

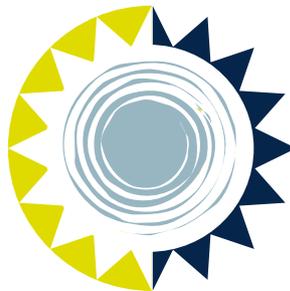


**Some of the winners:**

**Back row l-r:** Angela Mudukuti (Southern Africa Litigation Centre), Advocate Andy Bester (Chair ProBono.Org), Moray Hathorn (Webber Wentzel), Advocate Thuli Madonsela (Public Protector), Odette Geldenhuys (Webber Wentzel) Advocate Steven Budlender (Advocate Award), Erica Emdon (ProBono.Org National Director).

**Front l-r:** Danèlle Prinsloo (Outstanding Student at a University Law Clinic), Norman Moabi (National Director's Special Award), Albert Makwela (National Director's Special Award), Candice Pillay (Hogan Lovells).

2nd ANNUAL  
**PRO BONO**  
AWARDS CEREMONY  
**2015**  ProBono.Org



## We dedicate this issue to the Pro Bono Awards Ceremony held at The Hill, Constitution Hill on 17 September 2015

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This year's ceremony was held on home ground, at The Hill Café at Constitution Hill. Over 180 attorneys, advocates and friends attended the event. Our Master of Ceremonies was David Lewis, Executive Director of Corruption Watch, and we were honoured to have the Public Protector, Advocate Thuli Madonsela as our keynote speaker.

The awards are held to recognise the valuable contribution made by pro bono attorneys, law firms and advocates to the lives of low-income people in South Africa. While last year's awards were based on hours worked, the categories this year focused more on the quality and impact of pro bono work. New categories of Human Rights Champion, Children's Rights Defender and Students at university law clinics were added.

# Thank you to our Keynote Speaker

In her address, Advocate Thuli Madonsela paid tribute to the important work of all the nominees and others providing legal services to those who cannot afford them. She spoke about the link between access to justice and legal assistance, and the implications of lack of access to justice for democracy, development and the rule of law. "We also need to see an improvement in the quality of legal advice dispensed to the poor", she said. She invited practitioners to extend the reach of the legal advice and assistance to the increasing diversity of dispute resolution forums in our landscape, which include the office of the Public Protector.

"More importantly, thank you for your contribution to an inclusive, socially just and fairer society. I'm certain your work is taking us in the direction of the South Africa we want, the Africa we want and the world we all yearn for. That is the state affairs where everyone's quality of life is improved and potential freed. That is the Constitutional dream. Our collective efforts are also contributing to a society where there is accountability, integrity and responsiveness."



*Advocate Thuli Madonsela*

The full address can be found at <http://www.probono.org.za/the-2nd-annual-pro-bono-awards-ceremony-17-september2015/>

# Thank you to our judges

**NIC SWART** is the CEO of the Law Society of SA (LSSA) and the founder and director of Legal Aid and Development (LEAD), responsible for the professional training of attorneys. He is a member of various law faculties and sits on a number of boards. He also practises as an attorney and mediator. He holds BA LLB and B Com degrees from the University of Pretoria and UNISA.

**ALICE BROWN** is an international human rights advocate and expert on the use of law for the public good. She has extensive experience in civil rights litigation and social justice philanthropy and currently advises, speaks and does research on public interest law, philanthropy, social justice and non-governmental organisational effectiveness. She was the director of the Ford Foundation (South Africa) for many years. She holds a law degree from New York University and a history degree from Dartmouth College.

**JONATHAN KLAAREN** is a Professor of Law at the Wits University Law School and is based at the Wits Institute for Social and Economic Research (WiSER). He served as Dean of the Wits Law School from 2010 – 2013 and as Director of the

Mandela Institute from 2005 – 2007. He holds a PhD in sociology from Yale University and law degrees from Wits and Columbia Universities.

**NOMBONISO NANGU** is the Director of the National Alliance for the Development of Community Advice Offices (NADCAO). She has more than 15 years experience in development and organisational facilitation. Currently she serves on the Council of the University of Fort Hare in the Eastern Cape and is chair of the Audit Committee of the university.

**CLIVE RAMATHIBELA SMITH** is presently the Chief Investment Officer and co-founder of Clivera Incorporated Pty (Ltd), a multidisciplinary advisory services business that focuses on financial services and corporate social investment programmes.

He serves on the Investment committees of Merseta and Kaizer Chiefs and assists with strategy at the Mibco Pension Fund. Clive is also an active business contributor on several radio and TV programmes, such as SAFM, Radio 702 and eNCA Africa.

