

# We pay tribute to Tony Pillay



ProBono.Org extends its deepest condolences to Anthony “Tony” Pillay’s wife, children, family, and friends on his passing.

Tony served the legal profession as Executive Director of the Law Society of South Africa (LSSA). He joined as Finance Director from Lawyers for Human Rights (1995) in 1998.

Tony was the kind of person who took the trouble to know and greet everyone within his ambit, from the support staff to leadership. He had a keen eye for the detail affecting his role and the Profession. He was a committed driver for transformation in the profession and played a pivotal role in steering the LSSA through the transition brought about by the implementation of the Legal Practice Act, when he took over from the late Nic Swart from 2017.

Tony gave a great deal to fulfilling this legacy and was a dedicated advocate for improving access to justice. He was an accessible and empathic person, always willing to engage and discuss difficult issues and find workable solutions.

Importantly, he was not afraid to reach out for support or assistance or to offer mentorship when necessary to bolster his efforts to achieve what he saw as important. Tony was a vital facilitator in building the LSSA and its provincial structures in its new role as an interest group for legal practitioners.

Tony was a quietly devout person devoted to his family and community. He manifested values and ethics that provided a fitting example to many. Tony leaves a legacy of 25 years of exemplary service and leadership which is reflected in the deep respect, appreciation and sense of loss felt by many people across all walks of South Africa. He will be missed greatly.

**Rest in peace ●**

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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](mailto:margaret@probono.org.za)

The deadline for articles for the next issue will be:

**1 August 2024**

# Tribute to Justice Lourens Ackerman

(14 January 1934 – 25 May 2024)

ProBono.Org would like to extend its deepest condolences in honour of Justice Lourens Ackermann – appointed among the first Constitutional Court judges appointed by President Nelson Mandela in August 1994. His focus on human dignity as a constitutional value was central to his life's work as a judge. His judicial conscience, as his colleague Justice Kate O'Regan has written, "was always one that was not too sure that it is right. He would listen closely to his colleagues and gnaw at legal problems incessantly till he felt he had found the right way forward. Once however he had set a course, he was implacable in pursuing it."

While we mourn the loss of an eminent jurist, we celebrate a life that was well lived a life committed to the cause of justice, dignity and equality in his country and his contributions to the development of the law, justice and constitutionalism in South Africa.

While life can be fleeting, a life lived to the fullest leaves fond memories. Although this is a difficult and painful time for his family and in extending to them our heartfelt condolences, we wish them courage and strength to bear this irreparable loss.

**Rest in peace ●**



# Tribute to Justice Jennifer Yvonne Mokgoro

(19 October 1950 – 9 May 2024)

ProBono.Org would like to extend its deepest condolences in honour of Justice Jennifer Yvonne Mokgoro – appointed among the first Constitutional Court judges appointed by President Nelson Mandela in August 1994. She was the first black woman to join the bench and was a beacon of justice, advocate for gender equality and a champion of human rights. Her work is seen in the landmark *S v Makwanyane* decision, where her advocacy for Ubuntu helped declare the death penalty unconstitutional.

boundaries – a legal luminary throughout her illustrious career and passionately advancing constitutional and human rights jurisprudence' by the African Initiative of Women Human Rights Defenders.

While we mourn the loss of an eminent jurist, we pay tribute and celebrate a life that was well lived - a life committed to the cause of justice, ubuntu and equality and her contributions to the development of the law, justice and constitutionalism in South Africa.

**Rest in peace ●**



*Pic: Bernard Brand*

She was described as a 'titan of justice whose legacy transcends

# ProBono.Org hosts Freedom Day event

By Pearl Khumalo, Staff Attorney, Durban



**O**n 22 April 2024, ProBono.Org Durban hosted a Freedom Day event in collaboration with Norton Rose Fulbright, who graciously hosted us, and Garlicke and Bousfield. The purpose of the event was to encourage legal practitioners to take on pro bono work and to provide quality services to the poor and vulnerable. The event began with an inspiring keynote address from Justice Zak Yacoob who highlighted the importance of constitutional values in the legal profession, respecting the dignity of our indigent clients and the need to change our mindsets regarding race, gender and poverty. The speaker discussed what it truly means to be equal before the law.

This was followed by an insightful panel discussion which included Justice Yacoob, Judge Jappie, Advocate Andrea Gabriel and Sanelisiwe Nyasulu from Garlicke and Bousfield. The discussion focused

on the challenges with pro bono matters within law firms and the perspectives of judicial officers when matters come before them. Emphasis was placed on the community's need for legal education in a language they can understand so that they may access their rights. The speakers encouraged us to look at our democracy with gratitude as well as a sense of responsibility, to ensure dignity and equality for all.

