered into an open air courtyard of the former prison and a discussion ensued on how to tackle this fresh scourge of violence. Many shared various ideas on how to address the current challenges facing foreign nationals. The one

idea that seemed to garner the most support was that of a march in the inner city to show support to the victims of the violence.

As a result, on 14 September the participants gathered again, this time bringing along a mass of supporters. An estimated 1 000 people marched from Joubert Park through Hillbrow and onto Mary Fitzgerald Square. The march seemed to strike a chord with the residents of Hillbrow, as some were seen weeping as they witnessed the march proceed under their windows and balconies. Given the level of trauma suffered by many in that community, their reaction was understandable but heartbreaking. The march proceeded with high levels of discipline from attendees. It was well covered by the media and well protected by the S A Police Services. ●

## Where there's a Will, there's a Way

By Sinothile Zondi, Durban intern

National Wills Week 2019 ran from 16 to 20 September. Everyone wishes for their assets to be distributed to their preferred loved ones when they pass. To achieve this however, one needs to draft a valid Will, which will ensure that everything that remains of one's assets after all debts and administration costs have been subtracted will be inherited by one's preferred heirs. To assist clients in ensuring that they have a valid Will, the Durban office of ProBono.Org ran Wills help desks at various venues in Durban during the month of September.

The main function of the Master of the High Court's office is to supervise the administration of deceased estates. In this regard, ProBono.Org Durban worked closely with the Office of the Master of the High Court, as well as numerous pro bono private attorneys, in providing elderly members of the community



who attended our Wills Week help desks with the required legal services to draft or update their Wills. This ensures that their wishes are followed after their passing. From 16 to 20 September we held a daily Wills help desk at the Office of the Master of the High Court, Durban. We also held a Wills help desk at the Wentworth Organisation of Women (WOW) on 16 September.

Lastly, from 25 to 27 September we held a Wills help desk at the Nelson Mandela Chatsworth Youth Centre. In addition to the help desks, we held seminars at the KZN Deaf Association, in Montclair and at the KZN Blind and Deaf Society to educate the community about the importance and benefits of having a Will and what would happen if one passed away without having a valid Will in place. Through these initiatives we successfully assisted a number of clients with drafting Wills and providing information to those who needed it. In total we drafted 155 wills during the week.

The Johannesburg office also took part in Wills Week at various courts in conjunction with the Department of Justice, providing information on wills and inviting people to have their wills drafted by pro bono attorneys. ●

# Civil Society Forum at the Pan-African Parliament on the theme of Refugees, Returnees and Internally Displaced People



By Muchengeta Hwacha, Johannesburg intern



The Centre for Human Rights, in collaboration with the Pan-African Parliament (PAP), invited ProBono.Org to participate in a Civil Society Organisation (CSO) Forum on the sidelines of the third ordinary session of the Fifth PAP legislature.

The CSO Forum was invited to engage on the African Union theme 'The Year of Refugees, Returnees and Internally Displaced People'. The adoption of this theme comes at a time when there has been an increase in the number of

incidents of xenophobic violence and related intolerances across the continent.

The forum sought to discuss and develop:

- Avenues for countering xenophobic violence;
- Enhancing protection for refugees; and
- Mobilising effectively in protecting displaced populations.

**After much discussion, civil society organisations committed themselves to continue to use the forum to advance the agenda of anti-xenophobia, internally displaced people and refugees. ●**

