

Human Rights Month Refugee Outreach

By Mpho Mogodi and Margaret Fish

In collaboration with the Department of Pastoral Care for Migrants and Refugees in the Catholic Archdiocese of Johannesburg, ProBono.Org facilitated a workshop on 25 March 2023 commemorating human rights and to empower migrants and refugees on issues of access to documentation, education and health care.

Over 100 people attended the workshop at the Catholic Cathedral in Doornfontein, Johannesburg. The presenters included Elgene Roos, an attorney at Cliffe Dekker Hofmeyr, who gave a presentation on the birth registration process and the rights of foreign national children; Kholofelo Mphahlele, a paralegal at Section27 who addressed issues of

health xenophobia, access to health care and education for refugees and migrants; and Eldonna Muhwava and Tumelo Mogale from Lawyers for Human Rights (LHR) who spoke about the process of applying for asylum and refugee status and about their latest campaign to raise awareness on the unlawful arrest and detention of clients who are not able to regularise their status.

The Department of Pastoral Care for Migrants and Refugees defines pastoral care as “a model of emotional, social and spiritual support that can be found in all cultures and traditions across the globe.” Their main aim is to welcome, protect, promote and help migrants, refugees and asylum seekers to integrate into

the community where they live and offers basic and temporary support in terms of food, clothing, accommodation, transport and training, including free English and isiZulu classes. Since 2020, more than 380 migrants and refugee women have completed skills training and have started their own small businesses.

Out of this workshop, ProBono.Org has received 99 requests for legal assistance, ranging from applications for permanent residence, asylum and extensions of permits.

The success of this workshop has resulted in Sister Marizete Garbin requesting that a further workshop be organised to mark World Refugee month in June.

In this issue

- Human Rights Day events
- Uganda passes “Anti-Gay Law”
- Foreign nationals experience xenophobia at health care clinics
- ProBono.Org presents at the CAJE Conference
- A visit from the C S Mott Foundation
- Varsity College partnership expanded



HR Day Refugee audience



HR Day refugee panel

Joburg Human Rights Day Event

By Elsabe Steenhuisen, Children's Project Manager

The OCAY project participated in the 2023 HR festival on Friday 24 March 2023 by participating in a dialogue on internet safety for children. Carika Forsman, a social worker, and Adv Zola Khumalo represented ProBono. Org. Other panellists were from the SA Human Rights Commission (SAHRC), Legal Resources Centre, Media Monitoring Africa, Skillful Spaces, Play Africa, Constitution Hill and Young Engineers JHB North. School children, educators and parents also participated in the two- hour discussion, held in the Human Rights Conference Room at Constitution Hill. Nthabi Fuyani from Skillful Places was the facilitator and involved the children in the discussions, remarks and activities. Of the 68 people who attended the event, 52 were children, mostly from the Phumelela Institute College. One of the important contributions to the meeting was the fact that South Africa has a Social Media Charter, drafted by the South African Human Rights Commission and published at: <https://www.sahrc.org.za/home/21/files/SAHRC%20Social%20Media%20Charter%20FINAL.pdf>



Human Rights Day panel March 2023



Human Rights Day dialogue March 2023

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

The deadline for articles for the next issue will be: **1 May 2023**

Human Rights Day in South Africa and Looming Death Penalty in Uganda for the LGBTQI+ Community

By Faith Adeniji, Cape Town Intern

While South Africans commemorated Human Rights Day on 21 March 2023, Uganda's legislature, on the same day, enacted one of the world's harshest anti-gay policies. The Bill calls for life imprisonment for individuals that partake in same-sex conduct and ten years' imprisonment for an attempt at same-sex conduct. The Bill further mandates that anyone guilty of aggravated homosexuality be subject to the death penalty.



More than the current socio-economic and political situation confronting

South Africa, such as rolling blackouts, rising inflation, increased debt and a captured state, the heinous enactment of the anti-gay Bill by the Ugandan parliament gives South Africans even more reason to be dismayed

this Human Rights Day. The crisis facing Uganda's sexual minorities serves as a perfect opportunity for South Africans to reflect on how far we have come and still need to go in protecting the rights of sexual minorities in South Africa and beyond. It should also encourage South Africa to enhance its protection of sexual minorities so that it can continue to set an example for its fellow African countries.

