

PRO BOND & CSR

Annual Report
2022



22 Future Masters Football Club's winning team



24 Sally's Workshop empowers 34 women living with a disability

FOOD
FORWARD SA
Securing quality food. Nourishing lives.

11 Providing legal services to FoodForward



21 Continuing our rugby journey with 'Mister' through Connect Sports Academy



06

Introduction

04 Chairman's Foreword

05 2021 in Review

06 Awards and Recognition

Another Lex Mundi Pro Bono Foundation Award for Bowmans

06 Publication of our Pro Bono and CSR Report for 2021

For the Public Good - our Pro Bono Work

07 Highlights of our Cross-Border Pro Bono Initiatives

Undertaking legal research

Online harassment of female journalists in Kenya

Education rights for girls in Tanzania

Gender pay gap reporting in South Africa

Global corporate debt restructuring in Mauritius

Guiding principles on human rights

Female genital mutilation in Uganda

Assisting non-profit organisations

Advising on data protection in Kenya

Completing a survey on social enterprise policies in Mauritius

Concluding sponsorship and donation contracts in South Africa

Undertaking research to assist military veterans in Kenya

Providing property law advice in South Africa

Registering a non-profit company in South Africa

Facilitating a webinar on inclusive workspaces for LGBTI+ in Kenya

Transferring employees in Kenya

Corporate legal advice to local communities

Accountability Counsel

Kulczyk Foundation

Development in Gardening

Facilitating charitable investments in Kenya

Green Kids' Museum

Advising on licencing exhibitions in Kenya



07



09



14



18



20



25



27

14 Ishishini Lethu

Launching a mobile app in the healthcare sector
Strengthening leadership governance
Registering a catering business

15 In the Courts

Qwelane v South African Human Rights Commission and Another

ProBono.Org's housing clinic

Lenda Nkateko Mathebula v Mpho Lydia Thamaga and Others

Joyce Mdinisi v Nhlanhla Nkuna and Four Others

Christina Mphahlele v Department of Human Settlements and City of Ekurhuleni

19 Access to Justice

Supporting Community Advice Offices of South Africa

In Support of Communities - our CSR Efforts

20 Back to School in January

Support for the Pencil Box Project through Lions Club of Kirstenbosch

Donating school shoes to learners in need with Youngage Foundation

21 Celebrating the Youth in June

Continuing our rugby journey with 'Mister' through Connect Sports Academy

Future Masters Football Club's winning team

Children thrive on making music with Izivunguvungu

23 Honouring Nelson Mandela in July

Mama's Alliance throws support behind NewBeginningZ

Young boys and girls rise above circumstances with Change Agents South Africa

24 Supporting Women in August

Sally's Workshop empowers 34 intellectually challenged women

Participating in the I Love Boobies Imagine Race

26 Observing 16 Days of Activism in November

27 Participating in the Season of Giving in December

Disabled Children Action Group

Doctors Without Borders

Philani Support Group



CHAIRMAN'S FOREWORD

Ezra Davids

Chairman and Senior Partner

As the firm's African footprint has grown, so too has the level of cross-border involvement in, and collaboration on, pro bono initiatives.

The high level of inter-office interaction among our lawyers was a defining characteristic of our pro bono activities in 2021/22, to some extent offsetting the restrictions that the pandemic placed in the way of a 'normal' pro bono programme.

Our lawyers across our offices thrived on the opportunities they received to work together on global and African research projects aimed at understanding and finding solutions to pressing social justice issues such as female genital mutilation, the gender pay gap and education rights for girls, to mention a few.

We are especially proud of the contributions Bowmans people made to the UNESCO/International News Safety Institute's 'know your rights' guide for female journalists experiencing online harassment, as well as to the United Nations Working Group Report on Business and Human Rights, which focused on the impact and use of the UN Guiding Principles on Business and Human Rights across various jurisdictions.

Another major human rights highlight in our pro bono programme during the year was the Constitutional Court judgment in July 2021 that finally ended the hate speech case brought 11 years ago by our client, the South African Human Rights Commission, against the late Jonathan Dubula Qwelane. That judgment is a significant milestone for the protection of the rights of the LGBTI+ community in South Africa.

As a firm we have continued our work on gender and gender based violence. We are particularly proud of the legal research undertaken by our Kenyan Practice on online harassment of female journalists, on female genital mutilation undertaken by our Ugandan Practice, and on gender pay gap reporting undertaken by our South African Practice. We are also proud of the work we have done on education rights for girls in Tanzania and in facilitating a webinar on inclusive workspaces for LGBTI+ in Kenya.

We observed the 16 Days of Activism from 25 November to 10 December through an awareness campaign asking our employees to stand together and say #itsnotok and by supporting a charity working with abused children.

It has been a privilege to assist numerous non-profit organisations, small enterprises and social entrepreneurs across our African footprint with advice on the legal processes that are fundamental to their success, such as governance, data protection compliance and employment issues, among many others.

Over and above our extensive pro bono work, Bowmans employees gave freely of their time and other resources to charitable organisations working in an array of spheres, including child disability, education, disaster relief, youth development and breast cancer screenings for disadvantaged women.

None of us would be where we are today without other members of society. Those of us who are blessed have a duty to give something back. It is a joy, not a duty, to do so.



2021 IN REVIEW

Fatima Laher

Head of Pro Bono

Giving within the context of a global pandemic

2021 proved to be a challenging year for most of us, both professionally and personally.

The devastating effects of the pandemic were laid bare, with many of us losing our dear friends, relatives and colleagues to the pandemic.

The pandemic affected the take-up of some of our pro bono work. However, it was also a year which saw us adopting new ways of working in order to deliver on our pro bono and CSR commitments.

We are grateful to have successfully concluded another year in our pro bono work and CSR initiatives.

It is a pleasure for me to share with you some highlights of our work over the past year.

In mid-2021, the Constitutional Court in South Africa delivered its judgment in the seminal case on hate speech in the matter of *Qwelane v South African Human Rights Commission (SAHRC)* and Another. Bowmans' pro bono client, SAHRC, was victorious in this matter, bringing 10 years' worth of work to a conclusion.

Our access to justice work continued with our volunteer lawyers servicing the Refugee, Housing and Labour Law Clinics in South Africa.

A critical development for our pro bono work is the momentum gained in our cross-border practice across all of our offices on the continent. Interesting and pertinent legal research was undertaken by our offices and many non-profit organisations were assisted with novel legal matters.

