

TIPPING THE SCALES

Realities and remedies for gender
transformation of the legal profession



WOMEN'S
LEGAL
CENTRE



Equality & Justice

TABLE OF CONTENTS

1. ACKNOWLEDGEMENTS

2. ABBREVIATIONS

3. BACKGROUND

- 3.1. Respondents and analysis

4. CONTEXT: GENDER TRANSFORMATION IN THE LEGAL PROFESSION

- 4.1. Legislative and policy imperatives
- 4.2. What the numbers show
- 4.3. Gender representation on leadership structures in the legal profession
- 4.4. Other measures of gender transformation in the profession and its structures

5. FINDINGS: WOMEN'S EXPERIENCES IN THE LEGAL PROFESSION

- 5.1 Institutionalised exclusion and discrimination
- 5.2 Advancing within the profession: Barriers and opportunities
- 5.3 To stay or to go: Exiting the profession
- 5.4 Burden of care: Legal professional and mother
- 5.5 Treatment in management and leadership
- 5.6 Sexual harassment and bullying
- 5.7 Definitions and understanding of gender transformation
- 5.8 What is to be done?

6. RECOMMENDATIONS

- 6.1. Setting up accountability mechanisms
- 6.2. Ensuring policy evaluation and benchmarking
- 6.3. Changing leadership and structures
- 6.4. Providing mentoring and support
- 6.5. Enabling safe spaces
- 6.6. Providing mentoring and support
- 6.7. Addressing sexual harassment

Appendix 1:

National Association of Democratic Lawyers “Gender Transformation within the Legal Profession Project”: Questionnaires

Appendix 2:

Constitution of the National Association of Democratic Lawyers

Appendix 3:

NADEL “Gender Transformation within the Legal Profession Project”: Seminar & Panel Discussion, 6 October 2014

Appendix 4:

NADEL, “Gender Transformation within the Legal Profession Project”: Implementation Plan, 30 April 2015

Appendix 5:

NADEL “Gender Transformation within the Legal Profession Research and Dialogue Project”: Narrative Report on Implementation, 2015

Appendix 6:

NADEL Resolution on Sexual Harassment & Gender Based Violence in the Legal Profession

Appendix 7:

National Association of Democratic Lawyers “Gender Transformation within the Legal Profession Project”: Provincial Programmes

01 | ACKNOWLEDGEMENTS

The National Association of Democratic Lawyers (NADEL) recognises that this project could not have been implemented without the financial support of the Foundation for Human Rights.

The National Association of Democratic Lawyers (“NADEL”) recognises that this project could not have been implemented without the financial support of the Foundation for Human Rights and The Women’s Legal Centre. Its steadfast commitment, to the need for gender transformation within the legal profession, has allowed for the voices of women to be heard through this project.

The project would not have reached hundreds of women within the profession, had it not been for the participation and support of partners, including the Black Lawyers Association (BLA), Advocates for Transformation (AFT), the South African Women Lawyers Association (SAWLA), the Law Society of South Africa (LSSA) and various Provincial Law Societies, the Cape Bar Council, and the Department of Justice and Constitutional Development (DoJ&CD). NADEL is grateful to our provincial branches and gender desks that facilitated the provincial dialogues.

We are especially grateful for the vision, dedication and passion of Ms. Seehaam Samaai, who drove the project implementation with the support of Ms. Fazoe Sydow. Our thanks go to Mandi Mudarikwa and Charlene May for facilitating the dialogue sessions, conducting the reference group meetings, and drafting the initial report. We are grateful to Zama Khumalo for assisting with analysing the questionnaires and collating the laws and policies relating to gender discrimination and transformation in the legal profession. Thanks also to Melanie Judge and Erica Emdon for finalising the analysis and compiling this report.

This project would not have been possible without the support of Lucrecia Seafeld who passed away on 29 May 2017. She was the programme manager and driver of the project at the Foundation for Human Rights (FHR) and worked closely with NADEL on its implementation. She was a committed human rights defender and a staunch believer in the advancement of women. Her passionate devotion to women in the legal profession meant that she served as a mentor and pillar of strength to many women. She leaves a legacy of integrity and dedication. Hamba Kahle Lucrecia, your spirit lives on in this project.

We acknowledge the extraordinary women who made up the Reference Group that helped focus and direct the project. We also thank all the women in the legal profession who participated in the study. We hope that we have done you justice.

NADEL, August 2018



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**THIS PUBLICATION WAS PROOFREAD AND REDESIGNED IN 2021 BY
FORTALEZA AGENCY & REPRINTED BY MINUTEMAN PRESS.**



FUNDING IS FACILITATED BY THE FOUNDATION FOR HUMAN RIGHTS

through the Department of Justice and Constitutional Development and the European Union's Sector Budget Support Programme – Socio-Economic Justice for All (SEJA) Programme.

02 | ABBREVIATIONS

ACT	Legal Practice Act, No. 28 of 2014
AFT	Advocates for Transformation
ALS	Association of Law Societies
BLA	Black Lawyers Association
CGE	Commission for Gender Equality
CLS	Cape Law Society
DOJ&CD	Department of Justice and Constitutional Development
FSLs	Free State Law Society GCB – General Council of the Bar KZNLS – KwaZulu-Natal Law Society LSSA – Law Society of South Africa
LPA	Legal Practice Act
LPC	Legal Practice Council
LEAD	Legal Education & Development
LSNP	Law Society of the Northern Provinces
NADEL	National Association of Democratic Lawyers
NF	National Legal Forum on the Legal Profession
NPA	National Prosecuting Authority
SAC-IAWJ	South African Chapter – International Association of Women Judges
SAHRC	South African Human Rights Commission
SAJEI	The South African Judicial Education Institute
SAWLA	South African Women Lawyers Association

03 | BACKGROUND

On 6 October 2014, the National Association of Democratic Lawyers (NADEL)¹, in partnership with the Foundation for Human Rights (FHR), held a seminar at the Cape Law Society (CLS) titled ‘Gender transformation within the legal profession: Is enough being done?’

The purpose of the seminar was to facilitate discussion on the current state of racial and gender disparities in the legal profession, and to stimulate debate towards identifying key issues and challenges faced by individuals in this regard. The seminar also explored the nature of the efforts required to promote the integration of women within the legal profession, and how to create an enabling environment for women to pursue a career in law.²

At the seminar, it was agreed that further discussion, research and advocacy were needed, to support the identification of issues and challenges in respect of gender transformation within the profession. To this end, NADEL, together with the FHR, resolved that it would initiate a research project that builds on existing research,³ that includes dialogues and consultations with women in the legal profession, and with various professional bodies – such as the Black Lawyers Association (BLA), the South African Women’s Lawyers Association (SAWLA), the General Council of the Bar (GCB) and provincial law societies – so as to enable wide participation in the project across the legal profession.

The broader intention of the project was to facilitate a paradigm shift towards transformation indicators, that are not reduced to numbers alone, and include the enjoyment, protection and promotion of rights for women, across all spheres of the legal profession.

The following key activities were undertaken during the course of the project:⁴

- Establishment of a Reference Group comprised of women lawyers, academics and representatives from the Department of Women in the Presidency and from the Department of Justice and Constitutional Development’s (DoJ&CD) Gender Directorate, the BLA, Advocates for Transformation (ADT), the South African Law Deans Association, the Commission for Gender Equality (CGE), and NADEL gender convenors, amongst others. The reference Group provided guidance to NADEL on the focus of the dialogues and the research⁵
- Eight dialogues⁶ were held during 2015, and were attended by over 200 women from across the country, as follows:
 - Western Cape (44 attendees)
 - Gauteng (40 attendees)
 - Northern Cape (18 attendees)
 - KwaZulu-Natal (60 attendees)
 - Eastern Cape (29 attendees)
 - Free State (18 attendees)
 - Mpumalanga, Limpopo and North West (37 attendees)

Participants came from private practice, the public service, the National Prosecuting Authority, the magistracy and the judiciary.

- A survey was conducted on a wide range of issues pertaining to women's experiences in the profession including the obstacles they encounter, how these might be addressed, and what views they held on transformation more broadly.

3.1 RESPONDENTS AND ANALYSIS

This report presents a portion of the survey results from questionnaires that were circulated through NADEL branches and gender desks, partner organisations, and through project dialogues, of which 110 were completed.⁷ Respondents comprised attorneys, advocates, candidate attorneys, magistrates and researchers, profiled as follows:

TABLE 1: AGE AND SEX ⁸					
	17-25	26-35	36-50	50+	Total
Female	14	31	35	15	95
Male	2	1	1	3	7
TOTAL	16	32	36	18	102
No data					8

1 NADEL is an organisation of legal practitioners and students that aims to develop, promote and sustain a system of law that is fair, just, equitable, and accessible to and understood by all. It has as its primary goal a legal and judicial system that realises access to justice for disadvantaged people and the rule of law. It also aims to render and coordinate legal assistance to those involved in human rights, and to promote the study of transformation in the legal profession, including in the judiciary and magistracy. See <https://www.nadel.co.za> and the NADEL Constitution (Appendix 2).

2 See NADEL 'Gender Transformation within the Legal Profession', seminar and panel discussion 6 October 2014 (Appendix 3), and <http://www.derebus.org.za/gender-transformation-is-enough-being-done/> for a De Rebus report on the seminar.

3 The CGE Lack of Gender Transformation in the Judiciary Investigative Report, 2016 and CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession" were two major existing research reports to draw from.

4 See attached "National Association of Democratic Lawyers Gender Transformation within the Legal Profession Project Implementation Plan", 30 April 2015 (Appendix 4), which sets out the project plan.

5 Twenty-five people made up the Reference Group at the launch of the project, held on 25 July 2015. See 'NADEL: Gender Transformation Within the Legal Profession Research and Dialogue Project', 2015 (Appendix 5), which reports on the launch and the reference group, and see also <http://www.derebus.org.za/project-address-gender-transformation-legal-profession-launched/>

6 Ibid.

7 A total of 110 questionnaires were completed. Demographic data from 4 of these was missing.

8 102 respondents answered the question on their age and sex. "No data" indicates that the data on this question was not available in respect of eight people.

TABLE 2: RACE ⁹	
Black/African	62
Coloured	5
Indian	25
White	10
TOTAL	102
No data	8

TABLE 3: PROVINCIAL LOCATION ¹⁰	
Eastern Cape	24
Free State	9
Gauteng	22
KwaZulu-Natal	40
Limpopo	3
Mpumalanga	1
North West	4
Northern Cape	1
Western Cape	1
TOTAL	105
No data	5

For the purpose of this report, a select number of questions we analysed, pertain directly to respondents' gendered experiences in the workplace. These totalled 31 (see Appendix 1 for the questions analysed). A content analysis was undertaken of the responses, and the findings were themed in accordance with the primary areas of enquiry, along with reference to the wider body of literature and research in the field.

Given the inconsistency of the responses and the high number of incomplete or illegible responses¹¹, a meaningful deduction of comparative statistics for each question could not be ascertained. Consequently, the findings from the available responses have been subjected solely to a qualitative analysis. As the sample population was not representative, extrapolation of the findings to the wider legal profession cannot be made. Notwithstanding these limitations, the analysis of responses offers valuable anecdotal and qualitative insights into key issues pertaining to the status, treatment and experience of women in the legal profession, and to transformation within the sector more broadly. Organised around key themes that emerged in the analysis, the findings expose current realities facing women in the profession, perceptions of the state of gender transformation therein, and the range of inequalities and discriminations women experience. The report also presents respondents' views on possible remedies, as well as offering a set of broad recommendations that draw on both the survey findings and the project dialogues and consultations. Selected secondary sources are included in the analysis, to provide context and to show convergences with other relevant research.

9 102 people answered the question on race. "No data" indicates that the data on this question was not available in respect of eight people.

10 Table 3 sets out numbers in attendance from each province. "No data" indicates that the data on this question was not available in respect of five people.

11 The questionnaires were completed by hand. The direct responses presented in this report are all in italics, and have been slightly edited for purposes of readability.

04 | CONTEXT: GENDER TRANSFORMATION IN THE LEGAL PROFESSION

4.1 LEGISLATIVE AND POLICY IMPERATIVES

Women were allowed to join the legal profession in South Africa in 1923, following the enactment of the Women's Legal Practitioners Act 7 of 1923.¹² Despite important progression toward formal inclusion, the realisation of substantive gender parity in the legal sector has been, and remains, an enduring and arduous task.

A key requirement for admission to the legal profession is that one must be a 'fit and proper' person, as set out in Section 15(1)(a) of the Attorneys Act 53 of 1979 and Section 3(1)(a) of the Admission of Advocates Act 74 of 1964. In this regard, 'the burden of proof is on the applicant. Membership to the profession is thus subjected to character screening, yet what exactly a "fit and proper" person is, is not defined or described in legislation or regulations.

It is commonly accepted that in order to be "fit and proper" a person must show integrity, reliability and honesty, as these are the characteristics that could affect the relationship between a lawyer and a client, or a lawyer and the public.¹³ Historically, this proscription has been used to exclude persons of a certain race, gender or political affiliation from joining the legal profession.¹⁴ For example, several Law Societies in South Africa brought applications¹⁵ to have lawyers, involved in the anti-apartheid struggle, removed from the roll of attorneys or advocates, arguing that they were not 'fit and proper' persons.

Gender and racial equality were core values of the struggle for a democratic South Africa. Such values are enshrined in the country's constitutional and legislative framework, and in political commitments to develop national institutions, policies and programmes to dismantle structural gender inequalities.¹⁶

12 In the period 1909-1912, Madeline Wookey challenged the CLS's refusal to admit her to practice law. In the same year as the passage of the Women's Legal Practitioners Act 7 of 1923, Irene Antoinette Geffen became the first woman to be admitted to the Bar (Lilla Crouse, *A Bar for Women*, Advocate 2002).

13 Slabbert, M *The Requirement Of Being A "Fit And Proper" Person For The Legal Profession* PER / PELJ 2011(14)4, 212.

14 For example, in *Incorporated Law Society v Wookey* 1912 AD 623, a full bench of the Appellate Division relied on Roman Dutch law and its exclusion from legal practice of those persons who could be termed 'unfit and improper' including, the deaf, the blind, pagans, Jews, persons who denounced the Christian Trinity and women, to exclude Madeline Wookey from joining the legal profession as a woman.

15 *Incorporated Law Society, Transvaal v Mandela* 1954 (3) SA 102 (T), *Matthews v Cape Law Society* 1956 (1) SA 807 (C), *Society of Advocates of SA (Witwatersrand Division) v Fischer* 1966 (1) SA 133 (T), *Natal v Hassim* 1976 (4) SA 332, *Ex Parte Moseneke* 1979 (4) SA 884 (T), and *Natal Law Society v Maqubela* 1986 (3) SA 849 (N).

16 This includes the establishment of the CGE and the South African Human Rights Commission in terms of Chapter 9 of the Constitution, as well as policies such as affirmative action and the National Policy Framework on Gender Equality.

These imperatives have motivated South Africa to accede to a number of regional and international instruments, which protect and promote gender equality and enhance the integration of gender considerations into government policies and programmes.

Consequently, in the post-apartheid period, the state has adopted a plethora of legislative measures aimed at reorganising the race, gender and culture of society, which includes the legal profession.

Foremost is the 1996 Constitution and its Bill of Rights in which unfair discrimination, on such grounds as gender, race, sex and sexual orientation, is prohibited.

Of particular significance is the Legal Practice Act (LPA) 28 of 2014 which establishes a new regulatory framework for the legal profession that includes, ‘the transformation and restructuring of the legal profession into a profession which is broadly representative of the Republic’s demographics under a single regulatory body.’

This concerns, amongst other aspects, ‘remov[ing] any unnecessary or artificial barriers for entry into the legal profession’, as well as advancing constitutional values and public accountability by the profession.¹⁷

The LPA also creates mechanisms and mandates for transformation, such as:

- Measures that provide equal opportunities to aspiring legal practitioners;¹⁸
- Programmes to empower historically disadvantaged legal practitioners, as well as candidate legal practitioners;¹⁹
- Provision of legal education and training ‘having due regard to our inherited legacy and new constitutional dispensation.’²⁰

The LPA makes provisions for the establishment of a regulatory body, namely the South African Legal Practice Council (the LPC), which has the duty to develop programmes to ‘empower historically disadvantaged legal practitioners.’²¹

The LPC must report annually to the Minister on progress made in implementing such programmes.²²

Furthermore, it is peremptory for the Minister to ‘make regulations relating to the establishment of a mechanism, to monitor progress on the implementation of the programmes relating to the empowerment of historically disadvantaged legal practitioners, as well as historically disadvantaged candidate legal practitioners’²³

In respect of the composition of the various bodies created by the LPA, appointments to such bodies must take into account a number of factors, including the ‘racial and gender composition of South Africa.’

This applies to the selection of the Council executive and staff; to the choice of members of disciplinary committees, set up in terms of the Act; and to the selection of the board and staff of the Fidelity Fund²⁴; as well as the composition of the interim body, the National Forum.²⁵

There are a number of other legislative and policy frameworks in place to promote gender equality and prohibit gender discrimination. These include:

- The Labour Relations Act (LRA) 66 of 1995 and Amendment Act 127 of 1998: Until the promulgation of the LRA, there were no specific legislative provisions that placed a prohibition on a prospective employer from refusing to appoint someone on the basis of, for example, gender, race or political affiliation.
- The Basic Conditions of Employment Act 75 of 1997 (BCEA): This gives effect to the right to fair labour practices entrenched in section 23(1) of the Constitution, by making provision for the regulation of basic conditions of employment, and by ensuring that South Africa complies with its obligations as a member state of the International Labour Organisation (ILO).
- The Employment Equity Act 55 of 1998 (EEA): This provides for employment equity through measures such as affirmative action to redress the imbalances of past discrimination. The EEA promotes the constitutional right to equality, and seeks to eliminate unfair discrimination in employment, to redress the effects of discrimination, and to achieve a diverse workforce that is broadly representative of South Africa's demographics.
- The Justice Vision 2000: Launched in 1997, this policy framework recognised the need for the administration of justice to become a more effective and open system of justice, in line with democratic and rights-based imperatives, through a concerned plan of action by the then Department of Justice.²⁶

17 See preamble to the Act.

18 Section 3(b)(iii).

19 Section 6(1)(b)(v).

20 Section 6(5)(f)(i) and (ii).

21 Section 6(1)(b)(v).

22 Section 6(5)(h)(iv).

23 Section 94(1)(b).

24 Section 26 of the Attorneys Act 53 of 1979 sets up the Fidelity Fund which is a fidelity guarantee fund that protects the public against loss as a result of theft of trust funds by attorneys, candidate attorneys or their employees. Members of the public are reimbursed if they suffer monetary loss. Section 41 of the Act provides that a legal practitioner is not permitted to practice without a fidelity fund certificate that secures the protection of the public.

25 Sections 4 and 97 of the LPA sets up the South African Legal Practice Council and National Forum respectively. The National Forum is an interim body, created to undertake the work required to restructure the legal profession and set up the South Africa Legal Practice Council. The latter is the body that will become the permanent regulatory body and will replace the provincial law societies.