# Celebrating the finalists and winners of the ProBono Awards

ProBono.Org would like to thank everyone who submitted nominations for the awards, and congratulates all the finalists and winners. These awards are given in appreciation of the dedication of the private legal profession who are doing pro bono work for the poor. Thanks also to all the guests who attended this year's ceremony and helped to make it the success that it was.

## And, the winners are...

### 1. MOST IMPACTFUL CASE

Sponsored by AJS Business Management Systems

#### Finalists

- Norton Rose Fulbright SA – Transkei land claim case
- Cliffe Dekker Hofmeyr – Access to information – National Key Points
- Webber Wentzel – Emolument Attachment Orders case

And the winner was Webber Wentzel!

### MOST IMPACTFUL CASE

## UNIVERSITY OF STELLENBOSCH LEGAL AID CLINIC AND 15 OTHERS V MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND 18 OTHERS (WCHC 16703/14)

The recent judgement in University of Stellenbosch Legal Aid Clinic and 15 others / Minister of Justice and Correctional Services and 18 others (WCHC 16703/14) (the EAO case) is a victory for justice.

Emolument attachment orders (EAOs) or 'garnishee orders' are widely used debt-collecting instruments in terms of which a monthly portion of a debtor's salary or wage is attached until the outstanding debt has been paid off.

Prior to the landmark ruling in the EAO case, two routes were available in the Magistrates' Court Act, No. 32 of 1944 (Magistrates' Court Act) for creditors to obtain EAOs against debtors.

The EAO case dealt with the second route, the consent route. This 'fast track' route allowed for debtors to consent to judgements and EAOs. Based on this consent, clerks of the court rather than magistrates issued the EAOs.

The approach became open to abuse and clerks of the courts granted EAOs on the strength of one 'consent' form in terms of which the debtor had consented to an unsubstantiated take-on debt, illegal terms such as 60% interest rate, legal costs which bore no resemblance to tariffs, the jurisdiction of an inaccessible court, and/ or unaffordable EAO deductions.

Based on the evidence of the manner in which the EAOs against the 15 applicants



had been obtained and extensive constitutional arguments, Desai J ruled that the 'fast track' route is unconstitutional in its current form as it denies debtors access to justice.

The court accepted that there are widespread practices of abuse of EAOs much beyond the footprint of the EAOs of the 15 individual applicants.

Katz SC described the behaviour of the debt collection respondents by quoting from Bob Marley's Redemption Song: "Old pirates, yes they rob I, Sold I to the merchant ships, Minutes after they took I, From the bottomless pit".

The judgement declared that the only courts with jurisdiction to issue EAOs in respect of matters under the National Credit Agreement are those courts closest to where the debtor lives or works.

The primary significance of the judgement is in clarifying the manner in which EAOs must be obtained. Not only were the EAOs against the individual applicants found to be unlawful, invalid and of no force and effect, but the court hinted that all EAOs which have been obtained in the wrong jurisdictions may be invalid.

The further ruling that section 65J(2)a and (b)(i) and (ii) of the Magistrates' Court Act are unconstitutional to the extent that they do not allow for judicial oversight will change the manner in which EAOs will be processed and granted after legislation that allows for judicial oversight is passed.

The ruling is therefore not only a victory for poverty-stricken people who in the future will have a judicial officer decide the terms of the EAO, but it is also of great assistance to credit providers who will welcome the

certainty as to correct jurisdictions and the greater rigour of judicial oversight.

The other significance of the judgement is the emphasis on ethical behaviour of the legal profession. In finding a patent case of forum shopping on the part of the credit providers and their legal representatives, Desai J took a grim view of the attempts of the respondents' legal teams to argue otherwise, and held that it reflects badly on them.

Based on the patterns of abuse demonstrated by the 15 applicants, Desai J assumed that thousands if not tens of thousands of the Flemix & Associates EAO practice may be unlawfully obtained EAOs and therefore instructed the state parties, the South African Human Rights Commission and the Law Society to endeavour to put in place appropriate measures to monitor the situation.

Finally Desai J ruled that the Law Society of the Northern Provinces, on the basis of the

judgement, must determine whether Flemix & Associates as well as one of its partners have breached their ethical duties. Without Webber Wentzel's resources and the firm's commitment to the Pro Bono Practice, the University of Stellenbosch Legal Aid Clinic and the 15 applicants (Vusumzi George Xekethwana, Monia Lydia Adams, Angeline Arrison, Lisinda Dorell Bailey, Fundiswa Virginia Bikitssha, Merle Bruintjies, Johannes Petrus de Klerk, Shirley Fortuin, Jeffrey Haarhoff, Johannes Hendricks, Doreen Elaine Jonker, Bulelani Mehlomakhulu, Siphokazi Siwayi, Ntombozuko Tonyela and Dawid van Wyktive) would not have been able to take their case to court and establish a positive rule change for all.