For the second time in a three-year cycle, Bowmans received a Lex Mundi Pro Bono Foundation Award which recognised Bowmans as one of five law firms internationally as a recipient of the award. Mention was made of Ilara Health; our Kenya Office rendered pro bono legal services to Ilara Health aimed at the collection/usage of a range of sensitive patient information.

This is an important award for Bowmans as it consolidates our pro bono work across our offices in Africa. It is recognition of our vision of rendering an innovative model for the delivery of pro bono legal services which aligns with our firm's areas of expertise and strengths, thus ensuring our finest resources are used for the benefit of the poor and marginalised. The award further recognizes the many hours of pro bono legal services rendered by so many of our lawyers across the continent, for which we are grateful.

On the CSR front, we supported many charities throughout the year. We continued to find innovative ways to ensure that our funds reach those who are most in need.

We are thankful to all of our stakeholders with whom we work closely to be able to deliver pro bono services meaningfully.

We express our gratitude to all of our lawyers across all of our offices for the outstanding services which they have delivered to our pro bono clients, contributing to our firm's success in this area of work.

This report gives an overview of all of our pro bono and CSR work undertaken in the past year. We hope that you will find it to be an interesting and informative read.

For the financial year **1 March 2021 to 28 February 2022**, Bowmans contributed 8 601 pro bono hours valued at approximately ZAR 25.2 million.

AWARDS AND RECOGNITION

ANOTHER LEX MUNDI PRO BONO FOUNDATION AWARD FOR BOWMANS

The 12th Annual Lex Mundi Pro Bono Foundation Awards were announced on 5 May 2021 during the organisation's annual conference.

Bowmans was one of five member firms recognised for providing exceptional and critical pro bono contributions and support; helping to strengthen the global rule of law; supporting the global social entrepreneurship movement; and improving lives and communities around the world.

This was the second time in three years that Bowmans was honoured in this way.

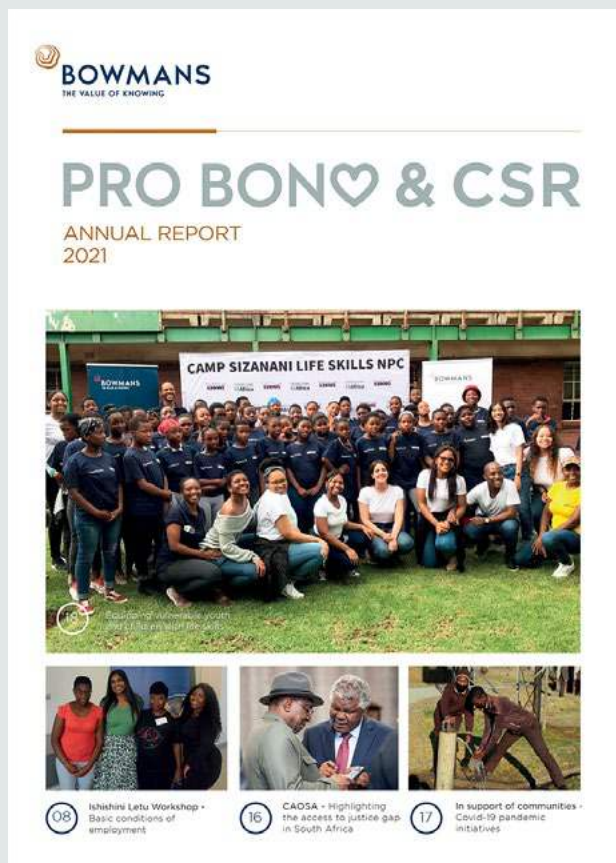
Numerous pro bono matters referred to us by the Foundation were taken up across all of our offices in the past year.

One of the highlights of the event was a special mention of Ilara Health. This organisation provides affordable diagnostic equipment to patients and healthcare providers and has partnered with more than 130 clinics to help thousands of patients across Kenya.

Our Kenyan practice advised Ilara Health on the collection/use of patient-sensitive information ranging from demographic data to

healthcare-specific data and how best to manage such data within the guidelines on data privacy and storage.

This is an important award for Bowmans because it highlights our innovative model for the delivery of pro bono legal services aligned with our areas of expertise. The award further recognises the many hours of pro bono legal services rendered by so many of our lawyers across the continent.



PUBLICATION OF OUR PRO BONO AND CSR REPORT FOR 2021

As a result of the pandemic, we released our 2020/21 pro bono and CSR report online instead of hosting our usual annual event.

HIGHLIGHTS OF OUR CROSS-BORDER PRO BONO INITIATIVES

Undertaking legal research

ONLINE HARASSMENT OF FEMALE JOURNALISTS IN KENYA

Our Kenyan Practice participated in an international research project, contributing the Kenyan chapter on online harassment of female journalists.

Undertaken by TrustLaw, the research culminated in a 'Know your rights' guide to assist journalists to understand the legal frameworks supporting media rights in various jurisdictions.

Other participants contributed chapters on Australia, Brazil, Finland, France, Germany, Ireland, Japan, the Netherlands, Sweden, the UK and the USA.



INTERNATIONAL NEWS SAFETY INSTITUTE

TrustLaw



With the support of UNESCO and the Swedish Postcode Foundation for the country chapters on Kenya and India



With legal contributions from:

ARTHUR COX

Baker McKenzie



BOWMANS

Dechert LLP



intel

KL A

LATHAM & WATKINS

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

PAUL HASTINGS

+simmons
simmons

The work done was completed as part of a larger project specifically on women journalists' safety in collaboration with UNESCO. Both UNESCO and the International News Safety Institute published the KYR Guide at the end of September, to coincide with a UNESCO launch event around online harassment.

Elise Perry, legal manager:
EMENA, TrustLaw



EDUCATION RIGHTS FOR GIRLS IN TANZANIA

Lawyers from our Tanzanian Practice undertook research into the education rights of girls in Tanzania.

The work was done on behalf of the Cyrus R. Vance Center for International Justice, a programme of the New York Bar Association that provides legal representation to civil society and human rights bodies in partnership with leading law firms around the world.

We advised on the laws and policies that support the provision of education for girls in Tanzania and provided information about education financing.


[Back to contents](#)


GENDER PAY GAP REPORTING IN SOUTH AFRICA

Lawyers from our South African Practice undertook research into, and provided advice on, the legislative and regulatory context of the gender pay reporting regime in South Africa.

The research formed part of an in-depth case study research project into how gender pay reporting regimes are carried out and where they are seen to be effective and/or problematic. The project was undertaken by the United Nations Foundation working with the Global Institute for Women's Leadership.

Our research was included in a final report (see alongside), titled 'Bridging the gap – an analysis of gender pay gap reporting in six countries'.