26 <http://www.justice.gov.za/policy/misc/justice2000.html>

South Africa is also beholden to international obligations pertaining to gender transformation, including:

- The Convention on the Elimination of Discrimination against Women (CEDAW): Ratified in 1995, it obliges the state to eliminate discrimination, to embody the principle of equality between men and women, in political and public life and in the constitution and other legislation, and to ensure (through law and other appropriate means) the practical realisation of equality.²⁷
- By participating in the Fourth World Conference on Women held in Beijing in 1995, South Africa committed itself to ‘take all necessary measures to eliminate all forms of discrimination against women and the girl child, and remove all obstacles to gender equality and advancement and empowerment of women.’²⁸
- As a member of the Southern African Development Community (SADC), South Africa has agreed to the SADC Declaration on Gender and Development, and the addendum on the Prevention and Eradication of Violence Against Women and Children. This was adopted by SADC heads of state in 1997 in recognising gender equality as a fundamental human right.²⁹
- Goal 5 of the Sustainable Development Goals (SDGs), to which South Africa is a party, aims to achieve gender equality and empowerment of women and girls. Its targets include ending all forms of discrimination and violence against women and girls, eliminating harmful practices and recognising the value of unpaid care and domestic work.
- The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003) ensures that the rights of women are promoted, realised and protected, and that they enjoy fully all their human rights. This includes addressing all forms of gender discrimination in representation, participation and decision-making in policy, legislation, and development plans, programmes and activities.

Despite the plethora of domestic and international laws and policies to address structural and historical gender inequalities, the extent to which these have translated into effective and wide-scale transformative shifts for women within the legal profession in South Africa, remains in question.

4.2 WHAT THE NUMBERS SHOW

PRESENCE AND THROUGHPUT OF WOMEN IN THE SYSTEM

In 2017, of the 7857 students that enrolled for law degrees, 54% were female and 46% male.³⁰ In the same year, women made up 45% of 1670 magistrates, 39% of 25 283 registered attorneys, and 35% of 246 judges. Of the 2 915 advocates registered at 11 Bars, only 27% were women.

As seen in the table below, it is notable that there are a low number of women who reach the pinnacle of legal seniority – including senior partnerships at law firms, senior advocates (silks), magistrates or judges – relative to the number of women that enrol at law school, suggesting impediments to throughput over time.

TABLE 4: REPRESENTATION OF WOMEN (2017) ³¹				
2017	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
Students enrolled	3 632	4 225	7 857	54%
LLB graduates (2016)³²	2 145	2 777	4 922	56%
Magistrates	921	749	1 670	45%
Registered attorneys	15 465	9 818	25 283	39%
Judges	159	87	246	35%
Advocates	2 119	796	2 915	27%

STUDENTS

The academic requirement to enter the legal profession as an attorney or advocate is an LLB. This may be completed in either four or five years.³³ It is worth noting that in 2016 more than half the LLB graduates were women, and in 2017 more than half the students that enrolled were women.³⁴

TABLE 5: STUDENT ENROLMENT AND GRADUATION ³⁵				
	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
2017 – students enrolled	3 632	4 225	7 857	54%
2016 – students who completed the LLB	2 145	2 777	4 922	56%

ATTORNEYS

The Attorneys Act 53 of 1979, and the rules promulgated in terms of the Act, prescribes the admission requirements for attorneys. This includes the completion of an LLB, followed by two years of vocational training (known as articles) served at a law firm or another permissible alternative such as a law clinic or Legal Aid South Africa. Another option is to serve articles for one year, with an additional full-time year spent at the School of Legal Practice.³⁶ Admission as an attorney takes place by means of application to the High Court, after vocational training is complete. In order to practise, the attorney must then register with a law society in the province in which they are based.

27 Articles 2 and 7.

28 Paragraph 24.

29 Paragraph b1.

30 LEAD 2016/2017 statistics, Law Society of South Africa, p.20.

31 Ibid, pp. 20, 23, 29, 49, 50, 51 and 53.

32 The LEAD figures do not include 2017 LLB graduate numbers.

33 The four-year LLB is an intense law degree, the alternative being to complete a three-year BA Law or BCom Law followed by a two-year LLB. The universities at which students may enroll for a legal degree include the University of Cape Town, University of Fort Hare, University of the Free State, University of Johannesburg, University of KwaZulu-Natal, North-West University, Nelson Mandela University, University of Pretoria, Rhodes University, Stellenbosch University, University of South Africa, University of Venda, Walter Sisulu University, University of Western Cape, University of the Witwatersrand and the University of Zululand.

34 Figures for the number of women that graduated in 2017 were not available at the time this report was prepared.

35 LEAD 2016/2017 statistics, published by the LSSA, pp. 20 and 23. The figures for students enrolled and the figures for students who graduated do not relate to one another, but simply illustrate the proportion of women enrolling and graduating in those particular years.

36 The School for Legal Practice was established by the LSSA in 1990 and provides post-graduate vocational training to LLB graduates. There are nine centres, one in each province, where students attend on a full-time basis for a year as an alternative to serving one year of articles.

In 2017, of the 3013 people registered for articles, 44% were women.

TABLE 6: REGISTRATION FOR ARTICLES (2016/17) ³⁷

	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
Articles Registered	1 701	1 312	3 013	44%

In 2017 there were 25 283 attorneys registered with the four law societies, of which 39% were women. The greatest number of women attorneys registered was in the area of jurisdiction of the Law Society of the Northern Provinces (LSNP).

TABLE 7: PRACTISING ATTORNEYS (APRIL 2016 TO MARCH 2017) ³⁸

	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
Cape Law Society	4 058	2 521	6 579	38%
Free State Law Society	688	327	1 015	32%
Law Society of the Northern Provinces	8 887	5 606	14 493	39%
KwaZulu Natal Law Society	1 832	1 364	3 196	43%
TOTAL	15 465	9 818	25 283	39%

The table below suggests no significant progression in the percentage of women admitted as attorneys, which averages 44% over the 11 year period.

TABLE 8: ATTORNEY ADMISSIONS (2006-2016) ³⁹

	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
2006	755	846	1 601	47%
2007	707	786	1 493	47%
2008	454	898	1 352	34%
2009	1 064	1 045	2 109	50%
2010	735	939	1 674	44%
2011	764	907	1 671	46%
2012	783	907	1 690	46%
2013	719	1 011	1 730	42%
2014	1 109	1 426	2 535	44%
2015	960	1 325	2 285	42%
2016	1 214	1 438	2 652	46%

³⁷ LEAD 2016/2017 statistics, published by the LSSA p.32.

³⁸ Ibid, p.29.

³⁹ Ibid, p.35.

In big law firms, women attorneys tend to occupy fewer senior positions. A study undertaken in 2013 found that White men dominated the upper echelons of corporate law firms: 80% of the chief executives of 12 corporate law firms, and 72% of managing partners, were White males.⁴⁰

Furthermore, 53% of the ownership of those firms was held by equity partners who were White males. Women made up 53% of employees at the participating firms, as illustrated in the table below. There is also a stark contrast on the basis of race, in that both White males and White females enjoy significantly higher positions than Black men and Black women, with White men being the only ones to head up the 12 large law firms surveyed in 2013. Further research is required to track whether there has been any change in women's levels of seniority more recently.

TABLE 9: SENIOR POSITIONS AT 12 LARGE LAW FIRMS (2013)⁴¹

RACE AND SEX	SALARIED PARTNER	EQUITY PARTNES	MANAGING PARTNER	CEO
White Male	45%	53%	72%	80%
White Female	23%	26%	11%	0
Black Male	9%	5%	11%	0
Black Female	4%	5%	0	0

ADVOCATES

In terms of the Advocates Act, completion of an LLB degree and admission at court are prerequisites to becoming an advocate. However, to be a member of one of the country's 11 Bars, it is also necessary to complete one year vocational training, under the guidance of an advocate who is a member of the Bar. Each Bar has an independent voluntary association with its own rules and regulation of members. As shown in the table below, in 2017 only 27% of advocates were women. Curiously the figure spiked to 41% in 2016 and then dropped back down to 27% in 2017, a level similar to that of three years prior.⁴²

TABLE 10: GENDER REPRESENTATION AT THE BAR (2014 – 2017)⁴³

	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
2014	1 926	645	2 571	25%
2015	1 582	696	2 278	31%
2016	137	96	233	41%
2017	2 119	796	2 915	27%

⁴⁰ Plus 94, Project Law: Demographic Survey of Large Corporate Law Firms, South Africa, May 2013, pp. 14 to 15.

⁴¹ Ibid.

⁴² Some Bar Councils provide figures for gender and race breakdowns on their websites. The Cape Bar Council for instance has a list of transformation advocates who are both black advocates and women, senior and junior. However not all the Bar Councils provide information. The Eastern Cape Society of Advocates lists one black advocate and twenty white male advocates out of the twenty-two listed.

⁴³ LEAD 2016/2017 statistics, published by the LSSA, pp. 49, 50 and 51.

The pupillage intake shows an increase in women over a four-year period, with a gender parity having been almost reached in 2017.

TABLE 11: PUPILLAGE INTAKE (2014 – 2017)⁴⁴				
	2014	2015	2016	2017
Male	74	176	137	157
Female	38	90	96	123
Total	112	266	233	280
Percentage Female	34%	34%	41%	44%

The percentage of women in senior positions at the Bar is also exceedingly low, accounting for only 8% of silks in 2017, and only 28% of those in excess of five years.

TABLE 12: GENDER PERCENTAGES (2017)						
	White	African	Coloured	Indian	Total	Percentage women
Women silk	27	7	3	7	44	
Men silk	410	42	7	28	487	
Total silk	437	49	10	35	531	8%
Men more than 5 years	781	218	37	67	1103	
Women more than 5 years	276	73	26	49	424	
Total more than 5 years	1057	291	63	116	1527	28%
Men less than 5 years	176	209	30	24	439	
Women less than 5 years	123	82	19	32	256	
Total less than 5 years	299	291	49	56	695	37%

In respect of advocates with more than five years' experience, the percentage of women is 28%. For women advocates with less than five years of practice behind them, there is a visible shift towards greater representation, with 37% of the total number of advocates in this category being women. This figure, despite being a great deal higher than the percentage of women silks, is still exceptionally low.

It remains to be seen whether, over time, the cohort of women in the underfive-year category will be retained at the Bar, and whether the number of women silks will begin to reflect any advance in representation.

44 LEAD 2016/2017 statistics, published by the LSSA, pp. 45, 46 and 47.

TABLE 13: GENDER AND RACE AT THE BAR ON THE BASIS OF SENIORITY (2017)				
RACE	GENDER & RACE	SILK	MORE THAN 5 YEARS	LESS THAN 5 YEARS
White	Male	410	781	176
	Female	27	276	123
	Total	437	1 057	299
	Percentage Female	6%	26%	41%
African	Male	42	218	209
	Female	7	73	82
	Total	49	291	291
	Percentage Female	14%	25%	28%
Coloured	Male	28	67	24
	Female	7	49	32
	Total	35	116	56
	Percentage Female	20%	42%	57%
Indian	Male	7	37	30
	Female	3	26	19
	Total	10	63	49
	Percentage Female	30%	41%	49%

Across all race groups, the vast majority of silks are men, totalling 82%. The gender disparities within race categories are the least pronounced amongst Coloured silks (20% are women), followed by Indian and then African silks.

Women make up 6% of White silks, with White men dominating this field. At lower levels of seniority, women are increasingly represented, however African women still hold under 5% of positions, amongst all those who have been at the Bar for over five years, and 11% of those who have served for less than five years.

In April 2016, the Minister of Justice and Correctional Services presented the following statistics on race and gender representation at the Bar:

- 70% White, 18% African, 4% Coloured and 7% Indian
- 25% women
- Silks: 7% African vs 85% White, less than 1% of the African silks are African women.⁴⁵

These figures reflect little progress since 2010 when 74% of advocates were White, 13% African and 21% women. In 2017 there was some movement, with the percentage of White advocates decreasing marginally to 65%. In this year, 23% of advocates were African, 4% Coloured and 8% Indian, indicating a slight rise in the number of African and Indian males.⁴⁶

⁴⁵ CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016 report, p.141.

⁴⁶ LEAD 2016/2017 statistics, published by the LSSA, pp. 49 and 50

THE JUDICIARY AND MAGISTRACY

The judiciary and magistracy are dominated by men and male leadership; gender transformation in the highest courts in the land remains slow. The Supreme Court of Appeal (SCA) is composed of 22 members of whom only seven are women,⁴⁷ and the Constitutional Court is made up of nine justices, of whom only three are women.⁴⁸ While there is some progress in the magistracy, in the higher echelons of judicial employment, women's presence remains low.

TABLE 14: GENDER BREAKDOWN IN THE JUDICIARY AND MAGISTRACY (2017)⁴⁹

	MALE	FEMALE	TOTAL	PERCENTAGE FEMALE
Judges	159	87	246	35%
Magistrates	921	749	1 670	45%

The CGE's Lack of Gender Transformation in the Judiciary Investigative Report in 2016 (CGE report), points to advances in female representation within the magistracy over time, stating that there were 284 women magistrates in 1998 and 667 in 2016. This has risen to 749 in 2017.⁵⁰ In 2016, of the 18 chief magistrates, 10 were women, nine of whom were Black.⁵¹ The number of women judges has increased over time, from 1994⁵² (when 163 of the 165 judges were men), to 2017 (when out of 246 judges, 159 were men and 87 women). However, with only 35% women judges, there is a long way to go to achieving gender equity in the judiciary.

Section 174(2) of the Constitution states that: "[t]he need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed". This makes transformation a constitutional imperative that is applicable not only to the appointment of judges but to all structures, institutions and levels within the legal profession. In 2012/13 the Department of Justice and Constitutional Development's Annual Report stated that 'the appointment of female judges has been slower than was initially anticipated.'⁵³ Chief Justice Mogoeng recently reiterated the urgency of gender transformation and the nomination of women to leadership positions in the judiciary.⁵⁴

In 2012 the Democratic and Governance Rights Unit (DGRU) and Sonke Gender Justice⁵⁵ lodged a joint complaint with the CGE centred on the slow pace of gender transformation in the judiciary. The complaint made particular reference to Section 174(2) of the Constitution,⁵⁶ as well as to how sections 9(3) and (4) of the Constitution and sections 8(h) and (l) of the Promotion of Equality and Unfair Discrimination Act 4 of 2000 were violated, in that lack of transformation of the judiciary constitutes unfair discrimination based on gender, and denying women access to opportunities amounts to systemic inequality.⁵⁷

They argued that various instruments promoting the rights of women, to which South Africa is a signatory, had also been violated. The complainants sought various remedies, including that the CGE:

- Investigate gender discrimination in the appointment of judicial officers.
- Investigate the reasons for the disparity in gender representation at the judiciary, and why this continues to exist.
- Set up a mechanism to monitor the appointments of women in the judiciary.
- Investigate what steps should be taken to address gender disparity in the judicial appointment process.

In 2016 the CGE's investigative report on transformation in the judiciary found:

- Lack of certainty on the Judicial Services Commission's (JSC) procedure and criteria.
- Lack of criteria in the selection of acting judges.
- Inaccessibility of venues utilised by the JSC.
- Lack of female leadership at institutions such as LSSA (Law Society of South Africa).
- That patriarchy and sexism continue to persist, requiring women to prove themselves in a male-dominated profession.
- Finger-pointing by key stakeholders as to who bears the responsibility for ensuring gender of the judiciary.
- Lack of women's availability and/or willingness to be appointed for certain judicial positions.⁵⁸

47 http://www.justice.gov.za/sca/judges_cv.html

48 <https://www.concourt.org.za/index.php/judges/current-judges> These are Justices Sisi Khampepe, Nonkosi Zoliswa Mhlantla and Leona Theron.

49 LEAD 2016/2017 statistics, published by the LSSA, pp. 51 and 53. These figures are not broken down into race.

50 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.38.

51 Ibid, p.38.

52 bid, p.31.

53 Department of Justice and Constitutional Development, Annual Report 2012/2013 available at <http://www.justice.gov.za/reportfiles/anr2012-13.pdf> accessed on 19 April 2014 at 7. (Hereafter Annual Report 2012/2013).

54 Gender transformation in spotlight at JSC (2017-04-03)
<http://www.news24.com/SouthAfrica/News/gendertransformation-in-spotlight-at-jsc-20170403>

55 The Democratic Governance and Rights Unit is an applied research unit within the Public Law Department at the University of Cape Town. Its work is primarily concerned with the relationship between rights and governance, focusing on public administration, public accountability and the realisation of constitutionally enshrined human rights.

56 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.11.

57 Ibid.

58 Ibid, pp. 59 to 60.

4.3 GENDER REPRESENTATION ON LEADERSHIP STRUCTURES IN THE LEGAL PROFESSION

THE LSSA AND LAW SOCIETIES⁵⁹

The LSSA represents the attorneys' profession by bringing together its six constituent members in the form of a national, non-statutory body. The six constituent members are four statutory law societies, the CLS, the KwaZulu-Natal Law Society (KZNLS), the Law Society of the Free State, the LSNP, and two non-statutory bodies, namely NADEL and BLA.⁶⁰ Attorneys in South Africa are registered with the four statutory provincial law societies in terms of the Attorneys Act, 1979, and these are the regulatory and disciplinary bodies for attorneys. The provincial law societies also register articles of clerkship for candidate attorneys. If a member of the public is dissatisfied with the service received from their attorney, they can lodge a complaint with the relevant provincial law society where the attorney is registered. For the past 20 years, the LSSA has been led by co-chairpersons: one drawn from the statutory bodies, and the other from BLA or NADEL. In this time, of the 44 co-chairpersons, only six were women. In the past five years, only men have been co-chairpersons.

In 2016 just three members of the twenty-member LSSA council were women, and the composition of the councils of provincial law societies was as follows:

- The LSNP – seven women out of a total of 24 council members.
- The CLS – three women out of 20 council members.
- The Free State Law Society – three women out of 15 members.
- The KZNLS – four women out of 24 members.⁶¹

59 See <http://www.lssa.org.za/>

60 The LSSA's forerunner was the Association of Law Societies (ALS), an association of the four statutory law societies. It was established in 1938 and disbanded in 1998. In 1994, in order to address the highly divided law profession and to promote cooperation, the ALS brought together the four statutory law societies and the two non-statutory lawyers' organisations, BLA and NADEL. After protracted discussions and negotiations a statement of principle was signed by the six constituents in July 1996 which set out the guidelines for the national restructuring of the attorneys' profession. The statement of principle envisaged a national statutory structure, with nine provincial substructures. The LSSA was seen to be an interim structure with a council comprising 50% representation from the four statutory law societies, 25% from NADEL, and 25% from BLA. The LSSA would take over the role and assets of the ALS with the aim of encouraging unity between members of the profession, overcoming the divisions of the past, and promoting new legislation to create a national, unified structure for the governance of the profession. In September 1996, a team began drafting the LSSA constitution and a provisional twenty-person committee, echoing the future LSSA council, was set up to steer the various drafts of the constitution. In February 1998 the twenty-person committee met for the last time to reaffirm the commitment of the then ALS, BLA and NADEL to the restructuring process and to finalise arrangements for the signing of the LSSA constitution. The constitution of the LSSA was signed at a special ceremony in Parliament in March 1998 attended by all the councillors of the six constituent members, the late Minister of Justice Dullah Omar, several parliamentarians, members of the judiciary, representatives of the GCB (which represents advocates) and the International Bar Association.

61 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.91. These figures were furnished to the CGE by the LSSA.