This event reminded all legal practitioners in attendance of the importance of our constitutional democracy, our history and access to justice. Justice Yacoob reminded us all that “we are human first, human rights lawyers second and lawyers third”. In light of the above, we encourage private legal practitioners to join our panel and make a difference. ●



# Ohio University Student Delegation visit to South Africa

By Hellen Motau, Communications Intern, Johannesburg



## **ProBono.Org hosted students and delegates from the Ohio State University on a tour of two provinces rich with historical sites to learn about the journey of democracy in South Africa.**

Along with their two lecturers, Haley Duschinski & Larry Hayman, the students spent time in Cape Town exploring the various historical sites. Their excursions included visiting Robben Island, Parliament, the District Six Museum & Iziko Slave Lodge, to name just a few. One student, Zachary Donaldson, posted LinkedIn, “This trip has reaffirmed my dedication to contributing to public service in any way I can, and underscored

both the importance and necessity of a robust human rights agenda”.

They spent their second week in Johannesburg where they visited Constitution Hill, the Apartheid Museum, Soweto, Ponte City and Soweto. ProBono.Org’s National Director, Shafie Ameermia, invited them to a lecture on Transformative Justice and the Truth and Reconciliation Commission presented by Ilan Lax and Candice Pillay, members of ProBono.Org’s board. Later in the day they attended a screening of One Humanity (celebrating Nelson Mandela’s 70th birthday in a concert in London). This experience was designed to share the sacrifices of South African freedom fighters in obtaining the

democracy we are enjoying today.

The visit ended with a Moot Court hosted by Norton Rose Fulbright SA Inc. where the students argued various legal topics related to the South African Constitution. The Moot was exceptional. The students were able to debate and argue the law using the relevant sources used in the South African legal context and used international law when necessary. They set an excellent standard and ProBono.Org would be honoured to host another delegation. ●

# A comparative analysis of the rights of children in Thailand and South Africa

By Daphne Makombe, Legal Assistant, Johannesburg

**On 26 April 2024, ProBono. Org in collaboration with Didyasarin International School in Thailand conducted a webinar for 32 grade two learners. The initiative aimed to empower the children with the knowledge, skills and values necessary to exercise and protect their rights, as well as respect the rights of others. One of the grade two teachers, Priscilla Clifton, coordinated the learners.**

South Africa has a more comprehensive and prioritised approach to children's rights than Thailand. Thailand has significant issues with child labour and trafficking, while South Africa has initiatives to address these issues. Both countries have ratified the United Nations Convention on the Rights of the Child (CRC), striving to protect children's rights and implementing compulsory education laws.

Children's rights in Thailand are protected by various laws and regulations, including the Constitution of the Kingdom of Thailand (1997) which includes provisions for the rights of children, such as the right to education, healthcare, and protection from exploitation. Other acts are The Child Protection Act (2003) which aims to prevent and respond to child abuse, neglect and exploitation; The Juvenile Justice Act (2011) which focuses on rehabilitation and restorative justice for

children in conflict with the law; The Compulsory Education Act (2002) which makes education mandatory for children aged 5-15; the Child Labour Protection Act (1996) which prohibits children under 15 from working in hazardous occupations; and The Human Trafficking Prevention and Suppression Act (2008) which aims to combat human trafficking, including child trafficking.

In the webinar, with the assistance of Geraldine Moya Anderson, the children's rights were explained in simple, interesting and exciting ways. Basic human rights and children's rights concepts were explained, such as rights and responsibilities, respect for oneself and others, equality and non-discrimination, protection from harm and abuse and access to education and healthcare. The webinar included age-appropriate activities and materials to help the children understand and apply the concepts in their daily lives.

Thailand includes children's rights education in its primary school curriculum. Their Ministry of Education has incorporated human rights and children's rights into the curriculum, aiming to raise awareness and promote understanding among children from an early age. Our offices are humbled to be part of this initiative in upholding children's rights. It is also



important to acknowledge the efforts made by both Thailand and South Africa to prioritise children's rights through laws and regulations. However, there are still significant issues with child labour and trafficking in Thailand, and it is crucial to continue addressing these issues to ensure the protection and well-being of all children.