 We have already begun to use the report to advocate for making improvements to existing regimes and to developing them where they don't exist...

Thank you so much again for helping us to pursue this work! 

Professor Rosie Campbell, director of the Global Institute for Women's Leadership and professor of Politics at King's College London

About

The Fawcett Society

The Fawcett Society is the UK's leading membership charity campaigning for gender equality and women's rights at work, at home and in public life. Our vision is a society in which women and girls in all their diversity are equal and truly free to fulfil their potential creating a stronger, happier, better future for us all.

The Global Institute for Women's Leadership at King's College London

The Global Institute for Women's Leadership works towards a world in which women of all backgrounds have fair and equal access to leadership. Chaired by Julia Gillard, the only woman to have served as Prime Minister of Australia, the institute brings together rigorous research, practice and advocacy to break down the barriers to women becoming leaders, while challenging ideas of what leadership looks like.

The Thomson Reuters Foundation

Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. We work to advance media freedom, raise awareness of human rights issues, and foster more inclusive economies. Through news, media development, free legal assistance and convening initiatives, the Foundation combines its unique services to drive systemic change. TrustLaw is the Thomson Reuters Foundation's global pro bono legal programme, connecting the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. We produce ground-breaking legal research and offer innovative training courses worldwide.

Bowmans

Bowmans has a track record of providing specialist legal services in the fields of corporate law, banking and finance law and dispute resolution, spans over a century. With eight offices in six African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues. Our clients include corporates, multinationals and state-owned enterprises across a range of industry sectors as well as financial institutions and governments.

Acknowledgements

This report was written with invaluable assistance from: Selin Akmanlar, Sophie Ash, Maria Garcia Martin, Julie Moonga, Ruchira Rana and Vincenzo Sansone.

This research has been funded by the UN Foundation, for which we are extremely grateful.

The South African Case study was supported by generous pro bono legal research provided by Bowmans and facilitated by TrustLaw, the Thomson Reuters Foundation's global pro bono service.

We would also like to acknowledge the Fawcett Society for their collaboration on this project.

We would like to thank the members of the GINL Employers' Board, Facebook and Baker McKenzie for their support and contributions.

We are indebted to our interviewees for making the time to speak to us, providing their insights and sharing their expertise.

Editing and design: Becca Shepard

GLOBAL CORPORATE DEBT RESTRUCTURING IN MAURITIUS

Our Mauritian Practice assisted The World Bank Group in partnership with INSOL International and the International Association of Insolvency Regulators (**IAIR**), with a data collection initiative on the workings of corporate debt restructuring around the world.

The work entailed administering a survey on out-of-court workouts, pre-insolvency procedures, formal reorganisation procedures and emergency measures introduced in the debt enforcement and insolvency arena to deal with the effects of the pandemic.

The project will culminate in the publication of a joint report.

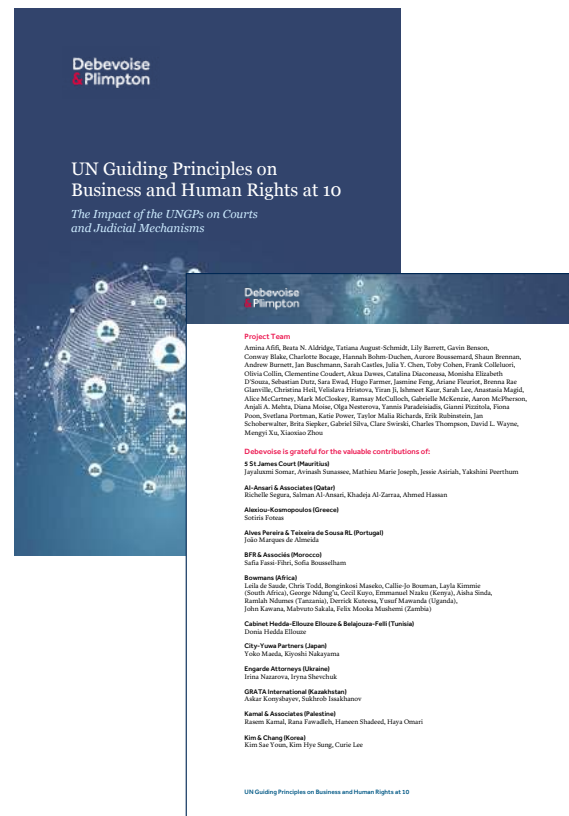
GUIDING PRINCIPLES ON HUMAN RIGHTS

We assisted Debevoise & Plimpton LLP (**Debevoise**), which had been approached by the United Nations Working Group on Business and Human Rights (**Working Group**), by undertaking research for a global project in support of the United Nations Guiding Principles on Business and Human Rights (**UNGPs**).

The project focused on the impact and use of the UNGPs by courts of law and quasi-judicial mechanisms across various jurisdictions.

We provided input from the six jurisdictions in which we are located, namely Kenya, Mauritius, South Africa, Tanzania, Uganda and Zambia. Our work involved identifying judicial decisions that cite or discuss the UNGPs and those that concern other standards relevant to the human rights obligations of businesses. We also provided observations on broader trends around business and human rights.

Debevoise's report was included in the Working Group's report to the United Nations Human Rights Council in June 2021.



FGM/C LAWS IN NIGERIA- LEGISLATIVE REFORMS AND LESSONS LEARNT FROM KENYA AND UGANDA



FEMALE GENITAL MUTILATION IN UGANDA

Our Ugandan Practice assisted HACEY Health Initiative, a non-profit organisation supporting women, girls and youth in Nigeria to live productive and healthy lives, by providing an outline of national legislation, policy and case law on anti-female genital mutilation (**FGM**) in Uganda.

The research was conducted, on brief by TrustLaw, in conjunction with other law firms in various African jurisdictions. It informed an advocacy toolkit aimed at reforming FGM laws in three states in Nigeria.

HACEY published the report, titled 'FGM/C Laws in Nigeria – Legislative Reforms and Lessons Learnt from Kenya and Uganda', which is available as a public resource.

Assisting non-profit organisations

ADVISING ON DATA PROTECTION IN KENYA

Our lawyers in Nairobi advised Peek Vision on its new partnership with Operation Eyesight Universal. The partnership will deliver an eye health programme in Kenya using Peek Vision's software and services, which include programme design, training and expert data analysis.

We helped Peek Vision to ensure that the programme could be rolled out as planned in compliance with applicable data protection laws. Peek's systems generate insights from the data gathered, allowing eye health providers to identify gaps in their services and make rapid, sustainable improvements where needed. Inequalities in service provision can be addressed so that more people can receive the treatment they need.