" Ironically, Uganda is a signatory to a few international human rights treaties that require states to respect, preserve and fulfil the fundamental human rights of all individuals to life, dignity, equality and freedom from discrimination."

Ironically, Uganda is a signatory to a few international human rights treaties that require states to respect, preserve and fulfil the fundamental human rights of all individuals to life, dignity, equality and freedom from discrimination; namely, the International Covenant on Civil and Political Rights (ICCPR) and the International

Covenant on Economic, Social and Cultural Rights (ICESCR). They both aspire to secure the enjoyment of fundamental human rights for all people without discrimination. In addition, Uganda is also a signatory of the Yogyakarta Principles. These principles are a declaration that integrates all rights granted to sexual minorities in numerous international treaties into a single text. It claims that sexual minorities have the

same fundamental human rights as everyone else, including the right to privacy, dignity and equality.

In essence, Uganda is a party to treaties that have consistently stated that legislations such as the Penal Code Act, which promotes sodomy law, are in conflict with such international treaty agendas and must be repealed. However, despite these pronouncements, Uganda still retains their Penal Code Act.

The enactment of this Bill comes as no surprise as Uganda is infamously known for its anti-LGBTQI+ attitudes. This is evident as, prior to the enactment of the Bill, Uganda had and kept the Penal Code Act of 1950 mentioned above. This act criminalises same-sex acts between consenting adults in private. Furthermore, it punishes persons who engage in such acts with a maximum penalty of life imprisonment. Not satisfied with the status quo, the now enacted Bill was proposed by Mr David Bahati, who envisaged punishment by way

of a death sentence for aggravated homosexuality.

Comparatively, looking at the local context in South Africa, the country also has a long history of fighting for the rights of sexual minorities. For instance, the Immorality Act of 1957 was one of the first pieces of legislation that sought to curb interpersonal relationships. However, upon adopting a new 1996 Constitution, South Africa took its first step towards realising and protecting the rights of sexual minorities in the country.

The quest for liberty did not end with the adoption of the new Constitution, as the first significant court case involving gay rights was the National Coalition for Gay and Lesbian Equality v. Ministry of Justice (1998). This case challenged the common law offences of sodomy and unnatural sexual acts and the Immorality Act's "men at a party" provision. As a result, the Supreme Court held that some statutes and common law penalties punishing gay intercourse were unconstitutional because they violated the Constitution's equal protection, dignity and privacy guarantees.

Despite South Africa's progressive realisation and protection of sexual minority rights, the lived realities of LGBTQI+ communities are that they still face discrimination, harassment and violence on a daily basis. As noted by Human Rights Watch, notwithstanding the rights granted in the country's Constitution, black lesbians and transgender males suffer an overwhelming milieu of prejudice and violence in South African townships and rural areas. Furthermore, researchers who analysed data from the 2017 National Crime Victimization

"Despite South Africa's progressive realisation and protection of sexual minority rights, the lived realities of LGBTQI+ communities are that they still face discrimination, harassment and violence on a daily basis."

Survey showed that, in 2017, the LGBTQI+ community experienced 71.1 victimisations per 1,000 people, compared to 19.2 victimisations per 1,000 people for non-LGBTQI+ people. As a result of this animosity, citizens have come to the fore and implored law enforcement to do a better job of defending the rights of South Africa's sexual minorities. Their pleas, however, appear to have fallen on deaf ears.

The purpose of signing and ratifying international treaties is to guarantee that treaties enacted at the international level are implemented at the domestic level to offer

adequate human rights protection to ordinary people. It is consequently obligatory for Uganda, which has ratified these vital international treaties, to put these rights into practice. Moreover, South African policymakers ought to recognise that the realisation of LGBTQI+ rights is only the beginning. Based on the amount of discrimination and challenges that sexual minorities face, it is clear that the current laws on sexual orientation have failed to protect such persons. Thus, it is imperative for the police, prosecutors and courts to prioritise the proper application and enforcement of these laws and practices. Finally, we implore South Africa to stand with their fellow African country during this challenging time as **"injustice anywhere is a threat to justice everywhere"** – Martin Luther King Junior.