BAR COUNCILS

There are 12 societies of advocates affiliated to the GCB. The councils of these societies remain dominated by men, other than the Cape Bar, which has seven male and seven female members.⁶²

The Society of Advocates in KwaZulu-Natal has a council composition of eleven men and three women,⁶³ and the council of the Pretoria Society of Advocates is made up of twelve men and six women.⁶⁴

The Polokwane Society of Advocates website does not specify members of the council, but rather members of its Bar.⁶⁵ There are 14 men and two women who are members of its Bar. The gender of the members of the Johannesburg Society of Advocates⁶⁶, the Mpumalanga Society of Advocates,⁶⁷ and the Free State Society of Advocates⁶⁸ are not specified. The remaining bars have no information at all regarding their councils.⁶⁹

NADEL

Decision-making powers of NADEL are still held by male branch members, with men being chosen primarily for leadership positions. NADEL reported that there were three women and 22 men on its leadership structure.⁷⁰

It is patently clear that for law societies and Bar councils to play a role in enhancing the position of women in the profession, there is a need for more gender-representative leadership within these structures.⁷¹

62 <https://capebar.co.za/...>>>EDGEMENTSp.Sexual Harassment Resolutionon Research and Dialogue Project>”to promote and advance itself. It includes fundra

63 <http://www.kznbar.co.za/>

64 <https://www.pretoriabar.co.za>

65 <https://www.plkbar.co.za/#>

66 <https://johannesburgbar.co.za/>

67 <https://www.google.com/search?q=Mpumhttps://johannesburgbar.co.za/langa+society+of+advocates&ie=utf-8&oe=utf-8&client=firefox-b-ab>

68 <https://www.fsbar.co.za/>

69 These bars are the Eastern Cape Society of Advocates, the Northern Cape Society of Advocates, the North West Bar Association, the Bisho Society of Advocates, the Society of Advocates Transkei.

70 Ibid, pp. 115 and 116.

71 This was concluded at a gathering of women lawyers, researchers, students and other stakeholders in 2017 to address gender transformation in the public interest litigation sector. See <http://www.judgesmatter.co.za/opinions/gender-transform-legal-profession/>

BLACK LAWYERS ASSOCIATION (BLA)

The National Executive Committee is made up of seven men and two women members.

SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE (SAJEI)

SAJEI reported that its council comprised 13 men and nine women.⁷²

NATIONAL LEGAL FORUM ON THE LEGAL PROFESSION (NF)⁷³

The Legal Practice Act 28 of 2014 (LPA) was enacted in September 2016 and came into full operation in October 2018. The LPA provides a legislative framework for the transformation and restructuring of the legal profession, in line with constitutional imperatives, to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of South Africa.

During the transitional period, the NF was established in terms of chapter 10 of the LPA, to ensure a smooth handover to the envisaged LPC which will be the permanent body that regulates the profession. The NF consists of both the advocates and attorneys' professions. Of the 21 members of the National Forum, 13 are men and six are women.⁷⁴

SAWLA

In August 2006 more than 300 women legal professionals, in both private practice and the public sector, came together at a South African Women in Law Indaba and laid the foundations for the birth of SAWLA.

The National Indaba was coordinated by a multi-stakeholder committee, comprised of organisations such as NADEL, BLA, AFT, LSSA and BWLO, which was convened by the DoJ&CD. SAWLA has a vision to empower women lawyers through transformation of the legal profession and to create a profession dedicated to addressing issues of gender equity and improving the status of women lawyers.

Its broad objectives are to provide a platform for dialogue and networking amongst women in legal careers and to advance their empowerment and participation in the transformation of the legal sector. It also seeks to provide an advocacy forum dedicated to improving the condition of women lawyers in the workplace and to facilitate the eradication of barriers that prevent the full participation of women in the legal profession. SAWLA, however, has no formal recognition within the formal structures of the legal profession i.e. the law societies or the NF. All SAWLA members are law society members (this is compulsory) and many are either members of BLA or NADEL.

⁷² Ibid, p.110.

⁷³ <http://www.lssa.org.za/legal-practitioners/advisories/misc/legal-practice-act-28-of-2014/misc/national-forum-on-the-legal-profession>

⁷⁴ <http://www.lssa.org.za/legal-practitioners/advisories/misc/legal-practice-act-28-of-2014/misc/national-forum-on-the-legal-profession>

LEGAL AID SOUTH AFRICA

With a budget of around R1.8 billion, Legal Aid South Africa is a significant organisation in the South African legal landscape. The table below indicates the gender breakdown of the board and executive team.

Shaded areas represent the years in which there were an equal number of women to men in leadership structures, or more women than men in leadership structures. In the period 2005 to 2018, the CEO has been a woman.

TABLE 15: LEGAL AID SOUTH AFRICA LEADERSHIP				
	BOARD		EXECUTIVE TEAM	
	MEN	WOMEN	MEN	WOMEN
2017/2018	9	5	9	8
2016/2017	9	5	9	9
2015/2016	9	9	9	8
2014/2015	8	9	12	7
2013/2014	8	7	10	7
2012/2013	8	10	9	8
2011/2012	6	7	5	3
2009/2010	9	8	6	7
2008/2009	9	9	9	6
2007/2008	6	8	8	5
2006/2007	9	7	8	5
2005/2006	10	8	7	5

4.4 OTHER MEASURES OF GENDER TRANSFORMATION IN THE PROFESSION AND ITS STRUCTURES

Current research points to the limited extent to which positive action has been used, to systemically address ongoing gender-related exclusion, marginalisation and discrimination in legal institutions. Figures from the Office of the State Attorney indicate that in the public sector, women received an average of 34.78% of State Attorney briefs and only 16% of fees paid by the State Attorney.⁷⁵

A study was commissioned by the Law Society of South Africa (LSSA) to investigate the distribution of legal work to advocates and law firms, in the period 5 January 2015 to 12 February 2016, by national government departments and state-owned enterprises (SOEs).

⁷⁵ Statistics of the Office of the State Attorney in The Law Society of South Africa, Distribution of Legal Work: Draft Report on Research Findings on the Distribution of Legal Work in the Legal Profession, 3 July 2016 (State Attorney Statistics) pp. 42 to 45 quoted in Michelle Norton SC, "Transformation Issue: Where are the Women?" Advocate, April 2017, p. 30.

The study was aimed at investigating how government departments and SOEs distribute their legal work in regard to race, gender and financial remuneration.

In government departments, the study revealed, among other things, that:⁷⁶

- Legal work in the period was not evenly distributed among advocates, with only a limited few advocates having received briefs.
- There is a significant gap between male and female advocates, with females receiving the fewest briefs.
- A limited amount of Black male advocates receive briefs.
- White male advocates receive the majority of briefs.

In relation to SOEs, the study revealed, amongst other things, that:⁷⁷

- As with government departments, legal work is not evenly distributed among advocates, with only a few receiving most of the briefs.
- There is a significant gap between male and female advocates, with females receiving the least work.
- A handful of Black male junior advocates, followed by a few White male senior advocates, are the major recipients of legal work from SOEs. Indian male senior advocates are in third place, followed by Black female junior advocates. Senior Black male advocates are in fourth place. Senior White female advocates and senior Coloured male advocates share fifth place.
- In terms of financial payment, White male senior advocates are the highest paid, followed by Indian male senior advocates.

The uneven distribution of legal work among advocates and attorneys prompted the LSSA to host a Summit on Briefing Patterns in the Legal Profession in March 2016.⁷⁸ Members of the legal profession and stakeholders came together to discuss the persistent exclusion and marginalisation of certain legal practitioners, in the procurement of legal services by the state. It was noted that when certain government departments and state-owned entities seek legal services, they primarily make use of the services from big law firms that are predominantly White-owned, from a few Black advocates, and from a limited group of White advocates.⁷⁹ This is contrary to the procurement and transformation imperatives of the Constitution and the relevant legislation.⁸⁰

76 <http://www.lssa.org.za/upload/Draft%20Briefing%20Patterns%20Report.pdf>

77 <http://www.lssa.org.za/upload/Draft%20Briefing%20Patterns%20Report.pdf>

78 <http://www.lssa.org.za/news-headlines/press-releases/statement-on-progress-made-by-the-action-group-on-briefing-patterns-in-the-legal-profession>

79 <http://www.lssa.org.za/news-headlines/press-releases/statement-on-progress-made-by-the-action-group-on-briefing-patterns-in-the-legal-profession>

80 The procurement of legal services is governed by Section 217 (1) of the Constitution of The Republic of South Africa, 1996, prescribes that when goods and services are procured from any level of government, or from any other institution specified in legislation, the organ of state must do so “in accordance with a system that is fair, equitable, transparent, competitive and cost effective.” The section enables organs of state to actively pursue a transformative approach by stating that a procurement policy may be implemented that provides for “categories of preference in the allocation of contracts”, and for “the protection or advancement of persons, or categories of person, disadvantaged by unfair discrimination”.

The Action Group on Briefing Patterns in the Legal Profession, established by the LSSA after the summit, developed a Procurement Protocol as a mechanism to proactively attempt to shift briefing patterns.⁸¹ The LSSA sent an advisory to all law firms inviting them to commit to the protocol, and a formal signing ceremony was held in June 2017.⁸²

THE PROTOCOL STATES THAT THE SIGNATORIES AGREE:

‘to positively promote the procurement of legal services of Black and women practitioners; to actively create better access for Black and women practitioners; to bridge the skill set deficits, if any, among Black and female practitioners; to increase the exposure of Black and female practitioners to all areas of the law; to help broaden the pool of Black and women practitioners; to ensure that fair selection criteria are used in the briefing of Black and women practitioners; to promote a change in attitude so as to promote the inclusion of Black and women practitioners in the mainstream of practice; to render bi-annual reports for the monitoring of compliance with the aims of these protocols, holding signatories to the protocols accountable; and to widen the pool of practitioners and ultimately affect the transformation of the judiciary; all in order to progressively realise the achievement of the transformation of the legal profession.’

The Centre for Applied Legal Studies (CALS), supported by the Foundation for Human Rights (FHR), researched the question of why there has been such limited change at the senior level of the legal profession in respect of race and gender transformation. In its comprehensive study, titled ‘Transformation of the Legal Profession’, CALS noted that, given the ‘large number of Black women graduating from law schools and entering the profession, it is incongruous that the upper echelons are not more integrated.’⁸³

CALS APPROACHED TRANSFORMATION AS INTERSECTIONAL AND WIDE-RANGING:

‘Transformation is not a case of facilitating the appointment of less qualified Black lawyers to senior positions; rather, it is about the removal of barriers that impede talented lawyers from opportunities to develop and gain skills, experience and knowledge within the legal profession because they are Black, women, lesbian, living with a disability or disease or, in some way, non-compliant with the dominant homogenous culture.’⁸⁴

It goes on to assert that such an approach ‘requires us to ask deeply uncomfortable questions, not only about the lack of transformation at the end point of the profession, namely the judiciary, but also, and perhaps even primarily, about the entire lifespan of a legal career, from graduation to attaining some of the most senior positions in the profession.’⁸⁵

81 <http://www.lssa.org.za/news-headlines/press-releases/statement-on-progress-made-by-the-action-group-on-briefing-patterns-in-the-legal-profession>

82 <http://www.lssa.org.za/our-initiatives/briefing-patterns-in-the-legal-profession/procurement-protocols>. According to the LSSA website eighty-eight firms in Gauteng, sixteen in the Western Cape, eighteen in KwaZulu-Natal, nine in the Eastern Cape, one in Limpopo, two in Mpumalanga and two in North-West, have signed onto the protocol. See <http://www.lssa.org.za/legal-practitioners/advisories>.

83 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p. 6.

84 Ibid, p. 9.

85 Ibid.

In its preliminary findings, the CALS study identified particular barriers facing Black women throughout their careers, including:

- In preliminary findings, the CALS study identified particular barriers facing Black women throughout their careers, including:
- A shortage of job opportunities and connections with established individuals in the profession.
- Alienation due to the gendered and raced culture of the profession.
- Racial bias and direct racism.
- Sexual harassment and violence.
- Inequitable briefing patterns that privilege White men.
- Expectations that they will fulfil gender-prescribed roles in the workplace.
- Lack of childcare facilities.
- The ‘trailblazer phenomenon’ whereby a standard of excellence is determined by the few Black women who have achieved senior positions.⁸⁶

As one of the more comprehensive studies undertaken in recent years on the topic, that is the subject of this report, the CALS findings are reflected upon in relation to the findings of the NADEL research detailed in the sections that follow.

86 Ibid, pp. 10 to 11.

05 | FINDINGS: WOMEN'S EXPERIENCES IN THE LEGAL PROFESSION

The findings that follow offer a partial and qualitative picture of gender transformation in the legal sector from the vantage point of where it matters most, namely in lived experience.

In providing this picture we point out – as De Vos does in respect of the judiciary (but which equally applies to the legal profession at large) – ‘The slow pace of gender transformation of the judiciary cannot be evaluated in isolation. The discussion must be placed within the larger South African context in which transformation (in its broadest sense) remains a difficult and contested issue.’⁸⁷

5.1 INSTITUTIONALISED EXCLUSION AND DISCRIMINATION

PATRIARCHAL CULTURE

As previously discussed, and in terms of sheer numbers, men are dominant throughout the legal profession's structures and institutions. An exclusionary patriarchal culture, as well as related structural barriers, inhibits the entrance and retention of women, and Black women in particular, in the legal profession. This culture manifests in, amongst other forms, male-driven networks that provide ‘significant advantages in career progression.’⁸⁸ The existence of ‘old boys clubs’ (historically White, with new emerging formations amongst Black men) impedes the career progression of women, as these networks guard the interests of their ‘membership,’ from which women remain structurally excluded.⁸⁹

The CGE's investigative report also points to a patriarchal culture in which socialising and networking with clients is enabled by ‘boys club’ activities such as golfing and hunting.⁹⁰ This institutionalisation of a racialised patriarchy is shaped by White males as they hold the vast majority of leadership positions across the legal fraternity. These impenetrable networks are a cornerstone of the professional culture and have been identified to be particularly exclusionary at the Bar, making it difficult for women to both enter and climb the ranks.⁹¹ As De Vos puts it, ‘the institutional culture of law firms and the Bar (as well as the judiciary) is dominated by White male interests, taking the experience of White men as the norm and measuring others against this norm. This invariably causes the “othering” of female (especially Black female) lawyers⁹² because their interests or sheer appearance lies outside the hegemonic norm.’⁹³

87 Pierre de Vos, 2016, Gender transformation of the judiciary: What is to be done? Opinion prepared for the Commission for Gender Equality, p.1.

88 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p. 41.

89 Ibid.

90 Ibid, p.86.

91 Ibid, p.41.

92 It is important to note the intersecting nature of discrimination based on both gender and race experienced by black female lawyers.

93 Pierre de Vos, 2016, Gender transformation of the judiciary: What is to be done? Opinion prepared for the Commission for Gender Equality, p.9.

The difficulty facing women in the sector starts at entry. Women struggle to enter a profession that remains largely male and White. One reason for this is because they do not have deep and long-standing connections inside the profession.⁹⁴

Moreover, obtaining articles is shown to be harder for women than men, with most firms preferring male candidates.⁹⁵ In addition, Black and female lawyers frequently don't get appointed to senior positions in law, 'because of barriers, behaviour and unwritten rules of the profession that limit talent and promote stereotypes throughout the lifespan of the legal career.'⁹⁶

Some of the ways in which the patriarchal culture of the legal profession takes shape are described by survey participants, and through institutionalised practices of inclusion and exclusion, are now detailed.

UNEQUAL PAY AND POSITION

In respect of pay gaps between men and women, whilst many respondents appear not to have information on comparative pay scales, they are mostly of the opinion that remuneration is differentiated according to gender:

- Because I am woman, male clients sometimes negotiate prices which they won't do with male attorneys.
- Clients are more willing to listen to and pay male attorneys.
- Male practitioners, especially White males, charge a higher tariff than females do.
- It is possible that male advocates are charging higher rates, as this is more acceptable than for female counsel to do so.
- Women attract fewer briefs, therefore, earning less than male colleagues.
- Some of my junior male counterparts charge higher hourly/day fees. I do family law by choice and that has an impact on the fees you can charge.
- I am not sure what my male counterparts are earning but what I do know is that they get more work.
- My male colleagues earn more quickly and find it easier to charge more for similar work.

94 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.12.

95 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.86.

96 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.12.

These responses point to how male counterparts command more work and more fees, and how women are in a structurally weaker position in this regard. There is also a perception that charging higher rates is more socially acceptable for males than females. The higher pay afforded to men is linked to their dominance in the profession, the increased likelihood of their being briefed, and the status and seniority of the legal work they get access to. **This generally privileged position is further expressed as follows:**

- There still exists a hierarchy in the legal profession. Males are given more responsibilities and trusted more.
- I believe that a man is more privileged within the legal profession. As women, we are expected to push our way into the profession.

Not only is the pay gap identified to be a difficulty, but historical economic disparities between Black and White professionals who are trying to establish themselves, place young Black lawyers in a disadvantaged position. Starting out with debt and other financial pressures can be severely prejudicial to Black entry-level professionals. Here the CALS research indicates that, for example, not being able to afford a car might affect the ability to work late and/or meet client demands or court appearances.⁹⁷ Gendered pay disparities, particularly for Black women, compound the effect of this already uneven playing field.

THE PREJUDICES OF GENDER STEREOTYPING

Institutional cultures in the legal profession involve various forms of exclusion that operate pervasively. These might not always be overt, and include insidious processes of undermining that chip away at the confidence of Black female professionals in particular.⁹⁸ Such exclusionary dynamics hamper Black women's full participation, thus undermining the growth and development of their capabilities and strengths. This situation is fuelled by, as was found in the CALS study, clients and senior counsel who will more readily listen to White juniors than to Black female juniors⁹⁹, reflecting how those in senior positions tend to second-guess the intelligence, ability and experience of Black and female practitioners.

Our respondents confirm this impression:

- I have had to prove my capabilities as an African female in an environment that is male-dominated.
- As female attorneys we feel that there is a need for us to prove ourselves for recognition.
- Women have to work twice as hard to get 50% of the recognition that males (from all race groups) receive.

97 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.60.

98 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.47.

99 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.37.

The pressure on Black women to constantly prove themselves is also reflected in Black legal professionals having to work ‘twice as hard’ to progress only ‘half as far’ as their White counterparts¹⁰⁰, along with women having to work both harder and longer to demonstrate their competency.¹⁰¹

This dynamic is fuelled by prejudiced notions and assumptions about people’s capabilities based on their race and/or gender. The LSSA found a perception in the profession that women are not suited to working long hours or dealing with stress; that they are not as assertive as male practitioners; that they become ‘too emotionally involved’ with clients and that they are less experienced than men.¹⁰²

These attitudinal trends are reflective of gender prejudice that converts into organisational standards and practices, in which women are negatively stereotyped and their abilities and prospects undermined.

Traditional female stereotypes of women as ‘caring, kind, deferential, having emotional sensitivity’ undermine women’s advancement as they do not correspond with ‘the attributes believed to be required to succeed in traditionally male occupations.’ This is ‘likely to lead to the conclusion that women are not equipped to handle these jobs, and consequently produces negative expectations about their likely success.’¹⁰³

Such gender stereotyping persists, says Justice Fayeeza Kathree, ‘regardless of our past achievements, professional qualifications, work experience and most of all, competency as lawyers, our womanhood continues to hinder our progress at the Bar.’¹⁰⁴

Whilst many respondents report not having been excluded from interactions with clients, on the basis of their race and/or gender, those that did experience this, described it as follows:

- Black is an assumption of ignorance.
- I have been spoken down to on race, gender and age, and once referred to by a senior attorney as my ‘learned child.’