Thai people used to identify themselves by their given names and their place of residence. In 1913, Thailand adopted the use of surnames when King Rama VI decreed the Surname Act. This is unfamiliar to the South African practice, but does not take away the right of a child to an identity and the right not to be stateless. ●



Pics: Pixabay



# The rule of law / Magna Carta

## (Part 2)

By Elsabe Steenhuisen, Child Law Project, Johannesburg

**In the previous article I referred to the special link the Magna Carta (MC) has to the USA as Runnymede, an acre of Crown land and where the MC was concluded, was given in May 1965 to the American people in perpetuity under the control and management of the Kennedy Memorial Trust.**

It should not come as a surprise that the U.S. Reports of the Supreme Court's decisions refer to the Magna Carta in more than 170 cases. As WEX (the free legal dictionary and encyclopaedia of Cornell University) explains: *“Although the Magna Carta was primarily meant to protect the powerful Church and wealthy nobility in medieval feudal England, it introduced legal concepts that persisted over time and came to be found in American law. The Magna Carta was the basis for English common law, and thereby indirectly also had influence on American law. The Founding Fathers of the United States particularly admired the Charter's rebellious nature against the English throne.”*

SJ Wermiel (USA) explains that there is a common theme that spans two centuries: the role of the Magna Carta is largely symbolic and, according to Steven Rares (Australia), the rule of law is a powerful assumption. The Magna Carta is not and cannot be positive law in the Supreme Court, since it far predates the writing of the U.S. Constitution, which created the Supreme Court. Despite that, American lawyers referred to the Magna Carta as early as 1794. The application of the MC during the two centuries was diverse. The first reference to the MC in a justice's opinion was by Justice Joseph Story in a dissenting opinion from the majority ruling of Chief Justice John Marshall in 1814, dealing with a lawsuit over

the ownership of timber. In 2012 In Southern Union Co. v. United States, Justice Stephen Breyer noted that any limitations on the power of judges in imposing fines were historically included in the Magna Carta. In the same year, Justice John Roberts referred to the MC when he had to rule on the autonomy of the church.

I agree with Richard Calnan (UK) that there are parts of the MC which are as relevant today as they were centuries ago. Clause 39 serves as example:

*“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”*

Even if many of the clauses are not fit for our modern legal systems, according to Calnan the MC did set in motion a process which ultimately led to constitutional government. Throughout the western world the writers of Bills of Rights and State Constitutions were inspired by concepts born in the Magna Carta: that a government should be constitutional, that the law of the land should apply to everyone, and that certain rights and freedoms were so fundamental that their violation was an abuse of governmental authority. Australia is the only Western democracy without a legislated Bill of Rights, although human rights are included in its Constitution.

It seems that having the principles of the MC in one or other form in modern statutes does not guarantee one protection against the abuse of governments. Rares refers to the horrors of two world wars and tyrannical regimes that

had blighted human freedom, and the General Assembly of the United Nations' adoption of the *Universal Declaration of Human Rights*. Rares points out that the Declaration included provisions that reflected what had been promised over 700 years earlier in the *Magna Carta*, such as the rights not to be subjected to cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or deprivation of one's 'property, the rights to equal recognition before, and protection by, the law, a fair and public hearing by an impartial tribunal in civil and criminal matters, and freedom of movement.

Verlaine de Wit (RSA) warns that the executive does have its own interests and where even the most basic rights and principles of citizens threaten those interests, the executive might well choose to act in a way which furthers those interests rather than the rights of the population. “The inherent threat in that is that it might try to further those interests one at a time by whittling away slowly at our Constitutional rights and democratic principles.” She urges that we as legal practitioners (LPs) should take heed of this. She rightly states that lay people, who benefit as much as LPs from living in a society with Constitutional rights and democratic principles, do not have the technical knowledge to understand the effect of the executive's actions on the law. It is the responsibility of us as LPs who can understand this and take a stand against such actions. We at ProBono.Org strive to uphold people's freedom, dignity and equality – rights that are going back to principles in a document drafted more than 800 years ago – the Magna Carta. ●

# The long awaited **GBVF bill** signed by President Cyril Ramaphosa

By Nonkululeko Sibambato, Senior Staff Attorney, Johannesburg

**O**n 24 May 2024, President Cyril Ramaphosa signed into law the National Council on Gender-Based Violence and Femicide Bill (the GBVF Bill). The establishment of the National Council was one of the resolutions of the first Presidential Summit on Gender Based Violence and Femicide convened in 2018.

The GBVF Bill recognises gender-based violence and femicide (GBVF) as a serious social evil that affects the most vulnerable members of society. The Bill gives effect to Chapter 1 and 2 of the Constitution, which uphold human dignity, equality, life, security of persons and freedom and the advancement of human rights.