This is one of those public interest matters where it is apt to quote Tom Hanks' character, Andrew Beckett, a lawyer, in the film Philadelphia:

*Joe Miller: What do you love about the*

*law, Andrew?*

*Andrew Beckett: I... many things... uh... uh... What I love the most about the law?*

*Joe Miller: Yeah.*

*Andrew Beckett: It's that every now and again, not often but occasionally, you get to be a part of justice being done. That really is quite a thrill when that happens.*

The Webber Wentzel team included: Odette Geldenhuys, Brigitta Mangale, Aphiwe Nkosimbini, Kameshrie Govender, Melanie Peters, Katleho Maeko, Maxine Gunzenhauser and Tamsyn Harrison; two vacation volunteers: Katherine McClean and Liesl Olivier; as well as two counsel: Anton Katz SC and Sheldon Magardie.

**WEBBER WENTZEL**

in alliance with > **Linklaters**

## 2. INDIVIDUAL ATTORNEY **Sponsored by Juta Law Finalists**

- Egon Oswald – St Albans prison torture case
- Sushila Dhever – Fasken Martineau – setting up domestic violence legal clinics in Soweto and Lenasia
- Moray Hathorn, Webber Wentzel – 16 years of pro bono work

### INDIVIDUAL ATTORNEY

After a 16 year career in public interest law, Moray was appointed to start the first pro bono practice group in a private law firm in South Africa in 2003 - the Webber Wentzel Pro Bono Practice Group.

Through his strategic leadership and inspiration, the practice group's work now, more than a decade later, encompasses a range of impactful practice areas in which the law is applied as a tool towards social change. Using constitutional and administrative law extensively, the practice areas which Moray has guided include: gender based violence; traditional leadership issues; land claims and post-restitution support to land claims beneficiaries; services to and upgrading of informal settlements; HIV discrimination in the workplace; discrimination generally and specifically in relation to LGBTIs; corporate governance in the NGO sector, including the HIV sector in particular; cases for the protection and promotion of the rule of law; refugees; health care issues including HIV, TB and mental and physical disability.

Driven by an exemplary work ethic and sense of justice, Moray has not shied away

from taking on the hard, and in some quarters, unpopular cases. Shortly after his appointment he became involved in representing a number of women in their parole applications, who had been sentenced to lengthy terms of imprisonment for the murder of abusive spouses. This was the start of the team's focus on gender based violence as an important area for legal intervention.

In the early years Moray was the attorney in an urgent application to interdict a group which sought to unlawfully supplant the legitimate leadership of the Aids Consortium, an umbrella body for some 1 200 NGOs and CBOs involved in the fight against HIV/Aids. This was the beginning of the significant practice at Webber Wentzel in relation to HIV/AIDS being developed.

Well known in legal circles for his integrity and collegiality, Moray is often approached for legal advice and positional thinking, and is asked to be a member in legal teams. His willingness to share legal expertise and know-how makes him a popular member of such teams. In the successful challenge to the constitutionality of the Communal Land Rights Act, 2004 Moray and the

## Congratulations to the winner, Moray Hathorn!



Webber Wentzel team acted jointly with the Legal Resources Centre as attorneys. The collaboration with the LRC has been carried forward in securing post-restitution support to the Khomani San.

His interest in decent shelter or adequate accommodation has been addressed in many different matters; and the one way has been by providing legal services extensively to informal settlements in Johannesburg on behalf of the Landless Peoples' Movement to secure services and upgrading in situ in line with national housing policy. These cases have met with mixed success in the courts but the struggle continues, and the successful outcome of the Protea South matter (see below) before Mr Justice Wright is of considerable importance, and may represent a breakthrough - opening the way for other in situ upgrading of informal settlements in Johannesburg.

Moray has ensured that the practice group is a site of learning. It has trained 25 candidate attorneys in, and has exposed eight associates to public interest lawyering.

There are four cases that should be highlighted. While they respectively illustrate very clearly the significant gains which can be achieved for communities through the application of law, what is opaque is the numbers of years, literally, that Moray has devoted specifically to these matters.

The first is the Khomani San matter. The Khomani San, among the first peoples of South Africa, lodged a sensitive land claim which was won and had their land restored to them in 1999 in terms of the Restitution of Land Rights Act. The successful land claim comprises 22 000 hectares of the Kgalakgadi Transfrontier Park in the Northern Cape; certain economic, cultural and traversing rights over the southern half of the Transfrontier Park; and six farms outside the park of some 60 000 hectares in extent. An agreement was reached with the state to provide post-restitution support to the Khomani San to manage this significant resource.