The team also provided data protection advice to the Mara Conservancy on its obligations under the Data Protection Act in relation to the collection, use and processing of personal data.

The Mara Conservancy is a not-for-profit organisation that manages and conserves the Mara Triangle in collaboration with the Narok County Government, conservation professionals and the local Maasai community.



COMPLETING A SURVEY ON SOCIAL ENTERPRISE POLICIES IN MAURITIUS

Our lawyers in Moka (Mauritius) participated in the Catalyst 2030: Social Enterprise Policy Survey, which set out to identify the policies and legal systems that help social enterprises to flourish and provide recommendations for policies and programmes that governments could adopt to support social enterprises. The partners in this project were the One Family Foundation and Morrison & Foerster LLP.

The questionnaire explored governance, funding and taxation of social enterprises and non-profit organisations in Mauritius, as well as the governmental infrastructure available to these entities.

CONCLUDING SPONSORSHIP AND DONATION CONTRACTS IN SOUTH AFRICA

Members of our Shipping, Aviation and Logistics Practice in Cape Town partnered with our client Minerva Bunkering Marine Services (Pty) Ltd, in an initiative to assist two schools in the Gqeberha community with sponsorship and funding.

We drafted and negotiated the terms of the sponsorship and donation contracts concluded between Minerva and the two schools. They are Emsengen Primary School, where Springbok rugby captain Siya Kolisi went to school, and Quest School for Learners with Autism, the only public school in the Eastern Cape for learners with autism.

UNDERTAKING RESEARCH TO ASSIST MILITARY VETERANS IN KENYA

True North Society is a Kenyan non-profit organisation that provides mental healthcare and other services to soldiers and their families. Their aim is to help military veterans to address the mental and behavioural impacts of their war experiences.

Retired members of the Defence Forces Medical Insurance Scheme (**DEFMIS**) are not eligible for mental healthcare. Our lawyers researched the legal grounds available to challenge DEFMIS in relation to this issue and outlined various options that True North could pursue in enabling military veterans to receive mental healthcare services.

PROVIDING PROPERTY LAW ADVICE IN SOUTH AFRICA



Securing quality food. Nourishing lives.

Members of our Commercial Property Practice in Cape Town advised FoodForward SA on various issues related to the purchase of its new premises in the city. FoodForward is the largest food redistribution organisation in South Africa, distributing good-quality surplus food from retailers to registered NPOs that provide at least four meals per week to needy people.

We reviewed a lease agreement with the existing tenants of the property concerned and assisted FoodForward in the appointment of a consultant to manage the construction of its offices.

We also helped FoodForward to procure the licence required to use and amend the Professional Consultants Services Agreement Committee Client/Consultant Professional Services Agreement; drafted amendments to the agreement; provided a risk analysis of the amended agreement; and assisted with the negotiation and execution of the final agreement.

REGISTERING A NON-PROFIT COMPANY IN SOUTH AFRICA

The Sickle Cell International Foundation is a non-profit organisation whose purpose is to reduce the morbidity and mortality rate of sickle cell patients through improved access to quality healthcare. The organisation, which operates in Cameroon, requested our lawyers in South Africa to assist in establishing a non-profit company in the country.

We drafted and filed the necessary documents for the registration with the Companies and Intellectual Property Commission and received confirmation of its incorporation. We have also been involved in registering the entity as a public benefit organisation with the South African Revenue Service.

FACILITATING A WEBINAR ON INCLUSIVE WORKSPACES FOR LGBTI+ IN KENYA

In the interests of promoting inclusive workplace policies, our lawyers in Nairobi facilitated a webinar on LGBTI+ inclusiveness for Open for Business, an alliance of organisations that promotes workplace inclusiveness.

We were instructed by Thomson Reuters, through its pro bono network TrustLaw, which is the largest global pro bono network, comprising over 4 000 members across 175 countries.

TRANSFERRING EMPLOYEES IN KENYA

Lawyers from our office in Nairobi helped Save the Children to transfer its Emergency Health Unit (**EHU**) from Save the Children Fund UK to Save the Children International (the movement's international programming implementation vehicle).

The EHU was established in 2015 and delivers rapid, high-quality healthcare for children and their families affected by natural disasters, conflicts and disease. By February 2021, the EHU had deployed more than 30 responses; trained more than 5 000 health staff and community health workers; and reached more than three million people with vaccinations, health and nutrition services, training and public health information.

The restructuring was done to ensure that the organisation as a whole is sufficiently well prepared, diverse, decentralised, collaborative and influential to meet the increasing needs of children.

We highlighted employment laws that apply to the transfer of employees; identified statutory procedures for effecting the transfers; and provided 'best practice' guidelines and made recommendations for effecting a transfer of employees in Kenya.

Corporate legal advice to benefit local communities

Our lawyers in Kenya have assisted various organisations to register as companies in the country.

ACCOUNTABILITY COUNSEL



We advised Accountability Counsel (**AC**), a United States-based non-profit organisation, in its efforts to register a non-profit entity in Kenya.

AC aims to strengthen the accountability ecosystem around the world by helping communities to protect their human rights and environments.

We provided an analysis of the two types of legal entities that AC is considering, highlighting the advantages and disadvantages of each. These are registration as a branch of a foreign charitable organisation or as a foreign registered company (**FRC**), or registration as a company limited by guarantee (**CLG**).

Our analysis extended to tax and liability issues, such as any requirements to establish a local board or local directors, and any restrictions or requirements related to sending funds out of Kenya.

DEVELOPMENT IN GARDENING



Development in Gardening (**DIG**), a US-based non-profit organisation, strives to teach communities in Kenya, Senegal and Uganda to plant restorative gardens that grow health, wealth and a sense of belonging.

DIG is considering establishing a registered non-profit entity in Kenya. We advised DIG on the registration options available to charitable organisations in the country, and highlighted other regulatory issues to consider.

FACILITATING CHARITABLE INVESTMENTS IN KENYA



Yunus Social Business, Kenya (**YSBK**) finances and supports businesses that solve human problems, from providing clean energy and safe water to reducing post-harvest crop losses.

Our lawyers in Nairobi assisted YSBK in connection with its debt investment of USD 70 000 in Alive and Kicking Ltd, a local ball manufacturer. We undertook a legal due diligence and prepared the transaction documents.

We also advised YSBK on its debt investment of KES 10 million in Burton & Bamber Company Ltd (**B&B**). B&B assists smallholder farmers to reduce post-harvest losses by purchasing fruit (mostly mangoes) that would otherwise go to waste. They then manufacture products that are sold both locally and abroad.