This aligns with other research, where women felt they were not taken as seriously as their male counterparts,¹⁰⁵ and that their role is diminished to that of still being ‘asked to pour the tea in meetings.’¹⁰⁶

100 Ibid, p.33.

101 Ibid, p.44.

102 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.86.

103 Madeline E. Heilman, “Gender stereotypes and the workplace bias”, Research in Organizational Behaviour 32 (2012), p.116 quoted in Michelle Norton SC, 2017, “Transformation Issue: Where are the Women?” Advocate, April 2017 p.31.

104 Fayeeza Kathree, “Eight Years at the Bar and still discriminated against”, Advocate, 2004, p.23. Quoted in Michelle Norton SC, 2017, “Transformation Issue: Where are the Women?” Advocate, April 2017, p.31.

105 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p.34.

106 Ibid, pp.13 and 34.

For Black women professionals the ‘presumption of intelligence was against them,’¹⁰⁷ in that if a White attorney makes a mistake, it is viewed as an error of judgement, whereas if a Black professional does so, ‘it confirms that Black colleagues are, on the whole, unable to do the work.’¹⁰⁸ Women judges also report being resented, treated as invisible and excluded by male judges and lawyers.¹⁰⁹ Similarly, women might be actively excluded from particular tasks or meetings because they are women.¹¹⁰

Some respondents also reported having completed work tasks that their employer or another person has taken the credit for. They explain that taking undue credit for female professionals’ work is linked to hierarchies of seniority, wherein senior lawyers (frequently men) take kudos for the work of more junior staff.

LANGUAGE AND CULTURAL BIASES

Respondents reported how language or cultural differences are used as justifications for prejudice against them:

- I am excluded due to my language – I cannot understand the discussions and this affects my work and productivity.
- In many instances, clients don’t easily accept my advice because I am not as articulate as my White colleagues.
- Eloquence and articulation are very important for advocacy. English limits me a bit as a result although isiZulu will limit me more. Culture also limits and often dictates who other people choose to work with.

Similar experiences were reflected in the CALS study, where it was found that not speaking ‘good English’ is racially stigmatised, whilst speaking English ‘well’ carries the assumption that one can do one’s job properly.¹¹¹ Black women professionals have to constantly ‘overcome preconceived ideas and assumptions related to their race, gender, language and accent.’¹¹²

Moreover, the ‘cultural alienation’ of Black women lawyers is evident, in that they ‘face invisible rules determined by social interaction outside work.’¹¹³ This illustrates how language differences are used to signify a lower social status; The ways in which culture and language are used to discount or denigrate the position of Black and women lawyers are frequently unspoken.

107 Ibid, p.44.

108 Ibid, p.46.

109 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.32.

110 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, pp.43 and 50.

111 Ibid, p.47.

112 Ibid, p.46.

113 Ibid, p.12.

The pace of gender transformation in the judiciary, and the quality of women candidates, has been linked to such gender attitudes, culture and practices, and to the status of women in the profession as a whole.¹¹⁴

Here the institutional culture in law firms and at the Bar is seen to reflect white male interests, with the norm of the white male serving as the standard against which others are then measured. Black female lawyers are particularly vulnerable, because 'their interests and sheer appearance lies outside the hegemonic norm.'¹¹⁵

THE INTERSECTION OF GENDER AND RACE DISCRIMINATION

The intersection between race and gender is evident in respondents' descriptions of the discriminations they face:

- Women having to compete with dominant male colleagues, whilst younger men also have to compete with dominant males.
- Not being taken seriously and having to prove their competence and capability, in contexts where clients are more likely to want to brief a male.
- Black women being treated differently to White counterparts and having to repeatedly prove themselves – to older White men in particular – in the face of being underestimated both based on race and gender.
- A lack of exposure and access to opportunities for advancement due to their gender and/or race.

This echoes the CALS findings on the intersectional operations of gender and race that result in 'Black women experience[ing] the same types of gender discrimination as their White female colleagues, [and] they also experience a different and additional form of discrimination by virtue of their race.'¹¹⁶ It is argued that the deepest disadvantage is suffered where race and gender overlap, and that to prioritise one ground of discrimination over the other will impact most heavily upon Black women'.¹¹⁷

As Deputy Chief Justice Raymond Zondo stated in an address to the LSSA in July 2017, 'Although there is discrimination against Black people in various branches of the law, women seem to be the most commonly discriminated against, across all divisions.'¹¹⁸

114 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.54.

115 Ibid, p.55.

116 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession" p.32.

117 Michelle Norton SC, 2017, "Transformation Issue: Where are the Women?" Advocate, April 2017, p.33.

118 <https://www.news24.com/SouthAfrica/News/legal-profession-still-racist-sexist-20170701>

Most respondents indicated that their race and/or gender status had not been used by their employer for the purpose of soliciting new work or clients.

Conversely, a minority gave examples of how their race and/or gender did factor:

- Because of the current situation in the profession it is good for firms to have African/Coloured female legal professionals, as some clients are for the empowerment of gender transformation, such as government bodies.
- Sometimes I am regarded as the right person to approach certain people because of my gender.
- I have felt like I have been invited to work on particular projects because I was Black and could understand the language of the client.
- My race may be used if African clients come in and need interpretation.
- My gender and race are used to deny me work and interaction with clients.

It cannot be clearly established from the responses whether this ‘use’ of gender and race is experienced as problematic and/or as necessarily appropriate. Perhaps this is also suggestive of the selective, and at times expedient, inclusion of Black and White women in the context of their more frequent exclusion from opportunities in the legal workplace.

As De Vos points out, ‘law firms may wish to be seen to comply with redress measures and may wish to present a racial and gender diverse face to clients. This may lead to forms of “fronting.”’¹¹⁹

This aligns with the CALS finding on the opportunistic use of Black lawyers to advance firm interests in pitching for work, and not necessarily in a manner that benefits them once the work is secured. Linked to this is the pervasiveness of sexual harassment – see pages 39 to 42 for findings on sexual harassment and bullying.

Regarding women advancing through institutional structures, respondents reflect how gender and racial discrimination intersect, to thwart equal opportunities for Black women in particular. Yet, despite these intersectional realities, ‘gender tends to be seen as less important in the process of transformation than race.’¹²⁰

Age hierarchy is also a variable, in that the compound effect of being a woman and being young, may further affect career prospects.

119 Pierre de Vos, 2016, *Gender transformation of the judiciary: What is to be done?* Opinion prepared for the Commission for Gender Equality, p.13.

120 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p.33.

121 Michelle Norton SC, 2017, “Transformation Issue: Where are the Women?” *Advocate*, April 2017, p.33.

Moreover, briefing patterns and the preferential allocation of briefs appear to favour men. With reference to briefing patterns at the Bar, both Black counsel and female counsel suffer ‘the impact of briefing patterns distorted by stereotypes.’¹²¹

- I have observed that in court when you are a young woman, you are not taken seriously as your male counterparts by presiding officers and other colleagues.
- Females are not given preference when it comes to corporate work.
- I do not receive any briefs from big attorney firms, Black or White, because I am a woman and Black.

In the present research, respondents highlight the pernicious ways in which women’s sexualities are exploited to further the interest of their legal organisations.

Two respondents referred to how their bodies were used to attract business and/or clients, as follows:

- Yes, I was once asked to dine with a client who clearly had other intentions with me alone.
- I think that my looks were important to my involvement in client meetings.

SEXUAL ORIENTATION AND GENDER IDENTITY

Respondents were asked about whether their sexual orientation or gender identity had negatively affected their career advancement or standing. No responses relate to being transgender and none refer explicitly to sexual orientation (e.g. being heterosexual or lesbian) as a factor in their workplace experience.

One respondent made reference to how the expression of gender non-conformity is met with alienation:

- I’m perceived as not feminine enough so instead of being a positive thing it makes people uncomfortable to work with me.

In sum, sexual harassment, stereotyping, obstructive practices from men, prejudiced and stereotypic views that women cannot handle high-stress projects and are not as clever, competent or experienced, are just some of the discriminatory and exclusionary practices women have to contend with in a patriarchal legal workplace.

The discriminatory practices of the legal workplace impact women’s experiences and treatment, shape the career possibilities they pursue and are supported in and retard their equal footing in contexts that remain White-and male-dominated.

¹²¹ Michelle Norton SC, 2017, “Transformation Issue: Where are the Women?” Advocate, April 2017, p.33.

5.2 **ADVANCING WITHIN THE PROFESSION: BARRIERS AND OPPORTUNITIES**

Legal knowledge and skills are developed through exposure to different aspects of the law, and/or to increasingly complex cases or legal questions. Lack of such opportunities negatively affects career development and growth. Career advancement up the hierarchy is stunted without exposure to both opportunities and support. A lack of access to, due to gender and/or race factors, can sabotage a person's career development trajectory.

Whilst some respondents reported having been exposed to opportunities to further their careers, others indicated how their efforts to progress have been frustrated:

- The institution I work for does not advance, promote or have opportunities for women, especially Black women from disadvantaged backgrounds.
- The regional head who is a male is passionate about women issues.
- In some instances, I receive advancement opportunities from recommendations. In some instances, males have gone out of their way to frustrate my promotion.
- I feel that my access to the Bar is limited in comparison. I wanted to when I started studying law and I don't believe it's possible now.
- There is no gender equality in briefing by government departments.
- There are no opportunities for Indian females [as they are] not regarded as 'Black' enough.
- Men are more senior in general and protect themselves.

The experience of lack of advancement is also true for women in the judiciary, with this respondent suggesting that conditions for women may be worse in the judiciary than in the private sector:

- Looking at the conditions where I am working as a judicial officer, I am really considering going back to practice, as the government does not appreciate our services. Judicial officers are the most underpaid employees, with fewer benefits, and are treated like street kids.

Despite the gender limits on career advancement, a number of respondents reported that internal opportunities were made available to them within their current work environments. These include access to training and further studies; secondments to the Black Lawyers Association, the LSSA Council, the Attorneys Development Fund, or to legal firms; and invitations to serve as acting judges.¹²²

¹²² The LSSA has a number of programmes and activities to promote women attorneys. This includes a five-day course for senior women lawyers and a mentorship programme, among others. It also offers a synergy initiative where it matches a large firm with a smaller growing firm, stating that many of these are women-owned firms (CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, pp.88 and 89.)

Nevertheless, the extent to which women get fair access to career growth opportunities was questioned by many respondents. This is particularly the case when women seek to advance to higher levels of authority that are still predominantly occupied by men.

The CALS study states that ‘there are a series of points of exclusion along the spectrum of the legal career of Black women.’¹²³ Also, Black women don’t get into a position where they can be ‘rain-makers’ and attract clients, which would give them opportunities to gain stature and seniority.¹²⁴ Some of the ways in which women’s career prospects can be improved, according to respondents, are now turned to.

WOMEN’S REPRESENTATION, RECOGNITION AND PROMOTION

Respondents see career advancement as something that can be supported by increased representation, by access to equal opportunities, and by actively promoting women:

- See the balance in representivity of males and females in our legal profession.
- Have the numbers and the ability to position women according to their capabilities and affording them equal opportunities to ensure maximum competence.
- Break down the barriers/hurdles against women to enable equal opportunity for advancement in the profession.
- Ensure the equitable treatment of women, equal opportunities, and advance women in the profession.
- Offer more opportunities to females who were previously not given the same/similar opportunities.
- Promote females into previous male-dominant posts.
- Prioritise investment in skills development and support to increase the upward mobility of Black women in law.
- Recognise the ability and competence of women practitioners to contribute at all levels of the profession, from practice to the judiciary, and increase the number of women in the profession.
- Change the space to make way for equal representation of both males and females and create an environment conducive for a productive transferring of ideas.
- Make the legal profession more accessible to females.

These measures suggest a twin strategy, involving the removal of gendered obstacles in the way of women while instituting positive interventions to advance women.

123 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.11.

124 Ibid, p.55.

MENTORSHIP AND SUPPORT

Respondents see mentoring and support, by more experienced and senior professionals, as an important way to promote women in the profession.

The following proposals combine in-house support with external initiatives to multiply opportunities.

- Provide positive mentoring to women.
- Provide mentorship programmes for young legal professional women who are recent graduates. This includes supporting female attorneys to mentor young female candidates and juniors.
- Encourage continuous training for employees and workshops focusing on sexual harassment.
- Create a support base for female attorneys.
- Take proactive measures to expose women – especially Black women – to more opportunities.
- Create a fund to support women lawyers to set up female-led practices.

The CALS research highlights the critical role of mentoring and guidance by more senior lawyers, indicating, ‘these types of relationships help newcomers to the profession develop their professional reputations and build confidence, networks and client-bases’¹²⁵ It also asserts that those who receive good training at the early stages of their career are at a distinct advantage, but that this is more likely to be available to White male juniors than Black professionals and White women.¹²⁶ It is, therefore, more probable that White male juniors get access to professional development opportunities, in comparison to Black women, Black men and White women.

The pool of women attorneys and advocates from which to draw on for judicial appointments is severely limited. One reason for this is that, despite the high number of women graduating, too few go into practice,¹²⁷ and this requires ongoing training and mentorship to make gender transformation of the judiciary realisable.¹²⁸ Sonke Gender Justice and the DGRU have advocated for mentorship by experienced and senior academics, attorneys and/or advocates, as a key way to foster and propel women in the profession. They argue that, ‘this recommendation is not made in support of the stereotype that women are less capable of performing the role of legal professionals, but rather in recognition of the difficulties that women experience in the legal sector.’¹²⁹ De Vos suggests that the training and mentoring of young attorneys and advocates can be problematic: ‘If done badly, it can easily perpetuate the obnoxious and often racist or sexist assumption that Black and women lawyers are inherently less capable than White male lawyers and are thus in greater need of training and mentoring.’¹³⁰

125 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p.57.

126 Ibid, p.54.

127 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.50.

128 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.51, reporting on the South Africa Chapter – International Association of Women Judges (SAC-IAWJ)’s response to its enquiry.

129 Ibid, p.150.

130 Ibid, p.57.

BOXED IN AND SET UP FOR FAILURE

Some fields of law are considered off-limits to women and there is a tendency for them to be pigeonholed into specific areas of legal work.

The impression here is that family law, frequently undertaken by women, has a lower status to, for example, criminal law, which is more strongly associated with men.

- As an advocate, women don't get certain types of work that is only for men. Women must only do family matters.
- Advancement in the profession appears to be in certain niche areas of law, for example, competition, construction and intellectual property. Black and female counsel are not exposed to these niche areas of practice.

Women at the Bar are not deemed suitable for commercial work since it is assumed, based on gender stereotypes, that they are more suited to family law.¹³¹ The assumption that family law requires any lesser skills than other areas of practice is of course contested in that, 'high net worth divorce cases are highly commercial, involving complex contractual, trust and company law issues, often in a foreign context.'¹³²

However, 'based on descriptive stereotypes and perceptions of the "fit" or "lack of fit" between the work of the stereotypical woman, the same advocate is excluded from one area of practice and embraced in another'¹³³

The experience of being 'boxed in', and thus directed to specific areas of law and not to others, emerged as a salient experience. Similarly, in the CALS study, it was noted that 'some think that Blacks and women "can't do numbers" and that "substantive work was the preserve of White males"'.¹³⁴

At the Bar, junior Black people are frequently put into teams on large matters 'which are far beyond their experience, setting them up to fail. As a result, they are seen as incapable of delivering quality work, which has an impact on their obtaining future work.'¹³⁵

Black women professionals are inundated with too much work, such that ultimately, they fail.¹³⁶ As one respondent put it:

- Don't set females up for failure – assist where necessary and ensure that performance levels meet the standard requirement.

131 Michelle Norton SC, "Transformation Issue: Where are the Women?" Advocate, April 2017, p.31.

133 Ibid.

134 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.51.

135 Ibid, p.49.

136 Ibid, p.50.

CLIENT ATTITUDES AND BRIEFING PATTERNS

Male clients can create barriers for women, particularly Black women, thus weakening their position in the firm. This is seen in the preferential treatment afforded to men, at the expense of women, in some firms:

- Sometimes clients ignore or belittle what I say.
- I was on the local panel of my local municipality, and they indicated their preferred attorneys were two male-managed law firms.

The attitudes and briefing patterns of clients can disable the career paths of women professionals. Respondents indicated that briefing patterns are skewed in favour of men and affirmed the need to:

- Brief more female advocates, especially on the part of government departments. Make it compulsory to have a Black female on all matters/briefs dealt with by male attorneys.
- Actively take in more Black females to address the imbalance and give them preferential treatment.
- Develop briefing policies to ensure the increased briefing of Black women by government.

Women receive ‘a disproportionately smaller share of work, in terms of the volume, type and quality of briefs.’¹³⁷ Deputy Chief Justice Raymond Zondo remarked, ‘Female lawyers are even excluded from legal work that is also not financially rewarding, because large factions of our society continue to lack confidence in female professionals, for no reason other than that they are women.’¹³⁸ Kentridge puts it as follows, ‘The less challenging the work women (at the Bar) receive, the less experience they have, the less they are qualified to do such work in the future, the less exposure they have, the less likely they are to become silks, and judges, and judges of appeal.’¹³⁹

The CALS research found reluctance ‘to brief outside one’s race and/or sex’, pointing to a broader trend in the allocation of work within the profession, which is largely driven by informal relations or racial and gender prejudices.¹⁴⁰ ‘Young advocates struggling to establish themselves need to find ‘champions’ in the attorney’s profession (or among state law advisors) to brief them. For young women advocates, it can be particularly difficult to “break in” to the profession and get the briefs needed to survive and thrive ... this is because there is an overwhelming tendency among attorneys... to brief advocates that look like they do in terms of race and gender, have the same interests or take part in the same kinds of social activities, go on holiday at the same kinds of venues.’¹⁴¹

137 Michelle Norton SC, “Transformation Issue: Where are the Women?” Advocate, April 2017, p.30.

138 <https://www.news24.com/SouthAfrica/News/legal-profession-still-racist-sexist-20170701>

139 Janet Kentridge, “Women at the Bar in England and in Wales”, Advocate, August 2004, p.28.

140 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p.13.

141 Ibid, p.23.

In 2016, the Minister of Justice and Correctional Services reported that the State Attorney's office has a target for 76% of state legal work to be given to Black and female practitioners, particularly at the Bar.¹⁴² The department has a long way to go to achieve this goal, given that in June 2015, only 20% of payments to counsel were made to females.¹⁴³

The JSC recommends that the private sector and the state should ensure there is an equal distribution of briefs to both men and women, and in particular Black women.¹⁴⁴ It also proposes that the government and state-owned enterprises insist, in their instructions to the State Attorney, that briefs should be given to women.¹⁴⁵ Sonke Gender Justice and the DGRU asserts that briefing patterns be monitored, recommending that the CGE direct the DoJ&CD to submit statistics on the number of briefs, referred to women advocates by the State Attorney, on a six-monthly basis. They further advocate that the CGE engage with the private sector to develop policies to improve briefing practices.¹⁴⁶

The CGE recommends that the State Attorney ensure there is an equal distribution of work to both women and men, particularly Black women attorneys. It also recommends that government and state-owned enterprises should 'insist in their instructions to the State Attorney that their briefs include women.' Further, it advocates that private law firms should adopt policies and practices which will ensure that there is equal distribution of briefs to women, particularly Black women attorneys and advocates, and that the Bar Council is enjoined to adopt rules and policies, to ensure women are briefed and appointed as arbitrator.¹⁴⁷ As Norton argues, addressing exclusionary briefing patterns requires 'a national policy instrument for adoption by individual Bars, private attorneys' firms, the Office of the State Attorney, and corporate briefing entities.'¹⁴⁸

5.3 TO STAY OR TO GO: EXITING THE PROFESSION

When asked if they would continue working as a lawyer, or within the legal profession in the coming five years, the majority of respondents expressed their intentions to remain, and identified particular areas in which they seek to develop.