By 2012 it became evident that the state did not have the capacity or will to comply with either its contractual or legal duties to the Khomani San in respect of this agreement. Webber Wentzel under Moray's leadership, and the Legal Resource Centre (LRC) assisted the Khomani San to obtain

post-restitution support under the supervision of the courts. The structural interdict appears to be the first of its kind for post-restitution support to land reform beneficiaries.

The second case is the Protea South matter. Protea South is a large informal settlement near Johannesburg and houses some 6 400 households. Having worked with this community over a number of years, more recently Webber Wentzel assisted the residents to successfully oppose their eviction by the City of Johannesburg (COJ). In March 2014, the High Court ordered the COJ be interdicted from undertaking any demolition of residential structures at Protea South, pending finalisation of the main issues of the matter. The COJ was further ordered to provide interim basic services such as communal water taps located within 200m of each household, chemical toilets of one per household, and high mast lighting. Moray assisted the Protea South residents to obtain a judgement, not only of considerable importance to them, but potentially a judgement which stands as a precedent for the in situ upgrading of informal settlements elsewhere in the country.

Webber Wentzel represented the Helen Suzman Foundation (HSF) in its successful challenge to the constitutionality of section 16 and Chapter 6A of the South African Police Service Act. The SAPS Act governs the establishment and operation of the

Directorate of Priority Crime Investigation (DPCI), informally known as the Hawks.

On 27 November 2014, the Constitutional Court declared certain provisions of the SAPS Act, which are inconsistent with the Constitution, invalid. Accordingly the Court granted the extraordinary remedy of severing the impugned provisions from the Act, without remitting the matter to Parliament.

The judgement represents a crucial victory in the safeguarding of the functional, structural, jurisdictional and constitutional integrity of the DPCI and creates the space within which the DPCI can meaningfully operate as a dedicated corruption fighting entity.

There are so many extraordinary examples of the work Moray has done at Webber Wentzel, which have had an impact on the lives of communities and individuals. His determination to champion the rule of law and to fight for social justice without respite, indicates an exceptional achievement.



### 3. CHILDREN'S RIGHTS DEFENDER

#### Finalists

- Hogan Lovells – Teddy Bear Clinic project – court preparation training
- Webber Wentzel Pro Bono Practice Group – law reform in relation to children with mental illness
- Bowman Gilfillan – work with ProBono.Org's One Child a Year campaign

**This was won by  
Hogan Lovells!**

## COURT PREPARATION TRAINING FOR TEDDY BEAR CLINIC

**Children's Rights**

The Teddy Bear Clinic is a not-for-profit organisation that provides medical and therapeutic services to children who have been physically or sexually abused in South Africa. Hogan Lovells adopted the clinic as its chosen charity when it was formed over 13 years ago. The relationship started with funding the organisation on a monthly basis but grew to providing legal and management advice. Over the course of time, a number of directors have sat on the board of the Teddy Bear Clinic and provide corporate governance assistance to the

organisation.

The clinic engages the child immediately when the crime is reported and once the child has undergone the medical treatment and psychological counselling, he or she enters a court programme which helps him or her to become a better witness in the criminal trial against the perpetrators. In 2013 Hogan Lovells considered the challenges faced by the Teddy Bear Clinic on preparing the child witness for giving evidence in court and the decrease in the conviction rate of

perpetrators and approached the clinic with a proposal.

Hogan Lovells volunteered to update and improve a court preparation manual for the children, offered to provide volunteer lawyers to assist with the Saturday training (for children) and, together with the social workers of the clinic, to work to prepare the children as witnesses to give evidence in court.

The idea behind the proposal was to empower children who have had their rights infringed, to change the mindset

Hogan  
Lovells



from victim to champion and to assist them to find closure from the sexual abuse by being the best witnesses they can be. The firm wanted to give them a real life court experience, to teach them legal principles

necessary for the court experience and to grow confident, credible witnesses – and still have fun and be children.

The existing Teddy Bear Clinic manual was re-designed in a manner that taught court

preparation in fun role plays, games and life skills activities. A programme was developed that included confidence and trust building exercises for the children.

The Teddy Bear Clinic Saturday training is held on one Saturday a month for two hours and the children are taken through various modules on a structured programme. The day begins with trust and confidence building exercises and then progresses to what needs to be taught to the children about the court process. The entire programme is done in 10 sessions over the year. The volunteers for the project are candidate attorneys and associates of Hogan Lovells. Hogan Lovells partners each lawyer with a social worker as a team and the children are taught about the role players in court, court procedure, legal concepts in the criminal justice system, outcomes of trial and sentencing. They also learn how to deal with anxiety, stress, and fear before, during and after giving evidence in court.

For 2014, the new programme ran only at the Soweto clinic but for 2015, this has now been extended to the Krugersdorp clinic.

There were approximately 70 children and 40 adults that underwent the programme in 2014.