KULCZYK FOUNDATION



We advised the Kulczyk Foundation on its proposal to provide funding for a local charity to purchase a piece of land. Because the land will be used to provide education to benefit the local community (charitable purposes only), our advice included the ideal structures for the acquiring entity and the land-holding entity.

The Kulczyk Foundation is a private family foundation headquartered in Poland, which has carried out over 200 humanitarian, educational and economic support projects in more than 60 countries.



GREEN KIDS' MUSEUM

We helped Green Kids' Museum with the incorporation of a company limited by guarantee (**CLG**).

The Green Kids' Museum will be a fun and interactive children's museum, where children will learn all about our planet, the environment and living sustainably.

It will be a place where teachers in the Nairobi metropolitan area can take their classes and where parents and their children can visit on weekends.

ADVISING ON LICENSING EXHIBITIONS IN KENYA

Muthaiga Country Club (**MCC**) in Kenya is in the process of establishing a charitable trust to be known as the Muthaiga Country Club Heritage Exhibition.



The trust will facilitate donations, bequests and endowments of artefacts by MCC members for exhibition, research and preservation purposes.

The Heritage and Museums Bill, 2021 seeks to strengthen the State's approach to regulation of public and private museums by widening the regulatory scope under the existing National Museums and Heritage Act.

We advised MCC on licensing requirements introduced under the Bill, as well as the implications that the Bill may have on the safety and security of its artefacts. Our work extended beyond reviewing the provisions of the Bill and existing laws and regulations to identifying specific legal risks in the Bill and proposing solutions to mitigate them; conducting research on international legal frameworks relating to private museums; and assisting MCC to engage the relevant stakeholders during the public consultation process.

PROVIDING LEGAL ADVICE TO HELP CHILDREN IN SOUTH AFRICA



Songo.info is an education and sports programme based in Kayamandi, Stellenbosch. Its key objective is for every child coming through its programme to become a confident, well-rounded individual who is gainfully employed and a contributing member of the community. There are currently 85 children from ages six to 24 years within the Songo.info family.

Our lawyers in South Africa have helped Songo.info with a range of legal matters including advising on the:

- retirement options for one of its teachers and the voluntary retrenchment of another of its employees;
- updating of its child protection policy and related documents; and
- drafting and execution of a collaboration agreement with a strategic partner to enable it to market its initiatives and raise capital.

ISHISHINI LETHU

Our flagship pro bono project continues to provide corporate legal advice to small businesses and start-ups. Highlights of our work are as follows.



LAUNCHING A MOBILE APP IN THE HEALTHCARE SECTOR

Vimbo Health, which offers app-based treatment for depression and anxiety, seeks to ensure that Africa is not only included in the future of digital therapeutics but can also be a springboard for global change. It aims to close the treatment gaps in mental healthcare.

We mobilised a team of lawyers with expertise in medical negligence and insurance, data protection and pharmaceuticals to advise Vimbo Health ahead of the market launch of its mobile app. We considered whether the mobile app falls into the definition of a medical device, and whether the information collected on the users of the app was lawful and in accordance with South Africa's data protection laws.

STRENGTHENING LEADERSHIP GOVERNANCE

The Mogale Youth Chamber (**Chamber**), which has been in operation since 2019, assists young entrepreneurs in Gauteng in the hope of redressing the current unemployment, socio-economic and poverty crisis.

Working in collaboration with the Gauteng Youth Directorate, the National Youth Development Agency and the Gauteng Youth Chamber of Commerce and Industries, the Chamber and the Gauteng Department of Local Government will invest ZAR 11 million in a project to establish business incubators in the chemical manufacturing and construction sectors.

Our lawyers helped the Chamber by drafting employment contracts for key management and directorship positions.

REGISTERING A CATERING BUSINESS

Siyabonga Dick works as a client liaison assistant in our Cape Town office. He and his business partner Simo Davashe started their catering business four years ago. They currently operate from Simo's residence in Khayelitsha, but plan on opening a restaurant at some point in the future.

We helped them to register a new company with the CIPC by drafting various documents and advising on regulatory considerations for catering businesses. We also put them in touch with a few accounting firms that assist similar businesses.

IN THE COURTS

QWELANE V SOUTH AFRICAN HUMAN RIGHTS COMMISSION AND ANOTHER

Judgment in a seminal case on hate speech in South Africa was handed down on 30 July 2021, finally bringing an 11-year-old matter to a close.

We acted for the South African Human Rights Commission (**SAHRC**) in the matter between it, the Minister of Justice and Correctional Services and Jonathan Dubula Qwelane.

It is widely recognised that at the heart of the Constitution lies an expansive promise of equality, freedom, human dignity and the fulfilment of fundamental human rights. However, the execution of this promise requires a continuous and delicate balancing act among competing rights and constitutional values.

The case was the first of its kind to be heard in the apex Court on 22 September 2020, with the aim of clarifying the tension that exists between the prohibition of hate speech and the right to freedom of expression.

The Court had to determine whether the late Mr Qwelane's discriminatory remarks about members of the LGBTI+ community in his article titled 'Call me names – but gay is not okay' published in the *Sunday Sun* in 2008, constituted hate speech in terms of section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (**Equality Act**).

The Court also had to decide whether section 10 of the Equality Act, in its current form, violated Mr Qwelane's right to freedom of expression as envisaged in section 16 of the Constitution, mainly due to the vagueness in section 10 and its scope being much broader than that of section 16.

In the judgment, section 10(1) of the Equality Act was declared unconstitutional and invalid as a result of it being irredeemably vague, but only to the extent that it includes the word 'hurtful' in the prohibition against hate speech. This is because section 16(2) of the Constitution has no similar wording, and speech which is merely 'hurtful' is insufficient to constitute hate speech.

The Court held, however, that this deficiency could be cured by affording Parliament 24 months to remedy the constitutional defect. Until then, the Court ordered that section 10 be read to only prohibit speech which is harmful or incites harm and promotes or propagates hatred.

More importantly, the Court held that a conjunctive interpretation should be applied when considering section 10(1)(a)-(c), confirming that speech must be altogether harmful or incite harm, and promote or propagate hatred to constitute hate speech. This is to prevent an overly extensive infringement on freedom of expression.

The Court further concluded that Mr Qwelane's offending remarks undoubtedly constituted hate speech and diminished the dignity of members of the LGBTI+ community by violating their rights to equality and human dignity. It specifically held that hate speech was the antithesis of the values envisioned by the right to free speech because, while the latter advanced democracy, hate speech is destructive of democracy.

