



## **JSC Media Briefing**

### **Johannesburg (22 February 2013) Mogoeng Mogoeng, Chief Justice of the Republic of South Africa**

I acknowledge Colleagues present, members of the media, fellow South Africans, Good evening.

You have since this morning witnessed the interviews of five candidates aspiring to be appointed to the highest Court in the Republic of South Africa.

I will upon completion of this short briefing, hand over to fellow Commissioners responsible for engaging with the media on our behalf to announce who of the five candidates are recommended to be considered for appointment by the President.

Suspecting that you are possibly burning with a desire to ask some questions, we have decided to take such questions as you may wish to ask. But first, a few remarks. As I indicated earlier, for some time now I have cited Parliament's delay in promulgating the Regulations necessary to regulate the business of the Judicial Conduct Tribunals as the key reason for my inability to appoint Judicial Conduct Tribunals to look into disciplinary charges to be proffered against Judge President Hlophe, Judge Motata, Judges Preller, Poswa, Mavundla and Webster. These Regulations have since been promulgated, to enable us to appoint the Tribunals in line with the decision taken by the JSC.



Be informed therefore, that members of the Judicial Conduct Tribunals appointed to look into allegations leveled against Judge President Hlophe are:

- Retired Judge Labuschagne of the North Gauteng High Court: Tribunal President,
- Judge Sandi of the Eastern Cape High Court; and
- Ms Maduba, a Practicing Attorney.

As for Judge Motata, the members of the Judicial Conduct Tribunal are:

- Deputy Judge President Jappie (KZN High Court): Tribunal President,
- Judge Dambuza: Eastern Cape High Court; and
- Mr A Lax, a Practicing Attorney.

Finally, the Tribunal members for the matter against Judges Preller, Poswa, Mavundla and Webster of the North Gauteng High Court are:

- Constitutional Court Justice Nkabinde: Tribunal President,
- Judge Tlaletsi of the Northern Cape High Court; and
- Adv Nazeer Cassim SC of the Johannesburg Bar.

The terms of reference for each of these Tribunals have been settled and it is expected that each Tribunal shall, barring circumstances beyond their control, complete their business by the end of May 2013.

I now turn to a matter that some members of the media, NGOs and predictably regular commentators have recently paid particular attention to: **Gender Representation.**

Our pronouncements as the Judiciary matched by our actions must have left no doubt in the minds of objective observers, that our commitment in giving expression to the constitutional imperative to transform the



Judiciary with particular regard to the representation on the basis of both race and gender, reigns supreme.

Our Courts must cease to look like what former President Nelson Mandela referred to as “a white man’s Court” during the Rivonia Trial. To this end, from October 2011 to date, we have recommended 36 new candidates for appointment to the Bench, and those who were serving Judges to other Courts or higher judicial office, and, they have all been appointed. Of the 36 candidates, seven were white males, four white females, nineteen black men and six black women.

This development or track record bears testimony to our commitment to appointing all suitably qualified South Africans, including our white compatriots, and which undergirds our unwavering commitment to realizing the transformation imperative of ensuring that black people and women, who were deliberately excluded during the apartheid regime. Of the 36 appointees, 29 are self-evidently transformation agents.

But our efforts do not merely end with these appointments. It extends to the progressive realization of our vision to transform the Judiciary by taking concrete steps.

We have campaigned for the equitable distribution of quality and lucrative work to women and black legal practitioners. Hopefully, our devout critics will not only confine themselves to professionalizing and perfecting the art of fault-finding but will also champion this noble and critical course. For, they have been conspicuous by their silence in this regard.

We have seen Parliament and many Government Departments change



their briefing patterns since we challenged their previous briefing patterns in private and in public.

We have also embarked upon an aggressive programme of training Aspirant Judges to create a pool out of which women and black people can be appointed to higher courts in line with the transformation agenda. Training programs have been designed for newly appointed Judicial Officers and continuing Judicial education for serving Judges of all courts to learn from one another, so that as many as possible have the opportunity to rise to the highest echelons of our Judiciary.

Serving and retired Judges, Academics and Civil Society have never been precluded from encouraging and even nominating women as candidates for vacancies in the Constitutional Court.

Only two male Judges were initially nominated for the 2012 vacancy in the Constitutional Court. It was only after an extension that one more male Judge and one female Judge were added to the list of two. Then a spirited campaign for the appointment of a woman was waged. A very able candidate, whose sterling performance continues to amaze us, was appointed.

Some of the most vocal about appointments to the Constitutional Court wrote articles lamenting the appointment of a man over a woman. Two of them have since nominated a man. None of the champions of gender representation have expressed any disappointment about this. Instead they are accusing the President, the Minister and myself for not being serious about transformation.

Perhaps the question should be: “who or what stopped them from owning



up to their civic responsibility of encouraging and nominating women to be considered for appointment”? What we should aspire to, is to collectively take responsibility that enhances this much needed transformation agenda

My Colleague Skweyiya J is retiring next year, to be followed by two other Colleagues, about four or five years later. Hopefully, many and not just one woman will be nominated to create a wider scope for the appointment of women. If there is a campaign to wage, it is the encouragement of a wide range of women in preparation for 2014 and beyond. The campaign to delegitimize the JSC as a constitutionally established appointing authority will not help efforts to build an independent Judiciary.

Some of those who serve in the JSC took an oath or affirmation upon appointment as Judges to carry out their constitutional duties without fear, favour or prejudice.

In addressing the needs of the society, informed by the constitutional mandate of the JSC, it is our concerted effort to achieve gender representation in the Judiciary.

If our decisions accord with the preferred outcome, it will always be sheer coincidence, not because we bowed down to pressure. Judges should not even have as much as a semblance of a constituency.

Finally, women will be appointed to the Constitutional Court and other courts, not because pressure groups or luminaries have intimidated or instructed us to do so, but because it is our much treasured responsibility. But nobody will be appointed to any court as of right.



All sectors within the South African society must be transformed, including the Judiciary. The economic sector remains lamentably untransformed. The four big media houses cry out for meaningful transformation in terms of ownership, race and gender. The editors and the leadership of related associations are male dominated.

May we all get our houses in order and rise to the transformation challenges for a better South Africa.

I thank you all.