Health Xenophobia in South Africa –

The Lived Reality of Many Foreign Nationals

By Masontaga Malatja, Johannesburg Intern

Many refugees flee their country of origin in fear of persecution, and they come to South Africa to seek refuge and protection. The rights of non-nationals to access the health care system is a complex matter and has been a major topical point in the country. This conversation on health xenophobia in South Africa was sparked by Limpopo Health MEC Dr Phophi Ramathuba's remarks about immigrants. In a video, Dr Ramathuba was seen lambasting a Zimbabwean woman who was in a hospital bed seeking medical treatment. She told the woman that foreign nationals are killing her health system and they must go back to their countries of origin for medical treatment.

Health or medical xenophobia is a term used to describe negative attitudes and practices of healthcare providers towards foreign nationals based on their national origin. This results in the medical maltreatment of the person seeking health care services.

There have been many instances of health xenophobia in clinics and community health centres. Members of Operation Dudula have been turning away immigrant patients from the Jeppe Clinic in Johannesburg and harassed immigrants outside several clinics last year, including Hillbrow and Kalafong in Tshwane. It was reported that members of Operation Dudula demanded that all foreigners leave the clinics and that only South Africans could receive treatment, with some people being assaulted by members of the group. Immigrants suffering from chronic illnesses such as HIV, diabetes and high



blood pressure are unable to access medication crucial to their well-being since Dudula started gatekeeping at the clinics. It is important to note that Dudula's actions are tantamount to criminal and illegal conduct.

The health care crisis in South Africa is not caused by foreign nationals; they are scapegoated for the failures of the state to address the health care crisis by the people who fail to hold the relevant parties – ministers and directors general – accountable. Denying immigrants access to clinics and hospitals will not solve the health care crisis in South Africa. Groups like Operation Dudula should focus on the root causes of the health crisis – corruption, irregular expenditure (such as in the case of Babita Deokaran, former Chief Director: Financial Accounting at the Gauteng Health Department, turned whistle-blower who was murdered for exposing R1 billion worth of irregular tenders issued at the Tembisa Hospital) – and stop the misconception that it is caused by

foreign nationals.

Chasing people away from health care facilities based on their nationality is inhuman, illegal and unfair. It diminishes their human dignity. What is the position of the law on this matter? The right to access health care services is a basic human right guaranteed by the Constitution. Section 27 of the Constitution states that all people in South Africa, regardless of status or nationality, have the right to have access to health care services and that no one may be refused emergency medical treatment.

The National Health Act confirms that all people in South Africa can access primary health care at clinics and community health centres. Pregnant or breastfeeding women, and children under the age of six, are entitled to free health care services at any level. According to the Refugees Act of 1998, refugees in South Africa have the same right to access health care as South African citizens, as set



out in the Constitution. This right is also considered to include asylum-seekers. The Department of Health Circular confirmed that refugees and asylum seekers, with or without permits, can access the same basic health care services as South African citizens, including treatment for HIV. Universal access to health care without discrimination is a human right enshrined in the United Nations Declaration of Human Rights, 1948.

The Minister of Health is urged to publicly condemn the actions of operation Dudula and uphold the Constitution and the domestic and

international legal obligations which ensure the right to health for all. The South African Police Service must condemn and act quickly to prevent vigilante groups such as Operation Dudula from violating people's rights to health and fuelling xenophobia. All health

care facilities (clinics, community health centres and hospitals) should ensure that all staff, medical and non-medical, recognise the right to health for all, as well as that all migrants, refugees and asylum seekers regardless of their documentation status have the same access to health care services as South Africans.

All South Africans are urged to denounce vigilantism and xenophobia, to stand in solidarity with non-nationals, asylum seekers and refugees. It is important to remember that united we stand, divided we fall,

in the true spirit of Pan-Africanism.