The Court, by relying on case law, reaffirmed the position that the assessment of section 10(1) requires an objective standard (reasonable person test) as opposed to a subjective test, contrary to the Supreme Court of Appeal's finding. This is because an objective standard gives better effect to the spirit and objects of the Bill of Rights.

This judgment brings with it a sense of relief and victory, especially to members of the LGBTI+ community. It will also assist to finalise pending draft legislation, the Prevention and Combating of Hate Crimes and Hate Speech Bill, which is currently under consideration by the National Assembly.

Our work on the matter began in December 2010. Since then, we have invested a total of 2 742 pro bono hours valued at almost ZAR 5.8 million in advising on the matter.

QWELANE V SOUTH AFRICAN HUMAN RIGHTS COMMISSION AND ANOTHER CONTINUED...

The SAHRC expressed their appreciation for Bowmans' assistance on the matter in the heartfelt letter below.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

27 Stiemens Street
Braamfontein
2017

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Houghton
2041

Tel.: 011 877 3600



18 August 2021

Ref:GP/2008/0796

To: Fatima Laher

Head of Pro Bono: Bowman Gilfillan

Per Email: fatima.laher@bowmanslaw.com

RE: JON QWELANE V SOUTH AFRICAN HUMAN RIGHTS COMMISSION CCT 13/20

1. The South African Human Rights Commission ("the Commission") wishes to extend its heartfelt gratitude to Bowmans for its meticulous and professional assistance to the Commission for the past decade in the matter against Mr Jon Qwelane from the Equality Court, all the way to the apex court in the country.
2. Were it not for the pro bono assistance provided by Bowmans in this and other matters, the Commission, being a state institution relying solely on state funds would not have been able to see this mammoth task through to completion.
3. Although it has taken well over a decade to gain finality and clarity on the constitutionality of certain provisions of the Equality Act, we have been thoroughly impressed by the diligent and professional service rendered by Bowmans staff through the years as well as Adv Tembeka Ngcukaitobi SC and his team.
4. We wish to commend the Pro Bono department for its tireless commitment to ensuring that human rights are promoted and facilitating access to justice for those who would otherwise be left with no recourse.
5. We look forward to a successful continued working relationship with Bowmans and once again gratefully thank you for your support and assistance herein.

Kind regards,

Adv Tseliso Thipanyane

Chief Executive Officer

South African Human Rights Commission

Transforming society. Securing rights. Restoring dignity.

Chairperson: B C Majola; **Deputy Chairperson:** F Chohan; **Commissioners (Full-Time):** A H Gaum; A M Makwetla; B Malatji; P Ntuli
Commissioners (Part-Time): A C Nissen, J B Sibanyoni; **Chief Executive Officer:** T Thipanyane

PROBONO.ORG'S HOUSING CLINIC

We have been servicing the Housing Clinic coordinated by ProBono.Org for many years. This is an important access-to-justice point for many indigent people who stand to lose their homes.

Three of our long-standing housing clinic matters were brought to a successful conclusion in the past year thanks to the many hours of hard work invested by our lawyers and external advocates, who also acted on a pro bono basis.



LENDA NKATEKO MATHEBULA V MPHIO LYDIA THAMAGE AND OTHERS

We acted for Lenda Nkateko Mathebula who has been residing at a property that was allocated to her in August 1997. Although she took occupation of the property at that time, it was never registered in her name.

According to the title deed, Mphio Lydia Thamage (first respondent) is the registered owner of the property. Ms Mathebula discovered this when she queried the municipal valuation of the property.

We instituted proceedings in the High Court seeking to declare Ms Mathebula the owner of the property and directing the Registrar of Deeds Pretoria (the third respondent) to register the property in her name in terms of section 6 of the Deeds Registries Act, 1937.

The matter was set down for hearing on the opposed motion roll on 17 May 2021. On 20 May 2021, Vorster AJ granted an order directing the Deeds Office to cancel registration of the property in the name of the first respondent, and effect its registration in the name of our client.

JOYCE MDINISI V NHLANHLA NKUNA AND FOUR OTHERS

Our client Ms Joyce Mdinisi, her children and her siblings are the residents of a property situated in Katlehong.

The property initially belonged to Ms Mdinisi's granduncle Mr Peter Radebe, who died in December 2014. The Mdinisis have been residing on the property since then.

Ms Maria Letwaba is our client's aunt and was also Mr Radebe's niece. He died without a will, was never married and did not have direct descendants.

Ms Letwaba misrepresented to the Master of the High Court that she was Mr Radebe's sole heir and the sole beneficiary of his estate. Relying on this, the Master issued letters of executorship to Ms Letwaba in December 2015.

In 2016, Ms Letwaba sold the property to Mr and Mrs Nkuna (the third-party purchasers). The property was transferred to them as co-owners on 3 October 2017.

At the time we were briefed on this matter, the third-party purchasers had already instituted eviction proceedings against our client and the other occupants of the property in the Palm Ridge Magistrates' Court. These proceedings were postponed pending the outcome of the High Court application to declare the transfer of the property invalid, cancelled and set aside.

In the High Court application, our counsel, Mr Mitchell and Ms Cingashe, argued that Ms Letwaba did not have the right to sell the house - either in her own capacity or on the estate's

behalf and that ownership never passed to the third-party purchasers. They argued that the estate is entitled to vindicate the house so that it can be distributed among Mr Radebe's rightful heirs. Furthermore, Ms Letwaba should not be allowed to inherit a half-share of the house.

The hearing of the High Court application took place on 19 October 2020, and an order was granted in our client's favour. The transfer of the property was declared invalid and set aside. The Deeds Registry was ordered to cancel the existing title deed in favour of the third-party purchasers and re-register the house in the estate's name so that it can be distributed accordingly. Ms Letwaba was disqualified from inheriting and was ordered to pay the costs of the High Court application.

CHRISTINA MPHAHLELE V DEPARTMENT OF HUMAN SETTLEMENTS AND CITY OF EKURHULENI

Ms Christina Mphahlele, our client, applied for a subsidised house with the City of Ekurhuleni in 1997. She was allocated a stand in Magagula Heights Township, of which she is the registered owner.

When Ms Mphahlele was allocated the stand, there was no structure on it. She was informed by the officials at the Housing Department that they would notify her once the house had been built.

She was in regular communication with the project manager, who promised to inform her when the house had been built. After following up numerous times over a couple of years, Ms Mphahlele visited the property to see for herself if the house had been built. Upon her arrival she found that the house had indeed been built and that there was a family occupying the property.

