



PRESS STATEMENT

CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA, CALLS ON SOUTH AFRICAN GOVERNMENT TO DO MORE TO ENSURE GENDER EQUALITY IN THE JUDICIARY

8 March 2017

In commemorating International Women's Day with the UN theme focusing on "Women in the Changing World of Work: Planet 50-50 by 2030," the Centre for Human Rights, Faculty of Law, the University of Pretoria, welcomes the nomination of Justice Mandisa Muriel Lindelwa Maya as the President of the Supreme Court of Appeal. She has extensive experience having served in the Constitutional Court, Supreme Court of Appeal, the Labour and the High Court. If Justice Maya's nomination gets confirmed, she would become South Africa's first woman President of the Supreme Court of Appeal. This would be ground breaking and a major step in ensuring that women are represented equally in the judiciary and in achieving gender equality.

However, progress towards gender equality takes two steps back in light of the nomination of Justice Raymond Zondo as Deputy Chief Justice by President Zuma. This is in light of the fact that Justice Bess Nkabinde has been Acting Deputy Chief Justice since 23 May 2016. While we note that her 12-year term expires at the end of 2017, limiting the time she would serve as (permanent) Deputy Chief Justice to nine months, we regret that the process to appoint a new Deputy Chief Justice had not been accelerated when then Deputy Chief Justice Dinkang Moseneke retired *on 20 May 2016*. This would have been the opportune time to appoint a woman to hold the second highest judicial office in the country. This raises questions as to the President's full

commitment to gender equality under the South African Constitution and in terms of our international obligations under the UN Convention on the Elimination of all Forms of Discrimination against Women and the Protocol to the African Charter on the Rights of Women in Africa.

There has been no reason posited for overlooking competent female candidates such as Justice Sisi Khampepe, one of the seven judges of the Constitutional Court, appointed since 2009. She is a senior to Justice Zondo, who became an acting judge in November 2009 and permanently appointed with effect from September 2012. Overlooking the current acting Deputy Chief Justice due to her impending retirement may arguably have been acceptable if an equally senior female judge was nominated. Failure to do so at the very least deserves an explanation. If Justice Zondo is confirmed, another opportunity for gender transformation of the judiciary at this level will be missed.

Section 174(3) of the Constitution of the Republic of South Africa, 1996, states:

“The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court and, after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.”

Although the President must consult the Judicial Service Commission (JSC) before he appoints anyone as Chief Justice and Deputy Chief Justice, there is no legal requirement for how such consultation should take place. Also, the President is ultimately not constrained in his choice of candidate.

We hereby call for a reform of the appointment process based on best practices. For instance, in the case of Zimbabwe, the appointment for Chief Justice and Deputy Chief Justice is made from a list of three nominees selected by the JSC following advertisements and the holding of public interviews as set out in section 180 of the 2013 Zimbabwean Constitution. Section 180(3), which reads as follows, regulates the position when the President rejects these three nominees:

“If the President considers that none of the persons on the list submitted to him,... are suitable for appointment to the office, he or she must require the Judicial Service Commission to submit a further list of three qualified persons, whereupon the President must appoint one of the nominees to the office concerned.”

These provisions ensure that it is not at the sole discretion of the President to appoint a Chief Justice or Deputy Chief Justice.

We call on President Zuma and the South African government to be bold and demonstrate that they are serious about empowerment of women and realization of a more gender inclusive judiciary. Achieving gender equality in the judiciary is imperative for sustainable development.

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