## 4. STUDENT AT A UNIVERSITY LAW CLINIC

### Finalists

- Mxolisi Ngubane – Wits University Law Clinic
- Kyle Lupke – KZN University Law Clinic
- Danelle Prinsloo – Pretoria University Law Clinic

**Danelle Prinsloo  
was the winner!**

### Outstanding Law Student at a University Law Clinic



There is sometimes a student who exhibits dedication and diligence far in excess of what is expected of a final year LLB student working in the Law Clinic as part of an elective module. Ms Danélle Prinsloo was such a student and for this reason she is being nominated by the University of Pretoria Law Clinic in the category of "Outstanding Law Student at a University Law Clinic".

Ms Prinsloo spent far more time than the compulsory 90 minute "duty time" at the Law Clinic and in fact attended to her cases at the Law Clinic on a daily basis. Students are not expected to attend to cases during the university examination and vacation periods, but Ms Prinsloo diligently assisted her supervising attorney with cases during these periods, when other students focussed on their studies and on enjoying their vacation.

## 5. HUMAN RIGHTS CHAMPION

Sponsored by the  
Ford Foundation

### Finalists

- Centre for Environmental Rights – Promotion of Access to Information Act success in Vaal case.
- Rural Women’s Action Research Programme (RWAR) – opposing the Traditional Courts Bill
- Southern Africa Litigation Centre – 4 cases in 2014, including Zimbabwean torture case

**Congratulations  
to the winner,  
the Southern  
Africa Litigation  
Centre!**

**HUMAN  
RIGHTS  
CHAMPION**

## THE SOUTHERN AFRICA LITIGATION CENTRE (SALC)

The Southern Africa Litigation Centre (SALC) aims, among other things, to use public interest litigation in domestic courts in Southern Africa to realise and advance the rights of marginalised and vulnerable groups and to strengthen the rule of law. Four important cases form part of this nomination:

In the case of SALC and Another v the National Director of Public Prosecutions and Others (Zimbabwe Torture Case) SALC sought to compel the South African authorities to investigate crimes against humanity committed in Zimbabwe, by Zimbabweans and against Zimbabweans.

In March 2007 the Zimbabwean police raided the headquarters of the opposition political party, and arrested and detained suspected and actual opposition supporters. During their detention many of these individuals were subjected to torture under the instruction of high-ranking police officers and government officials.

SALC submitted a detailed dossier to the South African Priority Crimes Litigation Unit (PCLU), and requested that the PCLU investigate the acts of torture committed in Zimbabwe. SALC argued that because the raid and the subsequent acts of torture were not isolated and formed part of a larger campaign of state sanctioned torture they therefore constituted crimes against humanity. The Rome Statute of the International Criminal Court Act (the ICC Act) gives South African authorities jurisdiction to investigate and prosecute international crimes as defined by the International Criminal Court.

After more than a year, the National Prosecuting Authority (NPA) and the South African Police Service (SAPS) notified SALC that they would not initiate an investigation into the allegations of torture. Considering this decision unlawful and unconstitutional, SALC and the Zimbabwe Exiles Forum (ZEF), with the assistance of Lawyers for Human Rights, approached the North Gauteng High Court to review and set aside the decision not to investigate.

The High Court ruled that the NPA and

SAPS did not act in accordance with their obligations and declared that the decision not to investigate the crimes included in the dossier was unlawful, unconstitutional and invalid.

The matter was taken on appeal by the NPA and SAPS and the Supreme Court of Appeal ruled in SALC’s favour indicating that investigations must begin without delay. The matter did not end there as the SAPS alone took the matter to the Constitutional Court where once again a judgement in SALC’s favour was delivered in October 2014. The case sets an important precedent, which is the principle that permits domestic courts to try and punish perpetrators of crimes against humanity, regardless of where they occurred or the nationality of the victim or perpetrator.

The case of Rammoge and Others v Attorney General of Botswana relates to the refusal of the Botswana Government to register an NGO set up to promote the rights of lesbian, gay and bisexual people. Their registration application was denied based on the fact that same-sex sexual acts are illegal in Botswana.

Nineteen people joined the NGO, Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) and launched proceedings in the Gaborone High Court seeking to review the refusal of the Department of Civil and National Registration and the Minister of Labour and Home Affairs to register the organisation.

On 14 November 2014, the High Court found that LEGABIBO’s constitutional objectives were harmless and even beneficial as they promoted human rights, public health, and a culture of self-reliance. Consequently, the Court held that the objectives of LEGABIBO did not offend the Societies Act.

The Court concluded that the decision to refuse to register LEGABIBO was wrong as it was based on the misconception that the organisation’s aim was to engage in unlawful conduct, rather than to, inter alia, advocate for the decriminalisation of consensual same-sex sexual acts. The Court also made it clear that gay and bisexual individuals were protected by the



Constitution, and held that denying them the opportunity to lobby for decriminalisation of homosexuality was a clear violation of their rights to equal protection before the law.

