

PRO BONO

A South African perspective on the role of Pro Bono lawyers

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As a democracy, South Africa is somewhat of a paradox. On the one hand, its Constitution is lauded as arguably the most progressive in the world, boasting a broader range of rights than other democracies. On the other hand, South Africa is regarded as the world's most unequal country. The legacy of apartheid—a legislatively sanctioned policy of racial segregation and discrimination, formally declared a "crime against humanity" by the United Nations—is a predominant contributor to that unfortunate reality. With this dichotomy, the role of pro bono lawyers is essential to advancing the progressive ideals of South Africa's Constitution.

A Need for Social Justice

The preamble of South Africa's Constitution states that the adoption of the Constitution as the supreme law is intended to "establish a society based on democratic values, social justice and fundamental human rights" (my emphasis). On a macro level, social justice generally entails the ambition to attain equal access to the enjoyment of rights, benefits, and opportunities for all members of society. At a micro level, social justice ordinarily has nuances that are unique to specific societies. For example, in South Africa, social justice is conceptually infused with Ubuntu.

While Ubuntu loosely translates as "humaneness," as an ideology, it is incapable of being reduced to a singular, all-encompassing definition. Essentially, it is a cultural philosophy that is best understood through its guiding creed: "umuntu ngumuntu ngabantu" (an isiZulu phrase that translates to: "a person is only a person through other people"). Ubuntu premises that an individual's well-being is determined by the overall well-being of the society that they form a part of and, conversely, that a society's well-being is determined by the well-being of the individuals within that society. Ubuntu aims to attain societal betterment.

Promoting Access to Justice

Despite South Africa having attained political freedom, the working class, unemployed, or indigent majority has limited access to the enjoyment of various rights and freedoms. To promote access to justice for members of society and help them realise their constitutional rights, Werksmans Attorneys (my firm) adopts a multi-pronged approach in our pro bono practice.

Public Awareness

In South Africa, one of the biggest obstacles to people's realisation of their rights is a lack of knowledge of the existence, scope, and application of those rights. To curb this problem, we often present at seminars, webinars, community workshops, and other public engagements (in addition to publishing online articles) to educate the public about legal issues relevant to them or their communities.

Advocacy

We monitor proposed legislation or government policies for potential changes contrary to the public interest or prejudicial to any societal groups. We then make submissions to Parliament on behalf of nonprofit clients. For example, we submitted numerous suggested revisions to proposed amendments to domestic violence legislation, some of which became law. Alternatively, we provide clients with legal opinions so that they may strategise their own advocacy initiatives.

Community Outreach

One of Werksmans' signature pro bono projects is a law clinic established in Diepsloot, a highly impoverished township in Johannesburg. Through this law clinic (and routinely staffing other organisations' clinics), we assist indigent community members with a diverse range of legal issues.

Direct Intervention

This involves representing pro bono clients—either indigent (or disenfranchised) individuals or organisations—in general dispute resolution and strategic litigation (against state or private entities) addressing broader constitutional or societal issues. Through litigation, we have necessitated statutory changes affirming asylum seekers' constitutional entitlement to unemployment insurance and informed jurisprudential and statutory developments to the laws regulating hate speech in South Africa.

Despite thousands of hours in pro bono legal services a year, much more needs to be done to lessen the inequality that plagues the people of South Africa.



Dakalo Singo

Head of Pro Bono

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