The purpose of the Bill is to provide a legislative framework for the establishment of the GBVF Council, which will act through its Board. The Board is responsible for providing strategic leadership on the elimination of GBVF in South Africa. The Board is also responsible for coordinating a multi-sectoral and inter-sectoral approach towards the implementation of the national strategy that addresses GBVF at a national, provincial and local level. Importantly, the implementation of the Bill will provide for reporting mechanisms to facilitate the effective performance monitoring, evaluation and corrective action in the prevention of, and response to,

GBVF in South Africa. Essentially this means that the approach to fighting the scourge of GBVF will be more focused and coordinated.

The Board will consist of no more than 15 members, comprising seven representatives from civil society and the private sector and one representative from each of the following organs of state:

- Department of Women, Youth and Persons with Disabilities;
- Department of Justice and Constitutional Development;
- Department of Social Development;
- Department of Health;
- Department of Co-operative Governance and Traditional Affairs;
- Department of Basic Education;
- The South African Police Service; and
- The National Prosecuting Authority.

The members from civil society and the private sector must be appointed by the President. The appointment must be from a list of people recommended by the National Assembly by way of resolution with a supporting vote of a majority of the members of the Assembly.

The Board is required to develop an action plan within six months after its establishment for the implementation of the national

strategy on GBVF. It is also required to coordinate measures for education and training concerning the prevention and combatting of GBVF, to establish partnerships with relevant stakeholders, and facilitate the prioritisation of anti-GBVF programmes.

The Board is required to report to the Minister of Women, Youth and Persons with disabilities at least four times a year on its activities, the performance of its functions and the achievement of its objectives. The Minister must table this report in Parliament as required. It is important to note that the Board is required to review its action plan every five years.

The enactment of the Bill is a long awaited and a very important step towards eliminating and combatting GBVF in South Africa. The rates of GBVF are unacceptably high and South Africa is in serious need of a structured mechanism to address this scourge. The enactment of this Bill is welcome and we are hopeful that it will have a positive impact on society. ●

## Welcome to our new staff and interns

### A happy outcome!

We recently assisted a client who had been without an ID or assistance by the DHA since 2004. He was robbed of his ID, amongst other possessions, in 2004 and had not been able to receive any assistance from the Department of Home Affairs (DHA). Due to a cruel acid attack that left him hospitalised for months, he lost his memory of certain facts like his ID number, but fortunately he remembered his date of birth. ProBono.Org managed to trace his school records that mentioned his ID number and gave the client a letter addressed to the DHA with a copy emailed to the acting deputy director-general of the DHA. The jubilant client has reported that he may collect his ID card after two weeks.

### Call to action: 30 Attorneys, 30 Matters, for 30 Years of Democracy

This campaign continues. ProBono.Org would like to remind legal practitioners to sign up on our panel. 30 Attorneys, 30 Matters for 30 Years of Democracy seeks to encourage legal practitioners to perform their pro bono work in their respective practices to celebrate the milestone of our constitutional democracy. There is a sign-up form on the home page of our website. See [www.probono.org.za](http://www.probono.org.za)

#### Lethiwe Ngubane - Durban Staff Attorney

Lethiwe Ngubane completed her LLB degree in 2019 at The University of Kwa-Zulu Natal. She thereafter served her articles at the UKZN Law Clinic and was admitted as an attorney in 2023. Lethiwe is passionate about protecting the legal rights of women and children and is excited to have joined the ProBono.Org team.



#### Leighen Mapogoshe - Johannesburg intern

In 2023, Leighen Mapogoshe received an LLB degree from the University of South Africa. He is currently a student in a full dissertation programme for an LLM in Mercantile Law. He received a merit scholarship for his postgraduate studies in 2023 from the National Science and Technology Forum. He finished the Street Law Programme with the UNISA Law Clinic, the Filing Clerk Project with the Johannesburg Association of Attorneys, and the Vocational Programme with Jasper Van Der Westhuizen and Bodestein Attorneys. The Annual African Emerging and Established Researcher Training Academy, in collaboration with the Human Sciences Research Council of South Africa, awarded him a research certificate in 2023 for successfully completing the programme.



#### Siviwe Stephen Dube - Cape Town intern

Siviwe was born in Port Elizabeth and raised at his maternal grandparents' ancestral home in rural King Williams Town. He matriculated in 2018 from Khwezi Lomso Comprehensive School. He moved to the Western Cape to commence his studies at the University of the Western Cape in 2019. Siviwe graduated with his LLB degree in 2024. Boasting an incredible astuteness in legal studies, he claimed First Position in the African Democratic Essay Award of 2023 for his essay on Multiculturalism. Following the completion of his studies, he has penned several legal papers and volunteered at the Probono.Org Cape Town office from February 2024.



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