This meant that Ms Mphahlele, who is an informal trader and is 60 years old this year, could not occupy a property that was rightfully allocated to her.

She then approached the Department of Human Settlements in Gauteng to enquire about the current occupants of her property. The representative at the department informed her that she should not evict the occupants of the property and that she would be allocated another house.

Ms Mphahlele is in possession of a letter from the department which:

- acknowledges the maladministration of the subsidised housing plan of the nineties and commits the department to rectifying the errors that had occurred; and
- requests the beneficiaries of the subsidised houses under the housing plan who have not taken occupation of their houses to refrain from evicting tenants currently residing at these houses.



Ms Mphahlele approached us towards the end of 2018 for assistance. We wrote a letter to the department to try to resolve this matter. In addition to proposing the resolution of the matter, the letter informed the department that if we did not receive a response from it by a certain date, we would proceed to evict the current occupants of the property. We received no response.

We then addressed an eviction notice to the occupants of the property but there was no response. We then instituted eviction proceedings out of the High Court. We also applied for the Court to compel the department to allocate our client another house in the alternative to the eviction application. The *ex parte* application was successfully argued. The court granted us an order to serve the Section 4(2) notice on the current occupants of the property.

When we were in the process of serving the section 4(2) notice, Ms Mphahlele was contacted by the department informing her that she had been allocated another property. She took occupation of the second property in November 2020.

ACCESS TO JUSTICE

To mark International Human Rights Day on 10 December, and for the second year running, we supported the access-to-justice work undertaken by Community Advice Offices of South Africa (CAOSA).



Community Advice Offices South Africa

This non-profit organisation seeks to unify community advice offices (CAOs) around the country to ensure that marginalised communities and individuals have easy access to justice, social and legal services.

CAOSA is also the national coordinating body of the community advice sector in South Africa. Therefore, its focus extends to mobilising resources and implementing measures to help the sector to be recognised and regulated. All this is done in an effort to advance constitutionalism and the protection of our democracy at a community level.

CAOSA was in the process of developing a digital case management system for the sector.

The next phase involved testing the system, which encountered technological challenges because 10 of the participating CAOs lacked equipment, such as laptops, monitors for desktop computers and data.

Using a donation from Bowmans, CAOSA was able to provide the 10 CAOs with the necessary equipment and data. This will ensure that the testing phase of the system is completed and should result in widespread roll-out of the system during 2022.

This will ultimately result in the sector having evidence of the impact it makes on the ground and give it the information necessary to advocate for systematic change in the justice system.

BACK TO SCHOOL IN JANUARY

SUPPORT FOR THE PENCIL BOX PROJECT THROUGH LIONS CLUB OF KIRSTENBOSCH

Through the Lions Club of Kirstenbosch, we made a donation to the Pencil Box Project.

In February 2021, when schools reopened, our donation of pencil boxes was delivered to the Christian David Moravian School in Retreat.



DONATING SCHOOL SHOES TO LEARNERS IN NEED WITH YOUNGAGE FOUNDATION

In March 2021, we collaborated with Youngage Foundation and Two Mountains to provide school shoes to 200 learners in need.



FOUNDATION
NPC Reg
2020/203985/08

Call us toll-free on 0800 668 539
www.twomountains.co.za

ANNUAL BACK TO SCHOOL 200 NEW SCHOOL SHOE DRIVE

In celebrating Human Rights Month, Youngage Foundation together with Bowman's Law and Two Mountains, will be ensuring 200 learners are gifted with a new pair of school shoes. Every learner has the RIGHT to education protection and freedom.

Every Child in SA, Has the RIGHT to Education

DATES
15th-18th March 2021

CONTACT US
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youngagef@gmail.com
Facebook
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CELEBRATING THE YOUTH IN JUNE

For Youth Day in South Africa on 16 June 2021, we shone the spotlight on our long-term relationships with three remarkable organisations that have dedicated themselves to the upliftment of youth from the most disadvantaged communities.

CONTINUING OUR RUGBY JOURNEY WITH 'MISTER' THROUGH CONNECT SPORTS ACADEMY

Connect Sports Academy is a non-profit organisation nurturing South Africa's next generation of young professionals in the sports industry by providing access to resources and opportunities.

Through the academy, we are sponsoring Lliitha 'Mister' Ntini – a talented rugby player from Khayelitsha – on his journey to sporting greatness.

Having grown up in an informal settlement with his mother and stepfather, Mister has become a national rugby sevens champion in the Western Province. He represented the side at U13 and U12 levels before being selected for the U16 high-performance squad.

Max Benson, director at the Connect Sports Academy, says: 'Mister has the capacity to go far and is a young man who responds to loyalty and investment with respect and endeavour.'

'Despite his tender years, Mister has not merely overcome the poverty of his early childhood, he already stands as an example to those born of privilege of what those less fortunate are capable of when provided with consistent access to quality resources and opportunities. We are extremely proud of Mister and honoured to be a part of his journey.'



Young people should be at the forefront of global change and innovation. Empowered, they can be key agents for development and peace. If, however, they are left on society's margins, all of us will be impoverished. Let us ensure that all young people have every opportunity to participate fully in the lives of their societies.

Kofi Annan, former secretary-general, United Nations





FUTURE MASTERS FOOTBALL CLUB'S WINNING TEAM

Through the Future Masters Football Club, Siyabulela Sophi is using soccer to uplift the youth of Khayelitsha. We supported his efforts by making a donation towards the purchase of soccer gear for the team members.

The Future Masters Football Club is making a difference in the community by helping to keep young people off the streets.

It is also building confidence in the players - they won all their games last season.

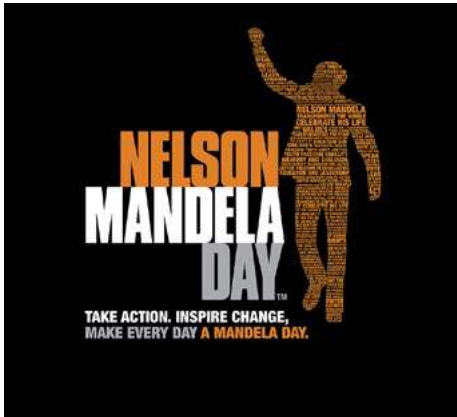
CHILDREN THRIVE ON MAKING MUSIC WITH IZIVUNGUUVUNGU

Bowmans supports schools such as the Kleinberg Primary School through Izivunguvungu, an organisation that uplifts the youth of Ocean View in Cape Town through the medium of music. Unfortunately, the children are still restricted from performing concerts outside the school because of the pandemic and this may continue for some time.

