

BRIEFING DOCUMENT ON GENDER TRANSFORMATION IN THE JUDICIARY

19 July 2013

In this note, we briefly examine the gender composition of the Judiciary in relation to transformation.

The appointment of judicial officers is governed by Chapter 8 of the Constitution of the Republic of South Africa. Section 174 (2) when referring to the appointment of judicial states that : “The need for the Judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed”. The consideration of racial and gender dynamics is in addition to the requirement that a candidate must be appropriately qualified and be fit and proper as stated in section 174 (1).

The premise for our research is the Constitutional imperative mentioned above. We recognise that a strong and capable judiciary is dependent on having well qualified, astute, judicial officers who are have excellent craftsmanship. In addition these judicial officers must reflect the transformatory vision of our Constitution. Hence we believe that merit and transformation are not mutually exclusive and that judges must be appropriately qualified but must also broadly reflect the country’s demographic composition. While our courts have evolved as regards racial demographics, in a country where more than 50% of the population are women, visible efforts to improve the gender dynamics have been sorely lacking and there has been no discernible consistent improvement in in the gender composition of the judiciary.

As of February 2013, the Judiciary was comprised of 240 Judges with only 70 being female amounting to just 29% of the judicial officers. In 1994, there was only one female judge of a total of 165 judges. The numbers have increased greatly since then, but it still averages a maximum of 4 female appointees annually.

In May, the President Jacob Zuma announced that a further four women had been appointed to the Gauteng bench, a much needed addition. Yet, as of January, only 22% of that bench was female. Countrywide, only the North-West bench as more reached a 50% threshold, with three other courts reaching 40-43% in relation to female representation.

The President also appointed two judges to the Supreme Court of Appeal (SCA) in May, one of whom is female. This brings the total number of female judges on the SCA to eight out of a total of 22 judges. The Constitutional Court is the most glaring example of how gender transformation has been neglected with only two women amongst the eleven sitting Justices. In 1994, at the inception of the court, there were two women, Justices Kate O’Regan and Yvonne Mokgoro - 19 years later the number has not changed.

We believe that the very legitimacy of the courts is affected when its judicial officers are not broadly representative of society. Our research has shown that transformation is not about the numbers,

but more about changing prevailing attitudes and perceptions that are fundamentally discriminatory and sexist. This view stems from discussions with women working in the legal profession who have experienced discrimination and sexism, and from our observation of interviews conducted by the Judicial Service Commission(JSC). We are also cognisant of the fact that South Africa is a deeply patriarchal society and these attitudes are not exclusive to the judiciary but permeate every sector of society; hence the need for research to feed into constructive engagement with stakeholders. The founding provisions of the Constitution list amongst others, non-sexism and the achievement of equality as values that are part of the country's foundation. These two values go to the heart of our research on gender transformation as they affirm the importance of Section 174(2).

In this regard, we conduct action research and focus on the following:

1. Interrogating the obstacles to gender transformation in the judiciary by focusing primarily on the government (this includes the Presidency and Department of Justice and Constitutional Development), the Judicial Service Commission (JSC), the Bar Association and Attorneys' profession.
2. Using our research to write peer-reviewed academic articles, Op-eds, reports and other related material.
3. Partnering with a range of interested parties in a bid to infuse their commitment to this issue with our expert research. These parties include but are not limited to the South African Chapter of the International Association of Women Judges (IAWJ) and Civil Society organisations, such as the Sonke Gender Justice Network.
4. Examining what measures can be taken to tackle the lack of gender transformation which includes a complaint laid with the Commission for Gender Equality (CGE) on the 19th of October 2012. The CGE has called for a Commission of Inquiry to be held in August following our complaint.
5. Facilitating and/or participating in workshops and dialogues that explore issues around gender transformation and seek to create common understanding amongst relevant stakeholders.