- There are still a lot of opportunities for me in practice. I feel that there is still a lot to learn in the profession, I am laying my foundation as a legal professional.
- Yes, I will do whatever it takes to make the presence of Black women a norm in the legal profession as opposed to the exception.
- I will enrol as an advocate since there are a few female advocates and I would like to add on the small number that we have.

142 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.42.

143 Ibid, p.138.

144 Ibid, p. 42.

145 Ibid, p.142.

146 Ibid, p.153.

147 Ibid, pp. 60 and 61.

148 Michelle Norton SC, "Transformation Issue: Where are the Women?" Advocate, April 2017, p.32.

In the responses above, involvement in gender transformation, through the increased representation of women, and Black women in particular, provides impetus for some women to stay on in the profession. However, as much as the respondents indicated a commitment to remaining in the sector, there are ever-present factors propelling them to leave.

Difficulties in the work environment, including unsupportive working conditions, the gendered burden of childbearing and rearing and lack of opportunities, negatively impact their future prospects for career growth:

- I am not sure I can stay. I want to, but I don't feel I can keep up when I have children.
- As primary caregiver it is difficult to meet expenses. More opportunities are given to other races and to males.

In a study by the Law Council of Australia undertaken in 2014, a number of ways to retain women in the profession were identified, including:

- Better remuneration
- Promotional opportunities
- Flexible work hours and better work-life balance
- Leadership and culture
- Better quality work
- Better mentorship¹⁴⁹

One of the respondents notes a pull-factor for the retention of women in the profession:

- Incentivise and regulate the increased representation of women across all levels and create conducive environments for their retention in the profession.

5.4 BURDEN OF CARE: LEGAL PROFESSIONAL AND MOTHER

Regarding working hours, the majority of respondents expressed that there was flexibility in being able to meet personal needs, whilst also having to carefully balance work and domestic demands. Those in private practice and/or self-employment have more flexibility and are better able to accommodate these sometimes competing demands.

- I am not sure I can stay. I want to, but I don't feel I can keep up when I have children.
- As primary caregiver it is difficult to meet expenses. More opportunities are given to other races and to males.
- Make available childcare facilities and flexible working hours to accommodate women who have children and ensure non-discrimination of mothers in the profession.

149 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.68.

The LSSA notes that women require flexible working hours, home offices, and childcare facilities at work,¹⁵⁰ reporting that women experienced:

- Difficulty in balancing family and household responsibilities, forcing women to choose between a family and a career.
- Having to opt to work half-day or start their own practices at home due to domestic burdens.
- A lack of support structures for working mothers in the legal profession.
- Lack of flexibility and the fact that women have to compete on an equal footing with male counterparts.

These factors are all impediments to women lawyers progressing through the ranks or taking up more senior posts. NADEL also cites family responsibility as hindering the progression of women to the judiciary.¹⁵¹

The CALS study mentions several hurdles related to the balancing of child-rearing and the demands of the profession. It is very difficult for women to rise within the hierarchy because they have less ‘face time’ owing to childcare responsibilities which limit their time at work, for networking and for ‘rain-making’.¹⁵² It found that 42% of women attorneys did not ask for flexible working arrangements even though this would alleviate the pressures on them. Reasons given were that they did not think it would be feasible because of the expectations of their role, or that such an arrangement would negatively affect career prospects.¹⁵³ This points to how women might perceive the assertion of their needs as negatively impacting their careers.

In respect of the Bar, Norton argues that ‘women suffer the most acute disadvantages in competing on an equal footing,’ owing to the responsibilities of motherhood.¹⁵⁴ They carry a disproportionate share of parenting responsibilities, and also have to manage the pressure to work long and often unpredictable hours, which is one of the defining features of success at the Bar. As Norton puts it ‘the Bar calls for single-minded application over a sustained period.’¹⁵⁵ She argues that while it is hard to identify the measures required to level the playing fields for women and men at the Bar, a more accommodating attitude among judges, colleagues, and attorneys is required.

Furthermore, a pivotal policy issue is how the Bar responds to the fact that motherhood requires taking leaves of absence, during the period of childbirth and caring for a young infant. This interruption breaks the ‘sustained momentum required to develop a practice.’¹⁵⁶ The Cape Bar has adopted a maternity policy that enables women to take six months maternity leave, during which they are relieved from contributions to Bar dues, chamber rental and floor dues. The Johannesburg Bar exempts members from paying Bar dues for a period of three months, and groups may adopt their own policies on rental for chambers, and the like.¹⁵⁷

150 CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, p.48.

151 Ibid, p.50.

152 CALS & Foundation for Human Rights Report, 2014, “Transformation of the Legal Profession”, p.55.

153 Ibid, p.55.

154 Michelle Norton SC, “Transformation Issue: Where are the Women?” Advocate, April 2017, p.28.

155 Ibid.

156 Ibid, p.30.

157 Ibid, p.30, footnote 22.

5.5 TREATMENT IN MANAGEMENT AND LEADERSHIP

As the literature shows, leadership structures in the profession are dominated by male representatives and reflect the invisibility of women's leadership. Amongst respondents, there were differing perspectives on whether and how women in management and leadership positions are treated, in comparison to their male counterparts. Several responses affirmed that women are treated equally to men, noting that performance is a key factor and that women in management fare well.

Conversely, others expressed the challenges women managers face, including:

- I do think that the female managers are treated with less respect by other colleague organisations/ firms.
- They are given a harder time and more is expected.
- Woman work harder and longer hours.
- They are not treated the same – less respect and trust is put in female leaders.

Two respondents remarked that women who take up management positions are not supportive of other women, perhaps pointing to how the few women who reach more senior levels are themselves expected to adhere to a dominant institutional culture:

- Women in management are harsh and unsupportive to each other.
- Where I am, women are the worst at discriminating against each other. I was once a victim of that, I decided to turn a blind eye so that I can be able to achieve my goal.

The CALS research divides legal professionalism into four phases, namely: Law student (phase 1); candidate attorney or pupil (phase 2); from admission to year 5 (phase 3); and from year 5 onwards (phase 4).¹⁵⁸ It was found that the difficulties women professionals face frequently emerge in the third phase, after they have qualified and finished their vocational training. At this stage, law firms discriminate in their 'implementation of practices of training and mentoring.'

CALS also reports that women who reach senior positions are frequently not supportive of other women, and have set the bar too high.¹⁵⁹ Labelled 'trailblazers', these successful and powerful women set an often unreachable standard, and if a Black woman attorney is in a team of trailblazers, she will be 'expected to have the same characteristics as that trailblazer', far more so than the expectations of her White male counterparts who would not have that same expectation.¹⁶⁰ Also, when Black women work in teams with White women, this does not mean discrimination stops, as gender discrimination can be replaced with racial prejudice.¹⁶¹

158 CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.12.

159 Ibid, p.13.

160 Ibid, p.58.

161 Ibid, p.35.

The difficulties Black women professionals confront when they occupy management positions might be exacerbated by the fact that there are no Black role models in leadership, or in the top echelons of law firms.¹⁶² There is little surprise then that, as found in the CALS research, 38.4% of Black female lawyers were either ‘very dissatisfied’ or ‘dissatisfied’ with the leadership and direction of their organisation in actualising transformation.¹⁶³ Lisa Pruitt identifies the need for ‘integration leaders’, which refers to champions in law firms, either male or female, who promote, nurture and proactively advance women in the firm.¹⁶⁴

5.6 SEXUAL HARASSMENT AND BULLYING

As previously discussed, patriarchal and sexist practices are embedded in the culture of the legal profession. One manifestation of that is the systematic sexual harassment and bullying of women. Even though some respondents report not having experienced harassment themselves, it is common knowledge that other colleagues have had to endure such attacks. Those who report sexual harassment are frequently victimised and usually forced to abandon their positions. Lack of policies to address harassment is also a problem, and where policies are in place many employees appear to be unaware of their existence or implications.

Respondents’ direct experiences of targeted gender discrimination include:

- Being sexually objectified or harassed in the workplace.
- Being bullied and patronised by male colleagues.
- Being subjected to male advances at work.
- Being expected to make tea or wash dishes.

One respondent describes a persistent pattern of harassment as follows:

- *Being asked about whether I am married; being denied leave as I do not have children and therefore should not be granted leave; asked to show my legs at an interview; getting direct questions about my sexuality and whether I am comfortable to “mingle” with clients.*

Respondents link the regularity of incidents of sexual harassment to patriarchal attitudes and to the sexual objectification of women:

- *Sexual harassment is a regular feature and prevents gender transformation from ever being achieved.*
- *Patriarchal and sexist practices are still embedded in general office culture. This is the case both in respect of overt sexual harassment as well as the more invidious invasion of a woman’s personal space (unnecessary touching of a woman’s arm, waist etc.).*

¹⁶² Ibid, p.59.

¹⁶³ Ibid, p.57.

¹⁶⁴ Ibid, p.68.

The use of sexual power to discriminate against women manifests in direct acts of harassment, as well as in a more generalised sexualisation of the workplace, through the expression of male entitlement over women's bodies.

- *Men do not understand what sexual harassment is and I have felt very uncomfortable by repeated sexual 'compliments' by men. When I tell them I am uncomfortable, they generally say I am too sensitive, that I took it in the wrong way, or that they were joking.*

Sexual harassment is also deployed to mediate women's access to opportunities, as reflected in these responses:

- *When you want to be considered for sometimes by those who are in powerful positions, men tend to want sexual favours in exchange for instructions.*
- *Senior male professionals use sexual harassment to employ candidate attorneys, meaning for you to have a job you have to sleep with your boss.*
- *Male lawyers, as well as magistrates, tend to unfairly treat women in that for men to be successful in the profession they must be sexually involved with them.*
- *Often women are promised jobs provided they cater sexual favours.*
- *If women dress attractively they to deal with comments/ looks etc. If not, then not taken seriously. Sometimes also career advancement is tied to sexual favours. Women who complain get bad reputations.*

When women do challenge harassment, they face consequences and so might not lay a formal complaint out of fear of reprisals:

- *If women do not collude or are assertive, they lose on the "generosity" of men who command a lot of work.*
- *Women do not report for fear of victimisation.*
- *The mere threat of sexual harassment is a fuel for fear. Sexual harassment has an added stigma and no one who fears victimisation will complain about it.*

The CALS study indicates that sexual harassment exists across the profession and that there are 'insufficient structures in place to address it; insufficient understanding of the range of behaviours that constitute sexual harassment and how it impedes women's advancement.'¹⁶⁵

¹⁶⁵ CALS & Foundation for Human Rights Report, 2014, "Transformation of the Legal Profession", p.39.

Whilst sexual harassment policies may or may not be present in their workplaces, respondents indicate that when such policies are in place, they are undermined:

- *There are policies, but you will find that those that are familiar with them don't try and explain to their subordinates. Most of the people are in the dark and they have no clue of such policies.*
- *Policy is there, but I do not know if it has helped any person or women.*
- *There is a policy but it hasn't been advocated or publicised.*
- *A colleague of mine reported to the director who held an inquiry, but to my knowledge the perpetrator was never punished.*
- *Policies mainly combat/prevent "direct" sexual harassment.*

Respondents express that they are less likely to implement sexual harassment policies if they know it will hamper their career. Moreover, the victimisation of complainants results in secondary trauma. As one respondent put it, there is 'too much of a backlash from women and men when a woman complains.' Generally sexual harassment complaints appear to be managed inadequately.

For many respondents, safe and confidential complaint mechanisms through which to report sexual harassment are key:

- *Have systems in place for women to report gender abuses safely and without being victimised.*
- *Establish an anonymous helpdesk for lodging of complaints by local professionals against legal professionals.*

5.7 DEFINITIONS AND UNDERSTANDING OF GENDER TRANSFORMATION

When asked whether they are familiar with existing laws that promote gender transformation, respondents referenced:

- The Constitution
- The Employment Equity Act
- The LPA, although a number of respondents indicated they were not aware if it deals with gender matters:
 - *As far as I know the LPA is more aimed at access to legal aid rather than gender equality in the legal profession.*
 - *I am not aware that the LPA now provides for gender transformation, neither of any other laws that do.*

When asked whether there is commitment to transformation in the profession, responses reflect a mixed picture. Those who are of the opinion that there is a degree of commitment, note the following:

- *The new LPA has a provision which is inclusive of women leadership... we are still to see if it will be effectively implemented.*
- *A clear strategy is needed.*
- *In the institute I work for there is a commitment to gender transformation, which is often not the case in most other institutions.*
- *Because the Employment Equity Act is binding and companies are forced to support transformation.*
- *It is not as visible as it should be.*
- *I think the Bar is trying its best – however women should start supporting one another – we must network as men do and respect ourselves and not ignore any disrespect (i.e. sexual harassment).*
- *Yes, but not everyone is held accountable.*
- *In most institutions, it is paid lip service and some males want to be seen as advocating for gender transformation.*

Those who feel there is little or insufficient commitment to gender transformation indicate that lack of representation, keeping change theoretical, and not shifting from talk to action, work against change:

- *Our profession continues to keep it a theory. Stop trying to take credit (i.e. various bodies established) and start being proactive. Provide the infrastructure and take women's words into account.*
- *Measures were taken through BLA [Black Lawyers Association] to talk to government on briefing instructions and assisting with finances and nothing was done with it.*
- *There are lots of talk very little action*
- *There should have been some progress by now, but the fact that there are still only a few females in the profession raises eyebrows.*

When asked how they understand gender transformation, responses reflected the following key components:

To change attitudes and institutional cultures

- *Alter gender and cultural stereotypes.*
- *Make people see the value of women in the profession, and that females must compete against men on an equal level.*

- *Ensure change in the cultural and professional environment of the legal profession so that the considerations important to women are taken into account and not seen as an anomaly to the standard, male-dominated professional environment.*
- *Move away from a historically patriarchal society to one that is unbiased and fair to all genders.*
- *Accept women in all spheres of professional life and treating them equally whilst taking into account the dynamics that they bring into the profession.*
- *Make institutions representative of women, more in congruence with policies that are gender balanced, and changing the way we work in order to make women excel.*
- *Transform a previously male-dominating profession.*

To advance women's representation, recognition and promotion

- *See the balance in representivity of males and females in our legal profession.*
- *Promote females into previous male-dominant posts.*
- *Recognise the ability and competence of women practitioners to contribute at all levels of the profession, from practice to the judiciary.*
- *Progress skills and opportunities and increase the number of women in the profession.*

To grow women's empowerment and voice

- *Empower women in all spheres of law.*
- *Make the presence felt of more qualified, eloquent and experienced females.*
- *For females not to be marginalised and for male and female perceptions to be changed.*
- *Shifting the imbalances of the past and make our voices heard about being treated equally to our male counterparts.*

Equality in representation, opportunity, job status, professional value and conditions of employment are all cited as key to gender transformation, along with the need to shift patriarchal attitudes and practices within the workplace. Understandings of what constitutes a transformed gender context, reflect how transformation concerns individuals and organisational systems, structures and cultures.

Transformation at the individual level includes the empowerment of women and the shifting of gendered attitudes and behaviours. Transformation at the level of structure includes recognition and redress in relation to the historical injustices and inequalities women have faced, along with the need to transform workplace race and gender power dynamics. It also involves policies on non-discrimination and on the advancement of constitutional principles of equality.

5.8 WHAT IS TO BE DONE?

When asked how, very practically, the legal profession can better address gender transformation barriers and challenges, the following four themes emerged from the responses:

BRIEFING PRACTICES AND PREFERENTIAL TREATMENT

- Influence briefing instructions and establish a rules-based system that is more inclusive of women.
- Brief more female advocates, especially in government departments. Make it compulsory to have a Black female on all matters/briefs dealt with by male attorneys.
- Actively take in more Black females to address the existing imbalance and give them preferential treatment.
- Firms to prioritise investments in skills development and support to increase the upward mobility of Black women in law.
- Take proactive measures to expose women – especially Black women- to more opportunities.

GOVERNANCE AND ACCOUNTABILITY

- Institute quotas for women in the workplace and ensure strict adherence to Employment Equity legislation.
- Ensure transparent decision-making on issues that pertain to, or impact, gender transformation.
- Hold established bodies accountable to transformation objectives and their achievements being demonstrable.
- Institute processes for males in the legal profession to attend training on gender inclusion and sensitisation.
- Increase governance oversight on gender matters, including gender-equitable salaries.
- Incentivise and regulate the increased representation of women across all levels and create conducive environments for their retention within the profession.
- Hold government accountable for steps they are taking to transform the profession.

- Establish platforms and/or helpdesks for complaints related to all forms of discrimination.
- Have systems in place for women to report gender abuses safely and without being victimised.
- Increase women's exposure to alternative career paths, especially those historically dominated by men i.e. maritime law, entertainment law, patent law etc.

MENTORSHIP AND SUPPORT

- Provide mentorship programmes for young legal professionals and recent graduates. This includes supporting female attorneys to mentor young female candidates and juniors.
- Make available childcare facilities and flexible working hours to accommodate women who have children, and ensure against the discrimination of mothers.
- Create a support base for female attorneys.
- Set up a fund to support women lawyers to establish female-led practices.
- Make it easier for women to work (flexible hours, maternity leave, and equal salaries) in law firms.
- Acknowledge the achievements of women in the profession.

POLICY INTERVENTIONS

There is unevenness in the extent to which gender transformation policies are in place, and are put into practice, in the respondents' places of work.

The policy areas identified as important to advancing gender equality are:

- Criteria for judicial transformation.
- Maternity leave policies (specifically at the Bar).
- Flexible working hours.
- Sexual harassment policies.
- Application of employment equity laws and policies.
- Policy commitments to transformation more broadly.

- Staff development policies that support equity and the provision of opportunities to women.
- Briefing policies to ensure the increased briefing of Black women by government.

TRANSFORMING PATRIARCHAL CULTURE

Respondents identified several ways in which gendered experiences could be countered by transforming patriarchal patterns, including:

- Altering gender and cultural stereotypes.
- Ensuring change in the cultural and professional environment of the legal profession so that the considerations important to women are taken into account, and not seen as an anomaly to the standard, male-dominated professional environment.
- Moving away from a historically patriarchal society to one that is unbiased and fair to all genders.
- Making institutions representative of women, more congruent with policies that are gender-balanced, and changing the way we work to make women excel.
- Transforming a previously male-dominated profession.
- Educating women on their rights in terms of gender discrimination.
- Instituting processes for males in the legal profession to attend training on gender inclusion and sensitisation.

These proposals address the institutional culture of law firms and bodies, representivity, and gender education and training for women and men.

Changing institutional cultures requires, amongst other things, ‘dogged engagement with the various branches of the legal profession to facilitate critical self-reflection on their part, with a view to agreeing on a programme of action that will be championed by the profession (the Bar, the side Bar and the judiciary) to begin the process of change.’¹⁶⁶

¹⁶⁶ Pierre de Vos, 2016, Gender transformation of the judiciary: What is to be done? Opinion prepared for the Commission for Gender Equality, p.21.