Organisations to contact for Advice (Collective Voices against Health Xenophobia Coalition):

- Socio-Economic Rights Institute (SERI) - 011 356 5860
- Kopanang Africa Against Xenophobia (KAAX) -
- Lawyers for Human rights (LHR) – 011 339 1960/ 066 076 8845
- SECTION27 – 011 356 4100
- Amnesty International South Africa – 011 283 6000
- Centre for Applied Legal Studies (CALS) – 011 717 8600
- ProBono.Org – 011 339 6080
- Doctors Without Borders (MSF) - 011 403 4440/1/2
- African Centre for Migration and Society (ACMS) - 0800 029 99 / 0600 123456
- Consortium for Refugees and Migrants in South Africa (CoRMSA) - 011 403 7560/0032



Global Alliance for Justice Education (GAJE) Conference

Cape Town Regional Manager Uzair Adams's paper proposal "Development of a Pro Bono framework in South Africa" was accepted for presentation at the GAJE-IJCLE-SAULCA Worldwide Conference on Justice Education: Building Resilience and Strong Connections in Times of Global Challenges, held from 11 to 15 December 2022 at Stellenbosch University.

The picture shows Uzair, together with Seehaam Samaai from the Women's Legal Centre who attended Uzair's session and found his presentation both insightful and thought provoking, while other attendees expressed an interest in having his paper published in the International Journal of Clinical Legal Education.

Uzair found that the conference was well-organised and particularly enjoyed the robust engagement in some of the sessions he attended. Uzair looks forward to making the conference theme a reality by building strong connections in times of global challenges and exploring innovative and collaborative solutions to overcome them.

C S Mott Foundation visit

On 28 March we were visited by representatives of the C S Mott Foundation, who have supported our Community Advice Office Support Programme for a number of years.

Visiting from the US were:

Neal Hegarty – Vice President for Programs

Shannon Lawder – Civil Society Program Director

Benita Melton – Education Program Director

Sam Passmore – Environment Program Director

Kimberly Roberson – Flint Program Director

Mamo Mohapi – Civil Society Program Officer

Lorenzo Wakefield – Civil Society Program Officer

The team visited the ProBono.Org offices in Johannesburg and met with National Director Teresa Yates,

who gave an overview of the history and work of ProBono.Org and discussed the location of the advice offices and paralegals within our overall strategy.

The visitors then travelled to one of the CAOs in Dobsonville and met with the paralegal Martha Chauke. Martha explained the work of the CAO and noted some of the challenges. She also noted and expressed appreciation for the partnership with ProBono.Org. One team member noted that she has worked with C S Mott for 25 years and had not had an opportunity to visit an advice office during that time. She was happy to “finally get to visit one and see the work.”



Mr. Hegarty's thank you note to the National Director noted: “[b]etween your work at a high level at ProBono.Org and the more direct work of serving clients in the community at Dobsonville, we came away with a very rich understanding and appreciation of the work.”

ProBono.Org thanks the C S Mott Foundation for their continuing generous support for our work and partnerships with the Dobsonville and other CAOs.

Varsity College partnership expands to Pretoria

ProBono.Org and Varsity College (VC) have an arrangement that final year LLB students of VC may perform their 24-hour work integrated learning at ProBono.Org. The students are accommodated in various ways at the ProBono.Org offices. Due to the increase in student numbers at VC, ProBono.Org decided to revive its Help Desk at the Pretoria High Court. The Help Desk functions in support of the Legal Practice Council (LPC) and CAOSA (Community Advice Offices of SA). 14 Groups of VC students will staff the Help Desk over several weeks from April to October 2023. ProBono.Org provides a legal practitioner to supervise the students. The first group attended during 3-6 April under supervision of Adv Elsabe Steenhuisen.



JOHANNESBURG: 1st Floor West Wing, Women's Gaol, 1 Kotze Street, Braamfontein 2017
telephone: 011 339 6080 **fax:** 086 512 2222

DURBAN: Unit 310, 3rd Floor, Cowey Park, 91-123 Problem Mkhize Rd, Morningside, Durban 4001
telephone: 031 301 6178 **fax:** 031 301 6941

CAPE TOWN: Unit 1021, 2nd Floor, Westminster House, 122 Longmarket St. (Cnr. Adderley St.), Cape Town 8001
telephone: 087 470 0721 **fax:** 086 665 6740

VISIT OUR WEBSITE AND FACEBOOK PAGE WHERE YOU CAN READ MORE ABOUT OUR WORK.

www.probono.org.za