The Attorney General has appealed the judgement, and the appeal is likely to be heard in the Court of Appeal in the last part of 2015.

In the matter of LM and Others v Government of Republic of Namibia three women sued the Namibian government after learning that they had been sterilised immediately after giving birth via Caesarean section, arguing that the sterilisations took place without their informed consent and as a result of their HIV status. SALC partnered with the Namibian Women’s Health Network (NWHN) and the Legal Assistance Centre.

The women, all living with HIV, claimed that they had been sterilised at public hospitals in Namibia without their informed consent when they were admitted for Caesarean sections. They argued that any supposed consent to the sterilisation procedures was coerced as they had not understood the language in which the procedure was explained, were misled about the procedure they were consenting to, and because they had been told by doctors that they could only receive a Caesarean section if they were sterilised at the same time.

The women sued the government for negligent harm and submitted that they were discriminated against because of their HIV status. They argued that their constitutionally protected rights to life, liberty, dignity and to found a family had been infringed. The High Court was faced

with two issues: whether the women had given informed consent to the sterilisation procedures; and whether they were discriminated against due to their HIV status.

The High Court found that the state was not able to demonstrate that it had provided the women with sufficient information to enable them to make an informed choice on sterilisation. The sterilisations had therefore occurred without the women's informed consent.

The State appealed the judgement, and it was heard by the Supreme Court on 17 March 2014.

In a decision handed down on 3 November 2014, the Court held that a woman must be in a position to understand the nature and the consequences of a sterilisation and have the capacity to consent. The Court found that it could not accept that sufficient information had been provided to the women and referred the matter back to the High Court to determine the quantum of damages to be paid to the three



women.

In the matter of Tapela and Others v Attorney General and Others two HIV-positive prisoners and the Botswana Network on Ethics Law and HIV/AIDS (BONELA) challenged a government policy that selectively denies antiretroviral (ARV) treatment to non-citizen prisoners.

Two HIV-positive foreign prisoners together with BONELA launched a legal challenge against this policy in an effort to compel the provision of ARV treatment to all HIV-positive foreign prisoners who

meet the treatment criteria.

In August 2014, the Gaborone High Court held in the applicants' favour that the policy was unlawful and unconstitutional and unjustifiably infringed the prisoners' rights to life, freedom from inhuman and degrading treatment, equality and non-discrimination. The Court ordered that all foreign prisoners meeting the treatment criteria be immediately provided with ARV treatment. The State parties appealed the High Court decision to the Court of Appeal. Oral arguments were heard on 23 July 2015 and judgement was reserved.

The case is important in that it deals with the right of non-discriminatory access to HIV treatment for a key population which is particularly vulnerable to infection with and the effects of HIV.

**SOUTHERN AFRICA  
LITIGATION CENTRE**

## 6. ADVOCATE AWARD

**This was won by Steven Budlender for his work with Corruption Watch and others!**

### INDIVIDUAL ADVOCATE Steven Budlender

Advocate Budlender has long exemplified the highest level of commitment to offering pro bono legal services and the year 2014 was no exception. He clearly recognises the need to improve access to justice by increasing the scope and availability of pro bono legal services of the highest calibre to organisations of limited means, organisations such as Corruption Watch.

Corruption Watch is a non-profit, civil society organisation with a vision of a corruption free South Africa, one in which educated and informed citizens are able to recognise and report corruption without fear, in which incidents of corruption and maladministration are addressed without favour or prejudice and importantly where public and private individuals are held accountable for the abuse of public power and resources. One of the ways in which Corruption Watch achieves its broad objectives is by devising approaches to strategic impact public interest litigation. Advocate Budlender has played a central role in assisting Corruption Watch in this regard, offering his service and expertise on a number of precedent setting cases such as the Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others, to which Corruption Watch was party.

Advocate Budlender's dedication and commitment to pro bono work proved to be vital to Corruption Watch and public interest



law in 2014 when he assisted in litigation challenging the legality and rationality of public procurement processes and decisions in an application for the review of the decision of the CEO of the South African Security Agency to make an alleged irregular payment to a supplier, in terms of a tender that was found to be irregular by the Constitutional Court.

In 2014, Advocate Budlender further offered his pro bono services to Corruption Watch in a case involving accessing information from the Department of Mineral Resources, in a project Corruption Watch is working on with the Centre for Law and Society at the University of Cape Town. The project aims to

access information relating to platinum mines in the North West Province, with the ultimate aim of assisting vulnerable and disadvantaged communities in their entitlement to mining royalties.