06 | RECOMMENDATIONS

This section details some of the key recommendations that have emerged from the project activities.

6.1 SETTING UP ACCOUNTABILITY MECHANISMS

- **Move from principle to practice:** Whilst there is affirmative-action language in appointment procedures, quota systems in respect of women's representation, and legislative and policy frameworks for transformation, accountability for the realisation of substantive equality for women remains lacking. A move beyond paper-based commitments is needed, and accountability mechanisms are key to this. The shift from the principle to the practice of transformation is required on the part of private law firms, professional bodies such as law societies and bar councils, as well as in the public sector. Members of these bodies must play an active and participatory role in holding structures accountable, for achieving measurable gender transformation objectives that substantively impact women's lives. To achieve this, legal regulatory bodies (particularly the soon-to-be-established LPC) should establish monitoring and accountability instruments and processes for gender and racial transformation. This includes, as previously mentioned, the necessary promulgation of legislation to monitor programmes relating to the empowerment of historically disadvantaged members of the legal profession.
- **Grow the picture:** There are gaps in the availability of reliable statistics on transformation initiatives and their impact within the profession, and on the realities facing women working within the public sector in particular. Information-gathering efforts are to be expanded, towards a more comprehensive mapping of the gender practices, and transformation imperatives and their achievement across the spectrum of the profession. The Council should, in addition to playing a monitoring role, oblige the profession to keep annual statistics on gender and race targets and trends.

6.2 ENSURING POLICY EVALUATION AND BENCHMARKING

- **Measure impact:** It is insufficient to have transformation and non-discrimination policies in place without the necessary evaluations to ascertain their efficacy and impact. To this end, law firms, professional bodies, legal NGOs, Legal Aid SA, law clinics, as well as organisations that employ legal advisors or legal professionals, should be required to collect data on their internal transformation targets and efforts. Such targets should not be limited to numbers, but also consider how policies have impacted female employees directly. This involves challenging formal and informal rules that determine patterns of inclusion and exclusion in the profession, towards creating more equitable and diverse working environments.
- **Shift organisational cultures and individual attitudes:** Investing in behavioural change training is needed to address resistances to transformation, eliminate race and gender stereotyping and pigeon-holing, and modify highly gendered and institutionalised cultures.¹⁶⁷

- **Benchmark and share best practice models:** Present approaches should be evaluated towards the consolidation of best practices for tackling the systemic barriers that inhibit women throughout their legal careers. It is also necessary to develop benchmarking tools to expose discriminatory barriers, and to develop approaches to curb these.
- **Context-specific models** for transformative gender relations in the profession, across institutions and structures, should be developed and shared.
- **Centre women in transformation efforts:** This involves recognising and promoting the experiences, views and participation of women, in leading and shaping transformation agendas and women's empowerment.

6.3 CHANGING LEADERSHIP AND STRUCTURES

- **Create and support the pipeline:** The nomination and appointment of women to leadership positions and representative structures is key. An enabling pipeline is central to increasing the throughput of women across all levels, up to and including those of authority and seniority.
- **Evaluate structures:** Legal professional bodies should evaluate current structures, to determine what internal barriers exist in relation to women's access and upward mobility. This is particularly important, given that quota systems for women cannot be assumed to effect systemic change in the power relations, and operations of leadership structures.
- **Leadership rotation:** Rotation of leaders on elected structures should be utilised to facilitate women taking up decision-making powers and positions. This is important given that quotas have often meant women are appointed to 'soft roles', such as secretariat functions or deputising. Rotation has been successfully employed to advance racial transformation, but less so in respect of gender.
- **Target setting:** Employers in the legal profession are to set transformation targets that include the continued education, training and development of women. Such targets should be set with individuals, taking into account their career path ambitions.
- **Engage men:** Involve male professionals in processes that heighten their sensitivity and commitment to gender equity and counter their resistances to change.
- **Intersectional dynamics:** The struggle for transformation of the profession is not limited to gender, and in many respects, racial transformation has taken the lead. Given the intersecting dynamics of gender and racial discrimination, transformation objectives are to actively respond to gender as integral to the achievement of racial transformation imperatives.

167 With regards to education and training which would assist in the transformation of institutional culture, Sonke Gender Justice and the CGE also recommend that the DoJ and LSSA roll out a national gender sensitivity and social context training programme targeted at the legal sector. The objective of such training should be to shift attitudes and highlight the obstacles that impede women's success and advancement, particularly in the judiciary. The programme "should cover the important role that men can play in advancing gender equality and how they can support women in succeeding in the legal profession (CGE Lack of Gender Transformation in the Judiciary Investigative Report 2016, submission from Sonke Gender Justice and DGRU dated 16 October 2015, p.150).

6.4 PROVIDING MENTORING AND SUPPORT

- **Active and incentivised mentoring:** The institutionalisation of mentoring, as a key tool for transformation of the profession, has largely been absent. Both men and women have a role and obligation to mentor and support women in the profession, and to incentivise that.

Mentoring can take various forms, from nominating women to fill certain vacant positions on professional structures, to channelling business or work opportunities to women.

Senior professionals should be encouraged to mentor Black junior women in particular, to create access to supported work opportunities, networks, knowledge and skills, and to facilitate their professional growth and recognition.

- **The establishment of formal mentoring programmes at judicial levels** would go a far way toward acknowledging the complexities of serving on the bench. Existing programmes, such as those run by the DGRU and the South African Chapter – International Association of Women Judges (SAC-IAWJ), should be supported and financed to reach growing numbers of women.
- **The need for champions:** In bigger corporate law firms, gender transformation is to be promoted through the backing of senior members (both men and women) to actively develop gender-transformative policies and practices.

6.5 ENABLING SAFE SPACES

- **Enabling environments:** There are limited spaces for women practitioners to engage with one another and share opportunities, as environments are frequently hostile to them. Professional bodies and councils have a duty to create and enable safe spaces and support structures for women's advancement.¹⁶⁸

This includes addressing stigma and discrimination in respect of sexual orientation and/or gender identity, and the provision of disability assistance.

- **Accommodating care responsibilities:** Increased acknowledgment and commitment to addressing women's unpaid care work is needed. Professional bodies and government are to promote work environments that are flexible and responsive in accommodating women's domestic burdens.

Create possibilities for women to opt for work routines that accommodate their disproportionate responsibility for childcare, including maternity policies that allow women to work, in a manner that supports both professional and childcare demands.

6.6 PROVIDING MENTORING AND SUPPORT

‘Women in the profession do need to be organised, visible and heard to ensure that the current inequalities and impediment to women’s advancement are profiled and addressed.’¹⁶⁹

- There is a need to actively build formal and informal alliances amongst women across the profession and within their respective institutional contexts.
- Enable women to develop networks with fellow legal practitioners and potential clients, to generate opportunities for growing their client base independently. Just as male practitioners have ‘golf days’ at their law society gatherings, women professionals need to have their own social spaces and events that enable them to grow an institutional culture, that is collectively supportive and empowering. Leadership structures in law firms, legal organisations and professional bodies are to facilitate initiatives that foster camaraderie and support networks amongst women professionals.

6.7 ADDRESSING SEXUAL HARASSMENT

- Comprehensive sexual harassment policies are required. Such policies should centre on victims/survivors; create accountable, transparent and safe mechanisms for violations to be dealt with decisively; and be integrated with a wider set of proactive efforts to challenge the patriarchal modus operandi that enables sexual harassment. At its 2018 AGM, NADEL adopted a resolution on sexual harassment which highlights the obligation on the legal profession to address this major barrier to gender transformation.¹⁷⁰ The resolution (attached as Appendix 6) emphasises the need for a victim-centred approach, and for legal practitioners to be held both legally and ethically accountable.¹⁷¹
- Education and training on gender rights, responsibilities and redress are to be introduced to reshape organisational cultures.

168 The fact that this was highlighted as a major issue at a time when the professional bodies all have gender desks is indicative that more needs to be done in terms of framing programmes to the needs of women and including them in the development of transformation policies.

169 <http://www.justice.gov.za/saiawj/docs.html> SAC – IAWJ, Newsletter, May 2016.

170 See NADEL media release, “NADEL condemns sexual harassment in the legal profession and workplace: a call for reflection and action.” 1 June 2018.

171 A blueprint policy and practice guideline on addressing sexual harassment in the sector should be developed and popularised. NADEL further called on the profession to set up a helpdesk via its pro bono structures in consultation with its provincial labour law committees. NADEL’s Gender Desk was tasked with implementing the resolution. As part of its broader youth and gender awareness campaign, the NADEL Youth Desk hosted a summit in January 2018 which included a panel discussion on challenges faced by young professionals, especially females, and the mistreatment of female candidate attorneys.

- Law societies and bar councils have an important role to play in addressing sexual harassment by their members. Such harassment should be dealt with as professional misconduct, and rules and procedures put in place for professional bodies to actively intervene and be held accountable to do so.¹⁷²
- Due to the victimisation many women face when instituting a formal complaint following sexual harassment or sexual violence, consideration should be given to establishing a permanent profession-wide body specifically to deal with gender misconduct, sexual harassment and sexual violence. This body should provide guidance and support for women to lodge complaints of harassment in confidence, and to access justice and redress.

In closing, transformation cannot be narrowly focused on increasing women's representation across the legal profession, although this too is a key strategy for change.

It must also involve radically reshaping institutional cultures and practices, so that these increasingly embrace a diversity of identities, experiences and opinions.

Furthermore, it must ensure systems and structures that are actively welcoming to Black and female professionals, whilst at the same time countering traditional attitudes and practices, that impeded the career paths and prospects of these professionals.

Central to this is actively challenging prevailing norms, and to set more equitable, inclusive and just standards for what it means to be a legal professional in South Africa.

It is hoped that this report makes a small contribution to this mammoth task.

¹⁷² In terms of section 71 of the Attorneys Act the council of a law society has the power to enquire into cases of alleged unprofessional or dishonourable or unworthy conduct by an attorney. Once the South African Legal Practice Council has been established it will take over this function. In terms of section 37 of the LPA disciplinary committees must be established to investigate complaints of misconduct against legal practitioners. A disciplinary hearing may follow if a prima facie case is found to exist.

APPENDIX 1:

NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS “GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION PROJECT”: QUESTIONNAIRES

1. Sex
2. Age
3. Race
4. Province
5. Do you have flexible working hours that enable you to meet your personal and professional needs? Please explain your answer.
6. Are females and males in similar positions paid the same? If different, please explain
7. Do you think that your skills and capabilities are being optimally utilised in your current position? Please explain.
8. Will you continue working as a lawyer in the next five years? And/or within the legal profession as a whole. Please explain your answer.
9. Have the numbers above (of women in management) changed in the last 5 years.
10. What is your understanding of gender transformation?
11. What are some of the problems that you have had to overcome as a female legal professional?
12. As a female legal professional, are there promotional and advancement opportunities available to you in your current context? Have you benefited/accessed any of them if available in the past?
13. As female legal professional, what other internal opportunities have you benefited from such as secondment etc. Are they available within your current context?
14. Who determines if you have access to any of the opportunities above? (e.g. secondment or other internal opportunities)
15. As a female legal professional, have you ever felt like your employer uses your gender or race to bring in new clients/work? Please explain

16. To what extent are you excluded/felt excluded from key meetings with clients/funders because of your gender and/or race? Please explain
17. As a female professional, have you ever completed any tasks that your employer or another person has taken credit for? If so, please give details of your experience and the person who took credit for your work.
18. How can the legal profession perform better in terms of your experiences above (Please make at least three (3) suggestions)
19. Within your past or present employment, are there any policies that are currently in place that you think are/have been useful in enhancing gender transformation in your career? If yes, please name them.
20. In your legal career, what policies, if any, do you think are inhibiting gender transformation? (For example, maternity benefits etc.)
21. In your career thus far, have your employers implemented any gendered policies and regulations to advance gender transformation in the legal profession? (For example, policy on maternity benefits, or policy on briefing more women of colour at the Bar) If yes, please provide details.
22. Existing research points to sexual harassment as a barrier that has negatively affected women and transformation of the legal profession? Do you agree – please provide details.
23. Are there any policies on sexual harassment in your current employment? Please provide details of how its deal with in your current and past context?
24. Has your sexual orientation and or gender identity (perceived or real) impacted on your career advancement or marketability within the legal profession? Provide details where relevant.
25. Are you familiar with any laws instrumental in achieving gender transformation in general and the profession in particular such as the LPA? Please provide examples if relevant.
26. In your opinion is there commitment within your context to gender transformation of the profession?
27. Is there a designated equality/equity person/committee in your current workplace? If not do you think it would be useful to have such a person/committee?
28. Outside your employment, who do you think are the key persons/departments/institutions that should be responsible in ensure that the legal profession in South Africa is transformed in order to enhance gender transformation?
29. On the issue of gender transformation do you want to add anything?











APPENDIX 2:

CONSTITUTION OF THE NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

PREAMBLE

1. Name:

2. Aims and objectives:

3. Structures of the association:

- 3.1. Branch level:
- 3.2. National level:

4. Branch level:

- 4.1. Establishment of branches
- 4.2. Branch general meetings (“bgm”)
- 4.3. Branch executive committee (“bec”)
- 4.4. Vacancies

5. Regional level:

- 5.1. Regional council (“rc”)

6. National level:

- 6.1. National organisation
- 6.2. General council
- 6.3. Meetings
- 6.4. Resolutions
- 6.5. Quorum
- 6.6. Minutes
- 6.7. Powers
- 6.8. National executive committee (nec)
- 6.9. Vacancies
- 6.10. National office-bearers and officials
- 6.11. Election of national office-bearers
- 6.12. Duties of national office-bearers

7. Rules of procedure at association meetings:

8. Membership:

- 8.1. Eligibility
- 8.2. Categories of membership
- 8.3. Termination of membership

9. Status:

10. Head office:

11. Removal from office of office-bearers:

12. Indemnification of officials, office-bearers and committee members:

13. Disputes:

14. Amalgamation and merger:

15. Dissolution:

16. Amendments:

17. Officials:

- 17.1. Employment
- 17.2. Status

18. Discipline:

19. Application for membership:

20. Subscriptions:

21. Finance:

22. Levies:

23. Notices:

24. Mandatory ballots:

25. Interpretation of the constitution

26. General

PREAMBLE

WHEREAS the Constitution of South Africa, Act 108 of 1996, is the Supreme Law of the Republic of South Africa;

AND WHEREAS we recognise, respect and honour those who have sacrificed, suffered and worked tirelessly towards the realisation of the rights, aspirations and values as contained in the Constitution of this Association as well as those in the Constitution of the Republic of South Africa;

AND WHEREAS we recognise, respect and honour those who have sacrificed, suffered and worked tirelessly towards the formation of this Association;

ACCORDINGLY WE HEREBY COMMIT OURSELVES to adhering to and upholding of the principles and values of this Association and to the realisation of the goals and objectives as set out in the Constitution of this Association and those set out in the Constitution of the Republic of South Africa; in particular we recommit ourselves to:

- a.** meaningfully and assiduously strive for a truly democratic and just society, free from oppression and exploitation; and
- b.** combat and prevent all instances of injustice, malpractice and unfair discriminatory practices based on race, colour or creed.

NOW THEREFORE IN DEDICATION TO THE ABOVE BELIEFS AND COMMITMENTS WE HEREBY CONFIRM OUR COMMITMENT TO PROMOTE, UPHOLD, SUSTAIN AND DEVELOP THIS, THE NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS (NADEL), INCLUDING ANY PROJECTS CONDUCTED UNDER OR IN ITS NAME.

PART 1

1. NAME:

The name of the Association shall be:
The National Association of Democratic Lawyers - (“NADEL”).

2. AIMS AND OBJECTIVES:

The aims and objectives of the Association shall be:

- 2.1 To uphold and to strive for the fulfilment and attainment of the beliefs and commitments in the preamble.
- 2.2 To develop, promote and sustain a system of law, which shall be fair, just, equitable, accessible to and understood by all.
- 2.3 To support and promote the African Charter on Human and People’s Rights, the United Nations Declaration of Universal Human Rights and any other such * instruments/documents consistent with the aims and objectives of this Association.
- 2.4 To affiliate to any organisation, local or international, having aims and objectives consistent with those of the Association provided that such affiliation shall be first approved by the General Council.
- 2.5 To render, and co-ordinate the rendering of, legal assistance to persons and organisations involved in matters affecting inter alia human rights
- 2.6 To assist members in matters relating to and arising from their professions.
- 2.7 To assist those who wish to study, research, practice or teach law either through financial grants, law clinics or other institutions.
- 2.8 To promote the study of and research into transformation of the legal profession, including the judiciary, magistracy.

PART 2

3. STRUCTURES OF THE ASSOCIATION:

The Association shall operate at the following levels of organisation:

3.1 BRANCH LEVEL:

- 3.1.1 Branches General Meeting (“BGM”)
- 3.1.2 Branch Executive Committee (“BEC”)

3.2 NATIONAL LEVEL:

- 3.2.1 General Council (“GC”)
- 3.2.2 National Executive Committee (“NEC”)
- 3.2.3 Executive Committee (“EXCO”) ¹⁷³

4. BRANCH LEVEL:

4.1 ESTABLISHMENT OF BRANCHES

- 4.1.1 There shall be branches in each province with each branch comprising of at least ten (10) members, provided that the GC may sanction the formation of a branch comprising fewer members.
- 4.1.2 There shall be no more than one (1) branch in a town or city provided that the GC may sanction the formation of more than one branch in a town or city.
- 4.1.3 The GC may sanction the formation of a branch whose members are from more than one (1) town or city.
- 4.1.4 The NEC shall have the right to depute one or more of its members or any officials to investigate the affairs of any branch at any time and shall notify the branch concerned of the reason therefore. Such deputies shall have access to all the records of the branch and the power to make copies of the records of the branch and the power to take copies of the records into custody for consideration by the NEC.

¹⁷³ Amended in February 2012.

4.2 BRANCH GENERAL MEETINGS (“BGM”)

4.2.1 Composition

The BGM shall be composed of all ordinary members of the Association living or practising within the area covered by the branch.

4.2.2 Meetings

- a.** The BGM shall meet at least once every three (3) months.
- b.** Notice of every Branch Meeting with an agenda shall be provided to the ordinary members of the branch.
- c.** A quorum for BGM shall be at least twenty five percent (25%) of the ordinary members in the branch. In the event of there not being a quorum the meetings shall stand adjourned and shall be reconvened within fourteen days (14) and notice of such adjourned meeting shall be provided by the Branch Secretary to ordinary members in the branch. At such adjourned meeting the members present shall form a quorum.
- d.** Minutes of all meetings of the BGM shall be submitted for approval at the following meeting. Copies of minutes of BGM shall be sent to the General Secretary and Regional Secretary by the Branch Secretary within thirty (30) days of it being approved.

4.2.3 Powers

- a.** A BGM may, subject to the direction of the national and regional bodies, decide on all matters concerning the branch and may submit resolutions to the RC, GC and NEC.
- b.** A BGM shall have the power to discipline members as set out below.

4.3 BRANCH EXECUTIVE COMMITTEE (“BEC”)

4.3.1 Composition

- a.** The BEC shall comprise of not more than fifteen (15) ordinary members elected every year at the AGM of the branch from among its members.
- b.** The branch office bearers shall be at least the Chairperson, Vice-Chairperson, Branch Secretary and Branch Treasurer elected by the BGM at the same meeting at which the BEC members are elected.