Mike Oldham, a retired director of the South African Navy Band who runs the organisation, says: 'The children still live in the shadow of the violence... We are constantly urged to continue with and even expand our projects. We are happy and privileged to do this, and we are also very appreciative of the support from people such as yourselves.'



It is a privilege for Bowmans to be part of an amazing journey with these various non-profit organisations and we take great pride in our association with them.



HONOURING NELSON MANDELA IN JULY

For Mandela Day on 18 July, we collaborated with two grassroots charities in the frontline of alleviating poverty in vulnerable communities.

MAMA'S ALLIANCE THROWS SUPPORT BEHIND NEWBEGINNINGZ

Mama's Alliance is a network that provides support to 33 independent non-profit organisations working in remote, rural and semi-urban areas within South Africa.

Through their network, we supported NewBeginningZ, a non-profit organisation caring for vulnerable people.

Our donation went towards providing 180 food parcels to the children and families within Iterileng, a large informal settlement west of Pretoria. Most of the residents were negatively impacted by the pandemic lockdown conditions and are single parents, granny/child-headed households and teenage mothers.



YOUNG BOYS AND GIRLS RISE ABOVE CIRCUMSTANCES WITH CHANGE AGENTS SOUTH AFRICA



Change Agents South Africa (**CASA**), based in Montagu in the Cape Winelands, seeks to alleviate poverty in underprivileged communities; provide counselling and mentorship to youth battling with substance abuse-related issues; and educate and empower young boys and girls to rise above their circumstances.

One of CASA's key projects is the operation of five Food Hubs (feeding schemes), which feed up to 700 people per day.

Our donation went towards food items, cooking utensils (such as pots and gas tanks), food making, toiletries and transportation as part of CASA's #ProjectWinterHope2021.

It is in your hands to create a better world for all who live in it.

Nelson Mandela, former President, South Africa



SUPPORTING WOMEN IN AUGUST

To mark Women's Month in August 2021, we continued with our mission of supporting the economic empowerment of women.

SALLY'S WORKSHOP EMPOWERS 34 INTELLECTUALLY CHALLENGED WOMEN



San Salvador Home's community project, known as Sally's Workshop, aims to contribute to the development, livelihoods and education of disadvantaged women living with a disability in Alexandra, Johannesburg.

There are 34 women involved in the project. They are transported to the workshop, where they make and sell handicrafts, perform light assembly work and provide services to local businesses, from Monday to Thursday every week.

Some of them are also involved in the Garden for Growth Project, where they grow vegetables and plants with assistance from the maintenance staff.

This project provides the organisation, its beneficiaries and their families with fresh produce, which is also sold to the public, thereby generating a small income.

Our donation went towards the annual transport costs, as well as the skills training and development costs for the 34 beneficiaries.





PARTICIPATING IN THE ILOVEBOOBIES IMAGINE RACE

We sponsored employees from our offices in Cape Town, Durban and Johannesburg who participated in the Imagine Race, an annual breast cancer awareness event hosted by ILoveBoobies. Their aim is to raise funds to educate, empower and provide free breast cancer screenings for disadvantaged women in South Africa.

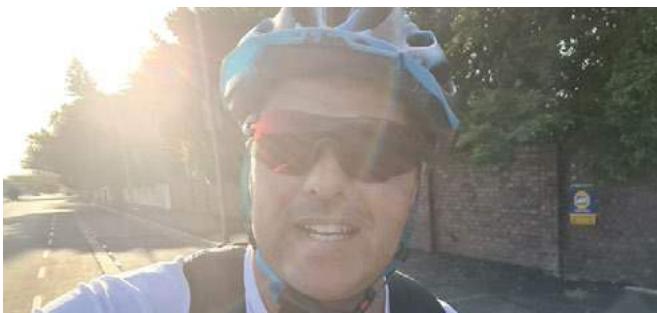
The race was a two-day multidisciplinary virtual event which took place on 23 and 24 October 2021. Participants chose to:

- Run or walk: 5km, 10km or 21km;
- Cycle: 25km, 50km or 100km; or
- Swim: 500m, 1000m or 1600m.

IMAGINE RACE



I ♥ Boobies



We observed 16 Days of Activism of no violence against women and children from 25 November to 10 December.



We asked our employees to stand together and say, 'it's not ok', as part of an awareness campaign led by Shared Value Summit.

We also made a donation to the Home of Hope, a Cape Town-based non-profit organisation that provides care for abused and neglected children with a special focus on those affected by Foetal Alcohol Spectrum Disorder (**FASD**). This causes permanent brain damage from prenatal exposure to alcohol.

Home of Hope operates Mimosa, a children's home, as well as a special needs school, Amathemba, catering for children who suffer from FASD.

Our donation was ringfenced for the development of new and upgraded chicken coops to enable the Home of Hope to increase its income from the sale of eggs.



PARTICIPATING IN THE SEASON OF GIVING IN DECEMBER

DISABLED CHILDREN ACTION GROUP



International Day of Persons with Disabilities is held annually on 3 December. To mark this day, we collaborated with the Disabled Children Action Group, a non-profit organisation based in KwaZulu-Natal working to support rural children living with disabilities.

We commissioned wheelchair and seating specialist, CE Mobility, to manufacture six specialised wheelchairs to be donated to people suffering from cerebral palsy, polio and severe epilepsy.



Dr Mchunu-Vertuin, founder of a Pietermaritzburg-based non-profit organisation called Proudly Able, facilitated the handover of the wheelchairs to the beneficiaries.

“Yesterday was extremely touching as the parents were overwhelmed and extremely grateful...these wheelchairs are definitely going to change their lives...thank you for allowing us to be part of this.”

Elroi Shelley, branch manager, CE Mobility Wheelchairs



DOCTORS WITHOUT BORDERS

In lieu of year-end client gifts, we made a donation to Medecins Sans Frontieres (**MSF**) – Doctors Without Borders, which is a global network of professionals who respond to the medical needs of people affected by conflicts, disasters and epidemics.

Our donation was earmarked for the work undertaken by MSF in Mozambique's northern Cabo Delgado Province, where a humanitarian crisis is unfolding, and escalating violence has displaced over half a million people.

MSF provides healthcare to the people displaced by the conflict through health centres, cholera treatment centres and mobile clinics. They have also distributed non-food items and improved access to clean water and sanitation.



PHILANI SUPPORT GROUP

We made a donation to the Philani Support Group. The group takes care of orphans and vulnerable children within the Ivory Park community (located on the outskirts of Johannesburg), including providing health and social services.



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THE VALUE OF KNOWING

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