Advocate Budlender is an outstanding professional, mentor, teacher, colleague and an exemplary leader for those in the legal profession and the profession itself. Because of his efforts, Advocate Budlender has earned the respect and gratitude of those for whom, and with whom he serves. South Africa's legal fraternity can rest assured that Advocate Budlender's unwavering commitment and dedication to excellent pro bono legal assistance will extend to many more well into the future.

## 7. NATIONAL DIRECTOR'S SPECIAL MENTIONS

- Albert Makwela – Community Advice Office work
- Norman Moabi – work with Funanani Centre law project
- Lesley Maman – work with the ProBono.Org Master's Office help desks
- Peter Jordi – Wits Law Clinic torture cases against the SAPS

### *National Director's Special Award*

In 2013 the Wits Law Clinic, University of the Witwatersrand celebrated 40 years of providing quality legal services to the poor free of charge, and producing ethical law graduates to serve the people of South Africa.

Specialising in delictual claims Peter has made a name for himself litigating against the Minister of Police in actions for damages for unlawful arrest, detention, assault and torture by members of the South African Police Services. He has pioneered specialised techniques in litigation against the Minister for actions for damages arising out of the torture of victims by police with electric shocks and suffocation.

He has settled over R22 million in damages for his clients over the last 3 years. Peter works tirelessly in the Law Clinic after hours and on weekends with a case load of over 150 files.

Peter's modus operandi is vigorous and uncompromising. When a client walks into the clinic with a new instruction alleging an assault and torture by the police, he picks up a dictaphone and immediately dictates a detailed statement – the client hardly has time to catch his breath! He then dictates a statutory Notice of Demand to the Minister while the client is still in his office - (he can dictate most documents out of his head without the use of precedents) bearing in mind that prescription is running against the client. He often then jumps into his motor vehicle with the client and travels to the scene of the incident and takes pictures for use in any subsequent trial. There is no time like the present, which could be one of Peter's mottos.

If the client has any visible injuries or scars, he takes pictures of the client to preserve this evidence and for use at trial. He makes appointments with medical experts to examine the client for the provision of medico-legal reports. He picks the clients up from their homes and takes them to the doctor's rooms and takes them home again. On one occasion while assisting his disabled client exit from his motor vehicle by taking the client's wheel chair out of the boot, the client stole his GPS tracking device from the glove compartment! He travels to police stations all over the Witwatersrand gathering crucial documentation from the police stations where his clients were assaulted and detained.

#### PETER JORDI



Peter has made use of innovative techniques for the use of forensic evidence at trial to help in proving that members of the SAPS subjected his clients to electric shock torture. He has learnt that it is possible to prove that a victim has been subjected to police torture by electric shock by taking biopsies from the skin of victims at the site where electrical wires were applied to the victim's skin. Blood samples taken as soon as possible after the electric shock torture can prove that the victim was subjected to electric shock (the conclusion is that the victim was either tortured, or he had just run the

equivalent of the Comrades Marathon, because his blood would look the same!). When presented with this evidence in conjunction with the testimony of the victim, the State attorney often concedes the merits of the matter and the parties then settle on the quantum of the claim.

In any given week, Peter has 2 or 3 trial matters running in various courts. He is like a maestro conducting a symphony in the law clinic reception, calling out instructions to his candidate attorneys, witnesses, counsel and clients. His meticulous pre-trial preparation ensures that his counsel is well prepared and lack nothing when on trial.

In just 2 matters where judgement was handed down in favour of his clients in May 2014 and November 2014, his clients were awarded R220 000 and R260 000 in damages by the Gauteng Local Division High Court for assault and wrongful detention. There are many other matters like these. The costs awarded in these matter help fund future matters.

Peter has made a difference to the lives of many people who have suffered at the hands of rogue police officers. His commitment to do what is necessary, immediately, has lifted many a case with so-so merits to a case with unassailable merits, with large awards for damages. R22 million in damages has found its way into the pockets of deserving clients over the last three years, and this figure keeps growing. Peter has shown individual drive and imagination to make sure that his clients' cases have the best possibility of success. He has become a master of his craft, and this has directly benefitted his many grateful clients.

## National Director's Special Award

### NORMAN MOABI

Funanani Centre is an institution established by the Lewende Woord Kerk. The church had community projects. Mr Nic Swart who was then the Director of the Law Society of the Northern Provinces (LSNP) started a pro bono project at the Funanani Centre. As part of the LEAD programme for Practical Legal Training he organised students to work as student counselors at the centre. The students had to give legal advice to members of the public who came to the centre.

In 2005 Mr Nic Swart asked Norman Moabi to assist at the Centre by supervising the students. Moabi started to oversee and supervise the student counselors. He realised that the students were not fully capacitated to deal with legal matters and in 2006 decided to take over the legal work at the Centre. He started doing consultations and running the clinic on his own and the students would only observe as he did the work.