4.3.2 Meetings

- a. The BEC shall meet at least once a month.
- b. A quorum for BEC meetings shall be a majority of the executive members.
- c. Copies of minutes of BEC meetings shall be approved at the BGM.

4.3.3 Powers

- a. Subject to direction from the BGM, NEC, and the GC and where applicable National bodies, the BEC shall be responsible for the day to day administration of the Branch.
- b. The BEC shall ensure that all monies collected by the branch and due to the National Treasurer are properly receipted and forwarded to the National Treasurer.
- c. The BEC shall report regularly to the NEC on any disputes or problems that have occurred within the branch.
- d. The BEC shall act as a link between members in that branch and the rest of the Association.
- e. Application for membership shall be tabled at the meetings of the BEC for consideration and/or approval.
- f. The BEC shall have the power:
 - To reprimand members and to recommend disciplinary action by the BGM.
 - To acquire by purchase, lease or otherwise or to dispose of any property or to hold same on behalf of the branch subject to ratification by the BGM.
 - To open and operate a bank account in the name of the branch.
 - To do such other things as in the opinion of the BGM appears to be in the interests of the Association and which are consistent with the terms of this Constitution.

4.4 VACANCIES

4.4.1 A member of the BEC shall vacate his/her office or seat in any of the following circumstances:

- a. On resignation, suspension or expulsion from membership of the Association;
- b. On ceasing to be eligible to be a member of the Association, or ceasing to be a member of the Association in good standing;

- c. By decision of the BGM;
 - d. On absenting himself/herself from three (3) consecutive meetings without sending an apology acceptable to the BEC;
 - e. On being elected President of the Association, provided that he/she shall be entitled to sit as an ex-officio member of the BEC.
- 4.4.2 Vacancies occurring on the BEC shall be filled by election of the members of the BGM from amongst them.

5. REGIONAL LEVEL:

- 5.1 The Association shall operate throughout the Republic of South Africa in such regions as the GC may determine.
- 5.2 The NEC shall have the right to depute one or more of its members or any officials to investigate the affairs of any region and/or branch at any time and shall notify the region / branch concerned of the reason therefore. Such deputies shall have access to all the records of the region / branch and the power to take copies of the records into custody for consideration by the NEC.
- 5.3 REGIONAL COUNCIL (“RC”)
- 5.3.1 Branches in a region may request the NEC to constitute a Regional Council (RC) for such purposes and in such form as the NEC may deem fit.
- 5.3.2 The provisions of this Constitution relating to notice and agendas for minutes of meetings in respect of branches shall mutates mutandis apply to RCs.

6. REGIONAL LEVEL:

6.1 NATIONAL ORGANISATION

The control of the Association nationally shall be vested in the following bodies in the order of supremacy:

- 6.1.1 General Council (GC)
- 6.1.2 National Executive Committee (NEC)

6.2 GENERAL COUNCIL

The GC shall be the supreme governing body of the Association.

6.2.1 Composition

The GC shall be composed of:

- a.** A minimum of one (1) representative per branch;
- b.** Each branch shall have one (1) additional representative for every ten (10) members;
- c.** The members of the NEC.

6.3 MEETINGS

- 6.3.1 The GC must be held at least once a year and reports on the activities of the Association shall be received. At every other GC (2 years) national office bearers shall be elected.¹⁷⁴
- 6.3.2 The NEC shall determine the number of delegates to which each Branch is entitled and shall cause each Branch to be notified of the date and venue of the GC.
- 6.3.3 Special meetings of the GC may be called by the NEC on fourteen (14) days written notice to Branches. Representatives at such special GC shall be as determined by the NEC for the previous ordinary GC.

6.4 RESOLUTIONS

Only the following resolutions may be considered at GC's:

- 6.4.1 Resolutions from Branches, Regions, or the NEC which have been circulated in writing to all branches and regions and the head office at least fourteen (14) days prior to the GC;
- 6.4.2 Resolutions on current topics and which the GC agrees to debate;
- 6.4.3 Any motion of consideration or no confidence in any office-bearer or official of the Association.

6.5 QUORUM

The quorum for the GC shall be a majority of delegates eligible to be present provided that at least two-thirds of the branches are represented. In the event of there not being a quorum, the meeting shall stand adjourned and shall be reconvened within a period of eight (8) weeks. At such adjourned meeting the members present shall form a quorum. Four (4) weeks written notice of such adjourned meeting shall be given to all regions and branches.

6.6 MINUTES

Minutes of the GC shall be sent to each region and branch by the General Secretary or a nominee of the NEC for that purpose, within four (4) months of the GC and shall be read and approved at the following annual GC.

6.7 POWERS

The GC shall:

- 6.7.1 Decide on all matters submitted to it for consideration. A special GC shall decide on the matter for which the special GC was called;
- 6.7.2 Have all the powers vested in the NEC;
- 6.7.3 Have the right to vary or reverse any decision of the NEC or of any regional or branch meeting;
- 6.7.4 Consider and/or decide, in addition to any other matters which may be submitted to it for consideration, on the following:
 - a. An annual report on the activities of the Association by the President and the General Secretary;
 - b. A financial report presented by the Treasurer and the approval of the auditor's reports and the financial statements of the Association for the financial year;
 - c. Resolutions;
 - d. Every two years at the annual GC, elect the NEC;¹⁷⁵
 - e. Any matter which the GC agrees to discuss.
- 6.7.3 Whether or not to establish, re-establish or close down branches and/or regions and define the boundaries of such branches/regions.

¹⁷⁴ Amended in February 2012.

¹⁷⁵ Amended in February 2012.

6.8 NATIONAL EXECUTIVE COMMITTEE (NEC)

The administration of the Association shall be vested in the NEC subject to the direction and control of the GC.

6.8.1 Composition

The NEC shall consist of a President, a Vice-President, the General Secretary, an Assistant General Secretary, a Publicity Secretary, a National Treasurer, an Assistant Treasurer, a member of the NEC responsible for the Gender Matters Desk, Projects and Campaigns Officer, Fundraising Officer and such other additional members as the GC deems necessary and expedient, provided that:¹⁷⁶

- a.** Each branch must be represented on the NEC; and¹⁷⁷
- b.** That the NEC shall have the power to co-opt up to two (2) additional members of the Association after consultation with the branches.

6.8.2 Meetings

The NEC shall meet at least once every three (3) months at such time and place as the President in consultation with the General Secretary may decide. Special NEC meetings may be called by the President and shall be called on a requisition by not less than one-third of the members of the NEC. In the latter event the meeting shall be convened within fourteen (14) days of receipt of the requisition by the President or General Secretary.

6.8.3 Notice

The General Secretary or a nominee of the NEC shall send to members of the NEC and all others entitled to attend not less than seven (7) days written notice of meetings. Such notice shall specify the time and the place and shall include an agenda.

6.8.4 Quorum

The quorum for meetings of the NEC shall be a majority of members. In the event of there not being a quorum the meeting shall stand adjourned and shall be reconvened within a period of two (2) weeks. At such adjourned meeting the members present shall form a quorum. One (1) week's written notice of such adjourned meeting shall be given to all NEC members.

¹⁷⁶ Amended in February 2012.

¹⁷⁷ Amended in February 2012.

6.8.5 Minutes

Copies of minutes of NEC meetings shall be submitted for approval at the following NEC meeting and shall be sent to each Branch Secretary by the General Secretary or a nominee of the NEC as soon as possible after the meeting and in any event within thirty (30) days.

6.8.6 Powers

The NEC, subject to the provisions of this Constitution, shall have the power:

- a.** To co-ordinate the activities of the Association, and to promote the interests of the Association and its members generally;
- b.** To decide what employment posts should be created, maintained or terminated for the effective running of the Association;
- c.** To engage and dismiss any employees of the Association, to fix their remuneration and other conditions of employment and to define their duties;
- d.** To nominate and elect persons to represent the Association on any body constituted in terms of any law or any other body on which it is desired that the Association shall be represented;
- e.** To institute and defend legal proceedings by or against the Association, or any of its members;
- f.** To acquire or dispose of either by purchase, lease, sale or otherwise any movable or immovable property;
- g.** To open, operate and close banking accounts on behalf of the Association and generally to control the funds and finances of the Association;
- h.** To borrow, raise, invest monies and funds and to allocate funds to the regions and branches; and to sanction all expenditure on behalf of the Association;
- i.** To conclude any agreements it deems necessary;
- j.** To review any decision of any branch, REC or RC and to confirm, amend or reverse such decision;
- k.** To provide legal assistance to members on matters related to their practice;
- l.** To decide all matters of procedure on which this Constitution is silent.

6.9 VACANCIES

The administration of the Association shall be vested in the NEC subject to the direction and control of the GC.

6.9.1 A member of the NEC shall vacate his/her seat in any of the following circumstances:

- a.** On resignation, suspension or expulsion from membership of the Association;
- b.** On ceasing to be eligible to be a member of the Association;
- c.** On absenting himself/herself from three (3) consecutive meetings without sending an apology acceptable to the NEC;
- d.** In the case of a co-opted member, if the NEC should so decide.

6.9.2 Vacancies on the NEC shall be filled by appointment of a new member by the NEC from amongst themselves on a temporary basis and shall be properly filled at the next GC.

6.9.3 A member elected to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor.

6.10 NATIONAL OFFICE-BEARERS AND OFFICIALS

The National Office-Bearers of the Association are the members of the NEC who shall hold office for two years upon their election at a GC and shall be eligible for re-election subject to any provisions contained in this Constitution.¹⁷⁸

6.10.1 A EXCO

The National Office-Bearers of the Association shall constitute the EXCO and shall attend to the duties and functions of the NEC in between NEC meetings, subject to its notifying the NEC of its actions as soon as possible and to ratification by the NEC.¹⁷⁹

6.11 ELECTION OF NATIONAL OFFICE-BEARERS

6.11.1 The President and Vice President shall be elected from among the membership of the Association.

¹⁷⁸ Amended in February 2012.

¹⁷⁹ Amended in February 2012.

- 6.11.2 The GC shall elect the remaining portfolio holders.
- 6.11.2 Should any one branch not have a member on the NEC after the above elections, its members may nominate a member to be elected as a branch representative.
- 6.11.4 The following procedure will apply in respect of each election:
- a. By nominating of a candidate, which nomination shall be duly seconded;
 - b. Ballot papers, in the event of a secret ballot, shall be prepared with names of all candidates for the position.
 - c. Each GC delegate present shall have one (1) vote for each post, which may either be cast by ballot or show of hands, whichever method the GC may decide.
 - d. After the votes are cast, the scrutineers shall determine whether any candidate shall be declared duly elected. The candidate with the majority of votes shall be declared duly elected. If not, further rounds of voting or secret balloting, as the case may be, shall be held but in each round, in the case of secret balloting, the names of those candidates who received the least votes and whose votes when combined with each other do not exceed the number of votes obtained by the leading candidate, shall be eliminated from the following round of the ballot.
 - e. The results of each round of balloting shall be disclosed to the GC before the following round is commenced.
 - f. Office-bearers shall be elected in the following order:
 - President
 - Vice President
 - General Secretary
 - Assistant General Secretary
 - National Treasurer
 - Assistant Treasurer
 - Publicity Secretary
 - Projects and Campaigns Officer¹⁸⁰
 - Fundraising Officer¹⁸¹
 - The NEC member responsible for the Gender Matters Desk¹⁸²
 - Such others as the GC deems fit to elect.
 - g. The newly elected National Office-bearers shall take office from the closure of the GC at which they are elected.

180 Amended in February 2012.

181 Amended in February 2012.

182 Amended in February 2012.

6.12 DUTIES OF NATIONAL OFFICE-BEARERS

6.12.1 President

The President shall attend all GC and NEC meetings and preside at such meetings but shall have no vote at the GC and a deliberative vote only at NEC meetings.

6.12.2 Vice President

The Vice President shall assist the President in performing his/her duties and shall perform such duties of the President as are delegated to him/her/them. The Vice President shall assume the duties of the President in the President's absence.

6.12.3 Acting President

In the event of both the President and the Vice President being unable either temporarily or permanently to perform their duties the NEC shall appoint a member of the NEC to act as President who shall hold office until the President or the Vice President is able to assume his/her duties or until the next election as the case may be.

6.12.4 Treasurer

The Treasurer shall:

- a.** Keep proper books of account;
- b.** Ensure that the books of accounts are audited annually;
- c.** Have the right to inspect all records relating to the finances and books of account of the Association; including branch and regional books of account;
- d.** Submit statements of income and expenditure of the Association's national accounts to each meeting of the NEC and in respect of each annual period to the GC.

6.12.5 Assistant Treasurer

The Assistant Treasurer shall assist the Treasurer in performing his/her duties and perform such duties of the Treasurer as are delegated to him/her. The Assistant Treasurer shall assume the duties of the Treasurer in the Treasurer's absence.

6.12.6 Publicity Secretary

The Publicity Secretary shall attend to the publication and dissemination of the affairs and views of the Association.

6.12.7 General Secretary

The General Secretary shall be responsible for the proper administration and co-ordination of the Association, including the duties to:

- a. Supervise the work of the officials of the Association;
- b. Perform such other duties as the NEC may direct;
- c. Report fully to each GC and NEC meeting on all aspects of the Association's activities;
- d. Ensure that a register of members is maintained.

6.12.8 Assistant General Secretary

The Assistant General Secretary shall assist the General Secretary in performing his/her duties and perform such duties of the General Secretary as are delegated to him/her. The Assistant General Secretary shall assume the duties of the General Secretary in the General Secretary's absence.

6.12.9 Projects and Campaigns Officer

The Projects and Campaigns Officer will take responsibility for rights-awareness, pro bono and litigation-related interventions of NADEL.¹⁸³

6.12.10 Fundraising Officer

The Fundraising Officer will take responsibility for the unique and challenging need to raise funds for NADEL's projects and activities.¹⁸⁴

6.12.11 Gender Desk

The NEC member responsible for the Gender Matters Desk will take responsibility for ensuring NADEL implements a programme of activities and projects aimed at addressing gender related issues.¹⁸⁵

¹⁸³ Amended in February 2012.

¹⁸⁴ Amended in February 2012.

¹⁸⁵ Amended in February 2012.

7. RULES OF PROCEDURE AT ASSOCIATION MEETINGS:

The normal rules of meeting Procedures shall apply to all Association Meetings.

8. MEMBERSHIP:

8.1 ELIGIBILITY

All persons shall be eligible for membership as set out hereunder provided that such person, body or association subscribes to the beliefs, policies and commitments referred to above.

8.2 CATEGORIES OF MEMBERSHIP

Subject to the power of the GC to exclude any person from any category of membership, there shall be three (3) classes of membership:

8.2.1 Ordinary

All lawyers who are in private and public practice, public interest lawyers, legal academicians, candidate attorneys, person serving pupillage, as well as para-legals employed at the offices of NADEL or in which a NADEL member is a partner or any other category in which para legal who in the opinion of the GC should be allowed ordinary membership and all those who in the opinion of the GC have been or are disbarred from practice on account of their political beliefs and actions are eligible for ordinary membership of the Association.

8.2.2 Associate

Any other person, body or association is eligible for associate membership of the Association provided that such a person, body or association is approved by the GC of the Association. An associate body shall participate in the Association at the branch level where it will be accorded a single vote for the members it represents in the branch's geographical area and whose delegate may participate as a full member in the affairs of the Association.

Individuals who are associate members shall have no vote in the affairs of the Association.

8.2.3 Honorary

Any person may be invited by the GC to become an honorary member of the Association.

8.2.4 Every ordinary member shall be liable to pay a subscription which amount shall be determined from time to time by the GC.

8.2.5 Subject to the power of the GC the right to exclude any individual or any category of persons, association or group of persons from any category of membership shall prevail.

8.3 TERMINATION OF MEMBERSHIP

A member may resign by giving four (4) week's notice in writing to the Branch Secretary provided that no resignation shall take effect until all monies due to the Association by the member concerned have been paid.

PART 3

9. STATUS:

The Association shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and of being sued in its own name. It shall hold property apart from its members. The liability of members shall be limited to the amount of their subscriptions outstanding or other monies due to the Association at any time in terms of this Constitution.

10. HEAD OFFICE:

The Head office shall be at such place as the GC shall from time to time determine.

11. REMOVAL FROM OFFICE OF OFFICE-BEARERS:

Besides any other provision in the Constitution for the removal of office-bearers such persons may be removed from office on the written request of at least twenty five percent (25%) of the members in good standing in the constituency in which the office-bearer has been elected or appointed. The responsible Executive Committee for the constituency shall arrange for a ballot of all the members in good standing within the constituency to determine whether they desire to have the office-bearer or official concerned removed from office. A majority vote in favour of the removal shall effect the removal.

12. INDEMNIFICATION OF OFFICIALS, OFFICE-BEARERS AND COMMITTEE MEMBERS:

The officials, office-bearers and committee members of the Association, provided that they have not acted in a manner which would constitute wilful misconduct, shall be indemnified by the Association against all proceedings, costs and expenses incurred by reason of any omission, negligence or other act done in performance of their duties on behalf of the Association and they shall not be personally liable for any of the liabilities of the Association.

13. DISPUTES:

- 13.1 In the event of a dispute existing between the association and any other party the association's general secretary, or if applicable regional secretary within whose region the dispute occurs, or branch secretary within whose branch the dispute occurs, shall have the right to take legal action on behalf of the Association in respect thereof.
- 13.2 If such legal action is taken by a branch or regional secretary, s/he shall do so only with the written approval of the NEC.

14. AMALGAMATION AND MERGER:

In the event of the GC determining that the objectives of the Association will be better achieved by a merger or amalgamation between the Association and any other Association(s), the GC may, by majority decision, resolve to amalgamate or merge with any other Association(s). In that event, the newly formed Association shall acquire all assets and liabilities and all rights and obligations of the Association and the newly formed Association shall be the successor in title of the Association.

15. DISSOLUTION:

- 15.1 The Association may be dissolved at any time by the resolution of two-thirds majority of the GC if for any reason the Association is unable to continue functioning, provided that no such resolution shall be effective unless a ballot of members of the Association shall have been conducted and more than 60% of the members in good standing and participating in the ballot approve.
- 15.2 If the Association has been so dissolved, the following procedures shall apply:
 - 15.2.1 The available members of the Association's last appointed NEC shall appoint a liquidator to carry out the dissolution. The liquidator shall not be a member of the Association and shall be paid such fees as may be agreed upon between him/her and the said available members;
 - 15.2.2 After payment of all debts, the remaining funds, if any, shall be disposed of by a decision of a ballot of the members of the Association who were in good standing as at the date of dissolution.

16. AMENDMENTS:

- 16.1 Any of the provision of this Constitution may be repealed, amended or added to in any manner by a Resolution of the GC, provided that at least three (3) weeks' notice shall first have been given to each branch.
- 16.2 Amendments shall be effective upon a resolution being passed by the GC.
- 16.3 The notice period may be waived if two-thirds of delegates present and entitled to vote at a general council so approve.

17. OFFICIALS:

17.1 EMPLOYMENT

- 17.1.1 Officials shall be employed by the structure they serve subject to ratification by the NEC.
- 17.1.2 Every newly appointed official of the Association shall serve a three (3) month probation period before that official's appointment is confirmed.

17.2 STATUS

All officials who attend Association meetings in terms of this Constitution shall have speaking but no voting rights.

