

## Is the call for gender transformation in the judiciary being heeded?

On 21 November 2012 the Judicial Service Commission (JSC) placed advertisements calling for nominations to fill 11 vacancies in various superior courts. On 23 February 2013 the JSC compiled a shortlist of candidates to be interviewed in Cape Town on 8 to 12 April 2013. Twenty three candidates were shortlisted, of which 14 are women.

Women are still in the minority in the profession, but 'it is improving'; however, it will 'take some time' before there is the right balance, said JSC spokesperson CP Fourie.

The JSC has on numerous occasions highlighted the lack of nominations of suitably qualified female candidates and urged role players to nominate suitably qualified candidates. Regarding the current ratio of male to female nominations, Mr Fourie said: 'It is an encouraging sign, and perhaps now the call is being heeded.'

The issue of gender transformation was again highlighted when former Constitutional Court Judge Zak Yacoob's retirement was announced last year. Of the five candidates shortlisted to replace Justice Yacoob and the subsequent four candidates whose names were submitted to the President to consider for appointment, all were men.

Women have more obstacles in their way and they have to be very 'courageous' to overcome these, said Justice Yacoob.

'The point is that the number of women in the Constitutional Court has been decreased from three to two by the JSC appointments in 2009. Nothing was done by the President or the JSC to right the situation in the appointment of the person to replace the [previous] Chief Justice. I hope that the President will, in the face of the absence of any women making themselves available to replace me, call for more names as he is entitled to do in terms of the Constitution,' said Justice Yacoob.

President of the South African Women Lawyers Association, Noxolo Maduba, told *De Rebus* that the recent announcement by the JSC is a 'good thing and is long overdue'. She also emphasised that women candidates should not merely be shortlisted but 'highly considered' for appointment. Ms Maduba said that women have been historically disadvantaged and have had to 'prove themselves'.

'I do not hope to see [transformation] happen overnight. It is a transition that should be embraced,' she said.

JSC spokesperson Dumisa Ntsebeza stated that the furore regarding the lack of female representation on the Constitutional Court arose over Supreme Court of Appeal Judge Mandisa Maya having been overlooked for a position at the court. Advocate Ntsebeza noted that some female candidates had declined to be nominated.

Mr Ntsebeza added that Justice Yacoob was one of the most critical of the lack of female representation. When compiling the shortlist, Mr Ntsebeza said that the JSC was conscious of gender. 'There has always been a consciousness [in the JSC] of s 174(2) [of the Constitution], which addresses gender and race balance,' he said.

He added that the JSC had taken many factors into consideration when selecting the candidates for the shortlist.

Currently only two of the positions on the Constitutional Court Bench are held by women.

• See 2012 (Dec) *DR* 10 and 54.

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