He dealt with various legal matters but mainly family law, administration of deceased estates, general litigation and housing matters. He rendered full legal services for free at the Centre and he would take the files that needed follow up to his office to work on them.

He went to the Centre on Saturdays to assist clients. In 2009 he started to recruit lawyers to staff the clinic through the LSNP. In 2012 the office had two attorneys and two conveyancers and as of 2015 the Centre has six attorneys.

He was the Chairperson of the LSNP from 2002-2003, the Chairperson of the Pro Bono Committee of the LSNP from 2004-2012 and the Chairperson of the Law Society of South Africa Pro Bono Committee.

He is currently a Trustee of the Funanani Centre and renders free legal assistance to the Centre. He prepares legal contracts and also does debt collection for free for the school that was opened as part of the Funanani Centre.

## National Director's Special Award

### LESLEY MAMAN

Lesley was employed as a paralegal attending to administration of estates at E.F.K. Tucker, D.E. Burns Attorney and subsequently Routledge Modise. She served articles at Eversheds (now Hogan Lovells), was admitted as an attorney in April 2013 and joined Friedland Hart Solomon Nicolson to head the specialist Estates Department in December 2014.

She has assisted at the ProBono.Org Master's Office Legal Clinic in Johannesburg since May 2011 and arranged the opening of the ProBono.Org Master's Office Legal Clinic in Pretoria in March 2015 at which she now also volunteers.

Her passion for pro bono work has been a driving factor in her desire to assist the most vulnerable and needy people in our society. In her words she has wanted to help, "since the first case I attended on where an elderly, disabled, illiterate and uneducated man who at 97, after living through three Constitutions in South Africa, signed a will which after his



death at 100 years of age was declared to be invalid."

She prepared an application which was launched in the High Court requesting that the Master accept the will as valid. The beneficiary was a lady who at the age of 82 had been attending his needs for some 13 years.

She has attended at the Master's Office in Johannesburg since 2011 as regularly and as often as she could and built a relationship of respect and cooperation with the Master and his deputies and assistants as a result of her determination to assist the poor.

She has drafted wills and given advice to hundreds of people, in regard to their estates, conflicts over wills, transfers of property on death, disputes, and many other issues brought to the Legal Clinics at the Masters' Offices, and made a difference in their lives, albeit small, but enough to assist them settle their concerns.

# National Director's Special Award

**ALBERT MAKWELA**  
PRESIDENT OF ACAOSA

Albert Makwela started as a leader of a local civic organisation in Lephepane(Tzaneen) in 1986. Through a partnership, that included training and support from Lawyers for Human Rights, the civic was converted into a Community Advice Office (CAO) in 1991. Community stakeholders named it Relemogile, a Northern Sotho name, which means 'we have realised'. Operations formally started in September 1993.

In 1996, he was finalist in the Limpopo Sowetan/ Aggrey Klaaste youth leader of the year competition. In 1999, he was appointed to the National Community Based Paralegal Association (NCBPA) to develop the cluster model and coordinate the activities of CAOs in Limpopo, until the NCBPA closed its doors around 2004/5. In 2007, he was approached by the National Alliance for the Development of Community Advice Offices (NADCAO) to re-organise Limpopo CAOs. In 2006, he was runner up in DTI National Consumer Champions Award (Non-Profit category), which he won later in 2007 through his work in the Relemogile Advice Office.

While running the Relemogile Advice Office in Tzaneen, he was elected as interim President of the Association of Community



Advice Offices of South Africa (ACAOSA) council for a year. He is presently, through ACAOSA, serving on the Department of Social Development Ministerial Task Team regarding the unlawful deductions on social grant beneficiaries' accounts. At the ACAOSA AGM in 2013, he was re-elected as president of the ACAOSA council for a 3 year term.

Through the Probono.Org Community Advice Office Support Project, he has been coordinating, organising and establishing a panel of private attorneys in towns in Limpopo and linking them with marginalised communities through CAO outreach programmes. During the course of 2015 he has organised workshops in Mafefe,

Mankweng, Matlala and Blood River. No mean feat as he has to organise attorneys to drive hundreds of kilometres with him to reach these far flung small rural towns. He has built up a committed group of pro bono attorneys in Polokwane, Tzaneen and Makhado. He has driven for miles and miles between these towns, to Sekhukhune, Musina, Thohoyandou and others, ceaselessly trying to increase the legal services available to the people in these impoverished towns, with exceptionally high unemployment and huge social and legal problems.

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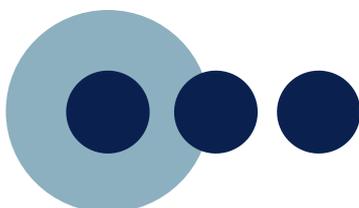
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