18. DISCIPLINE:

- 18.1 Any member or office-bearer who fails to comply with any of the terms of this Constitution or who acts against the terms of this Constitution or who acts against the interests of the Association may be disciplined by the NEC or BGM.
- 18.2 The NEC or BGM as the case may be, shall advise the person concerned by not less than ten (10) day's notice in writing, of the substance of the charge and of the time and place of his/her hearing. Such notice may be sent by registered post to the last known address of the person charged or delivered by hand.
- 18.3 If the NEC or BGM as the case may be, is satisfied that the person charged has, though absent, received the prescribed notice, or if the person charged is present, the NEC or BGM may proceed to hear and determine the charge, and if it finds the charge proved to its satisfaction, may expel or suspend, for a definite period, the member or office-bearer from the Association and/or impose a fine not exceeding FIVE THOUSAND RAND (R5 000,00) and may suspend a member until such fine is paid.
- 18.4 At the hearing of the charge and in the case of an appeal, the NEC or BGM as the case may be, shall afford the person concerned an opportunity to state his/her case personally and to call members or officials of the Association as witnesses in support of his/her case.
- 18.5 There shall be a right of appeal from a decision of a BGM to the next meeting of the NEC and from a decision of an NEC to the next GC which shall have the power to confirm, vary or reverse the NEC's decision. The decision of the GC shall be final.
- 18.6 An appeal shall be lodged in writing with the General Secretary in the case of an appeal to the NEC or GC, within ten (10) days of notification of the decision appealed against; provided that when notification of the decision has been conveyed, the person concerned shall also be advised that s/he has a right of appeal and that notice of appeal must be given in writing within ten (10) days.

- 18.7 A member or office-bearer shall cease to be entitled to the benefits of membership, including the right to vote, during any period while s/he is under suspension in terms hereof. An office-bearer who has been suspended shall cease to act on behalf of the Association during the period of his/her suspension.

19. APPLICATION FOR MEMBERSHIP:

- 19.1 Applications for admission of membership shall be made in writing to the Branch Secretary.
- 19.2 If admission to membership is refused by the BMC, the applicant concerned shall be notified and shall have the right to appeal up the ranks of the Association as follows, upon the refusal of his/her appeal at each level, to the BGM, to the NEC and to the GC whose decision shall be final.
- 19.3 Whenever an appeal is lodged, the applicant shall be afforded an opportunity to state his/her case personally to the BGM, NEC or GC, as the case may be, and may if s/he so desires call witnesses in support of any statement made by him/her.
- 19.4 An applicant to whom membership is refused shall be entitled to a refund of any subscription paid by him/her on application.
- 19.5 A member who has resigned or been expelled from the Association may be re-admitted to membership on such terms and conditions as the BMC may determine.

20. SUBSCRIPTIONS:

- 20.1 The national subscriptions payable by members shall be determined from time to time by the decision of the GC.
- 20.1 Any member who falls more than three (3) months behind in payment of subscriptions shall cease to be in good standing and shall not be entitled to any benefits of the Association.
- 20.3 In addition to the aforementioned subscription, a member shall also be liable for the payment of other fees or any levy imposed by the GC, or his/her BGM.

21. FINANCE:

- 21.1 The national funds of the Association shall be made up of all monies received by means of the national subscriptions, levies, donations, functions and in any other manner for the running of the National Association and its campaigns; and for allocation to branches or regions. Save that where the GC so decides, a portion of the national subscription may be retained by the branches.
- 21.2 The national funds of the Association shall be deposited in a national bank account decided upon by the NEC.
- 21.3 Branches and regions may raise funds in addition to the annual subscriptions, and such funds may be retained by the branch, provided that such funds are raised or levied in accordance with the Association's policies.

- 21.4 If any branch or region ceases to exist as such, its assets and liabilities shall devolve upon the National Association.
- 21.5 Branch and if applicable, Regional Treasurers shall prepare income and expenditure statements duly audited and approved at the annual meeting of the BGM and RC respectively.

22. LEVIES:

The NEC may at any time with the view to securing funds for any particular purpose, impose such levy as it may determine on each member provided that notice of the proposed levy has been given to all branches and provinces, and provided further that any PC or BGM may demand that a ballot of members of the Association be taken on the subject.

23. NOTICES:

No meeting shall be invalid solely by reason of the non-receipt by any person entitled to receive the requisite notice.

24. MANDATORY BALLOTS:

- 24.1 Members in good standing in a constituency may in writing request that a ballot of members within that constituency be held on any issue, provided that the request shall be signed by at least 20% of all members in good standing.
- 24.2 On receipt of such written request the responsible Executive Committee for the constituency shall arrange for a ballot of all members in good standing within the constituency to determine the issue which shall then be deemed its policy.

25. INTERPRETATION OF THE CONSTITUTION

The responsibility for the interpretation of the terms of this Constitution or any matter arising in connection therewith shall be vested in the GC and its decision shall be final and binding.

26. GENERAL

- 26.1 Any matter not contained or dealt with in this Constitution shall be provisionally determined and dealt with by the National Executive Committee pending rectification by the GC at the next Annual General Meeting.
- 26.2 The NEC shall be entitled to put into operation rules for its effective and proper functioning, provided that those rules are not inconsistent with any provision of this Constitution.

APPENDIX 3: NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS “GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION PROJECT”: SEMINAR & PANEL DISCUSSION 6 OCTOBER 2014

TABLE OF CONTENTS

1. INTRODUCTION & OVERVIEW
2. NARRATIVE REPORT: GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION
3. WELCOME ADDRESS
4. KEY NOTE SPEECH- DEPUTY MINISTER, J. JEFFERY (MP)
5. YASMIN SOOKA, FOUNDATION FOR HUMAN RIGHTS
6. ADV. R. NYMAN, ADVOCATE OF THE HIGH COURT
7. CHARLENE MAY, ACTING DIRECTOR, LEGAL RESOURCES CENTRE
8. NOXOLO MABUDA, PRESIDENT, SOUTH AFRICAN WOMEN LAWYERS
9. MOHUBE ONICCA PHAHLANE, DOJ&CD, ACTING CHIEF LITIGATION OFFICER
10. DISCUSSION
11. VOTE OF THANKS
12. ACKNOWLEDGMENTS

The National Association of Democratic Lawyers Western Cape in
partnership with the Foundation for Human Rights

CORDIALLY INVITES TO A GENDER TRANSFORMATION SEMINAR & PANEL DISCUSSION

The Key note address will be delivered by
The Honourable Deputy Minister John Jeffery (MP)
of Justice & Constitutional Development

DATE: 6 October 2014 | **TIME:** 16:30 – 19:30

VENUE: Cape Law Society, 30th Floor ABSA Building, 2 Riebeeck Street, Cape Town

RSVP: by latest 3 October 2014 nadelwc@gmail.com

CONTACT: Ms. S Samaai (Branch Secretary): 083 384 3448

A light snack and supper will be served.

IN PARTNERSHIP WITH



TIME	PROGRAMME	SPEAKER & PANELIST
16:00	Arrival and Registration	Light Snack on Arrival
16:30	Opening	Dr. J.J. (Joey) Moses, Chairperson NADEL (WC)
16:40	Introduction to Deputy Minister & Welcome	Honourable Judge Siraj Desai
17:00	Key Note Address	Honourable Deputy Minister of Justice and Constitutional Development, Mr. J Jeffery (MP)
17:30	PANEL DISCUSSION Gender Transformation within the Legal Profession	Chairperson: Seehaam Samaai, NADEL WC Yasmin Sooka, Foundation for Human Rights Topic: Access to Justice & the Legal Profession in South Africa for Women: A presentation on the findings and recommendations of CALS/FHR Research Report on Transformation within the Legal Profession Adv R Nyman, Advocate of the High Court Topic: “Remaining ignored and unseen - The impact of briefing patterns on black female advocates” Charlene May, Acting Director, Legal Resources Centre Topic: “Can we attain substantive equality and transformation through legislation and policy alone”? Noxolo Mabuda, President, South African Women Lawyers Topic: “Overcoming challenges faced by Women in the legal profession” Ms. Mohube Onicca Phahlane: DOJ&CD Acting Chief Litigation Officer Topic: Role and Experience as State Attorney and allocation briefs
18:30	Resolutions	Seehaam Samaai & Lisa Draga
19:00	Way Forward	Adv F Nagia Luddy
19:15	Vote of Thanks	Adv Chandre Brown
LIGHT SUPPER		

1. INTRODUCTION & OVERVIEW

On the 6th of October 2014, NADEL Western Cape, in partnership with Foundation for Human rights, held a seminar/panel discussion at the Cape Law Society, entitled: 'Gender Transformation within the Legal Profession.'

The objectives of the seminar were the facilitation of discussion relating to the current status of racial and gender disparities in the legal profession as well as the stimulation of a robust debate that could help identify key issues/challenges currently being faced by individuals in the legal profession.

The event also looked at the nature of efforts required to promote the integration of women in the legal profession and the creation of an enabling environment for women to pursue a career in law.

Dr J. Moses opened the proceedings, provided some background of the history of these gender disparities within the legal profession and advised the audience of the importance of the Seminar.

The keynote speaker was the Honourable Deputy Minister of the Ministry of Justice and Correctional Services, Mr. J. Jeffrey who was introduced by the Honourable Judge S. Desai.

The panel discussion was chaired by Ms. S. Samaai, Branch Secretary of NADEL Western Cape. Each panelist was given a topic, to be delivered lecture style, followed by questions and discussion. The panelists were:

- **Ms. Y. Sooka** who is the Executive Director, Foundation for Human Rights presented the topic: Access to Justice & the Legal Profession in South Africa for Women: A presentation on the findings and recommendations of CALS/FHR Research Report on Transformation within the Legal Profession.
- **Adv. R. Nyman**, who is an Advocate of the High Court addressed the topic: "Remaining ignored and unseen - The impact of briefing patterns on black female advocates"
- **Ms. C. May**, the current Acting Director, Legal Resources Centre who discussed the topic: 'Can we attain substantive equality and transformation through legislation and policy alone?'
- Ms. N. Mabuda, the President, South African Women Lawyers who presented the Topic: 'Overcoming challenges faced by Women in the legal profession.'
- Ms. M. Phahlane, the current Acting Chief Litigation Officer in the Office of the State Attorney, DOJ&CD who discussed 'The allocation of briefs and how the profession can support the transformation agenda of the DOJ&CD to promote gender inclusivity and transformation within the legal profession.'

Adv. C Brown then delivered the vote of thanks and invited all attendees to a light supper in the Law Society boardroom.

2. NARRATIVE REPORT: GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION

The event officially started at 16:30 on the 6 October 2014. Time was however set aside for registration and to allow the NADEL members to interact with, and personally introduce themselves to new members and with the panellists in an informal setting. Light snacks were provided.

3. WELCOME ADDRESS

Dr. J. Moses opened the proceedings by welcoming all of those in attendance which included High Court Judges, Magistrates, Advocates for Transformation (AFT), employees of the Western Cape Master of the High Court as well as members of NADEL, BLA and other Civil Society groups. He provided some context to the planning of the seminar and made reference to certain articles published recently which aimed to expose various issues being faced by women and persons of colour within the legal profession.



4. KEYNOTE SPEECH- DEPUTY MINISTER, J. JEFFERY (MP)

The keynote speech was delivered by the Honourable Mr J. Jeffery, Deputy Minister of the Ministry of Justice & Correctional Services.

The Honourable Judge S. Desai officially welcomed and introduced the Deputy Minister, giving a brief background of the Deputy Minister's career and history within the Ministry and Department of Justice and Constitutional Development (DOJ&CD).

He noted the presence of Judges Saldanha, Allie and Langa (Regional Court President) and further acknowledged the presence of the various speakers, members of NADEL, Black Lawyers Association, Advocates for Transformation, the Cape Law Society, the University Law Clinics, the State Attorney and the Master's office.

BIOGRAPHY: Deputy Minister John Jeffery is an admitted attorney and holds BA and LLB degrees, as well as a postgraduate diploma in Environmental Law from the University of Natal. Mr. Jeffery is a member of the African National Congress, the parliamentary ruling party in South Africa. He describes growing up as a white South African in the late 1970s and seeing the injustices and human rights violations under the previous regime as being the driving force in him joining the liberation struggle and becoming actively engaged in politics at university.

After South Africa's transition into a constitutional democracy, Mr. Jeffery became a member of the KwaZulu-Natal Provincial Legislature where he chaired the Environment and Conservation Portfolio Committee.

Mr. Jeffery has been a member of the National Assembly of Parliament since 1999. He is a former member of the Justice and Constitutional Development Portfolio Committee where he was instrumental in shaping a number of promulgated legislation, such as the Child Justice Act, the Prevention and Combating of Trafficking in Persons Act, the Protection from Harassment Act, the Superior Courts Act, the Protection of Personal Information Act and the Legal Practice Act.

He also served as Parliamentary Counselor to the President and the Deputy President from 1999 to 2013. He remains a member of the Peace and Stability Committee of the ANC. He took office as Deputy Minister in the Ministry of Justice and Correctional Services on the 9th of July 2013. His constituency is in Kwazulu-Natal.

The Deputy Minister began his address by posing a question to the group: 'who was the world's first female lawyer?' He made reference to Arabella Mansfield who was admitted to the Bar in Iowa in the USA in 1869 who some believe to 'officially' hold this title.

Others, according to Mr Jeffery, believe it should go to Lidia Poet who passed her exams and did her two years of practical training and met all the qualifications for admission, but could not be admitted to the legal profession due to the fact that she was female.

Poet, in her attempts to have herself admitted to the profession, encountered a variety of obstacles. She approached the Turin courts a few times. Her case sparked public controversy and even reached Parliament, but to no avail. She was eventually admitted to the Turin Bar in 1920 at the age of 64.

HE THEN QUOTED AN ACTUAL PASSAGE FROM THE CASE WHICH GOES

'It would be improper and ugly to see women descend into the court's gymnasium, excite themselves among the noise of public judgment, participate heatedly in discussions that easily reach excess, and in which, in spite of themselves, they may be drawn beyond the limits that the fairest sex ought to observe...'

One cannot help but cringe when reading it. All of this took place a little more than a century ago. In our own country women have similarly faced an uphill battle to gain entry into the legal profession. Strangely not much is known about the pioneers of our own legal profession.

All of us, given that we are lawyers and given our country's history, should know who Desiree Finca is, but sadly there is very little information available on her.

The Deputy Minister cited the case of Madeline Wookey which was adjudicated in 1912. The Appellate Division refused her application to be admitted as an attorney, holding that a woman was not a 'person' as required by the legislation.

In Incorporated Law Society v Wookey a full bench of the then Appellate Division relied on Roman Dutch law and its exclusion from legal practice of persons who could be termed 'unfit and improper' including, the deaf, the blind, pagans, Jews, persons who denounced the Christian Trinity, and women. Quoting Judge Pius Langa, he explained how even when women were finally allowed in the legal field, their involvement never really extended beyond its periphery.

'Langa writes that it was in 1967, 44 years after the admission of the first white female attorney that Desiree, who came from Umtata, was admitted as the first black female attorney in the country. Appearing before a magistrate in Vereeniging, Finca struggled to be heard as the magistrate claimed he had never heard of a black female attorney. It was only after he confirmed her status with another attorney that the magistrate apologised and continued with the proceedings.'

Mr. Jeffery noted the changes that have occurred within the legal profession since 1994, but questioned whether real transformation had occurred if the legal profession has since transformed. Or has it really? He examined certain statistics relating to the current status quo of the legal profession in South Africa.

'The latest figures show that of our country's 243 judges only 79 are female. That's 32,5%. And although the racial diversity of the Constitutional Court in 20 years of democracy has gone from seven white judges and four black judges to the current bench, where the majority of the judges are black and two are white, the same has not been achieved in terms of gender, as the number of women on the Constitutional Court has remained unchanged: two in 1994 and two in 2014.'

Looking at our court system in particular, Mr. Jeffery showed that change on the highest levels are still lacking in South Africa. Since June 2012, in respect of the Constitutional Court, there have been two interview processes.

Nine candidates were interviewed, of whom eight were men and one was a woman. Out of these two processes, two men were appointed.

At the level of the Supreme Court of Appeal, there have been three interview processes since June 2012. Fifteen candidates were interviewed. Of these candidates, there were 13 men and two women. Six men and one woman were appointed out of these processes.

At High Court level, which includes the Labour Appeal Court, Labour Courts, Electoral Courts and Land Claims Courts, the numbers are slightly more encouraging. There have been four interview processes. During these processes, 61 candidates were interviewed, of whom 32 were men and 29 were women. These processes led to the appointment of 17 men and 14 women judges.

The advocates' profession, according to the Deputy Minister, is still a matter of concern when it comes to gender. The statistics of the General Council of the Bar show that only a quarter (645) of our country's total 2571 advocates at the Bar are female.

Of these only 4,5% (116) are African females. Of the silks, or senior counsel, only 27 are female, of which only 4 are African. That is less than 1% of our country's 451 senior counsel. This is a concern to Mr. Jeffery, particularly since many of our judges come from the ranks of the advocates' profession.

Mr. Jeffery believes however that the picture is not overwhelmingly bleak, as it must be acknowledged that much progress has been made, particularly in the magistracy and also in respect of briefing patterns. The number of female magistrates has increased significantly from a total of 284 in 1998 to 667 currently.

This means an increase of 134%. There were only 62 African female magistrates in 1998, today there are 285. This translates to an increase of 359%. Of the 285, 2 are Regional Court Presidents and nearly 50 are Regional Magistrates.

For the first time in the history of the magistracy we now have more women than men at the level of Chief Magistrate, of the 18 Chief Magistrates, 10 are female.

'No single role-player in the justice system can bring about gender transformation on its own. The legal profession must do its bit, as must the JSC. Academia should be putting forward more names of suitable and experienced women as potential candidates for the bench. And government has a significant role to play in this regard.'

We have a proud history of lawyers at the forefront of the struggle and the advancement of human rights. Mr. Jeffery paid specific tribute to the many female lawyers, lawyers like Phyllis Naidoo who studied to become a lawyer while being banned and under house arrest and who was only allowed to practise once her banning period ended.

He also paid tribute to Cissy Gool, Desiree Finca and Victoria Mxenge who defended many struggle activists in those very dark days of oppression and states of emergency.

The Deputy Minister concluded by quoting Benjamin Franklin who once said 'without justice, courage is weak.' He added that in his opinion it should rather go: 'without courage, justice is weak,' we must have the courage to continuously recommit ourselves to the Constitutional imperative of transformation, in the legal profession and society at large. There is still much to be done.



5. YASMIN SOOKA, FOUNDATION FOR HUMAN RIGHTS

BIOGRAPHY: Ms. Sooka currently serves as the Executive Director of the Foundation for Human Rights in South Africa. This institution was established in 1996 by the Government of President Nelson Mandela and the European Union to fund the human rights sector in South Africa. Ms. Sooka resides in Johannesburg, South Africa.

She is the co-author of the African Union's Policy Framework on Transitional Justice in Africa. She was appointed by President Mandela to the South African Truth and Reconciliation Commission in 1995, where she served until the report was delivered in March 2003.

In 2002 she was appointed by Mary Robinson, the High Commissioner for Human Rights, as an International Commissioner to the Truth Commission in Sierra Leone.

Ms. Sooka is widely regarded as an expert on Transitional Justice and gender, race, class and on Reparations, Disappearances and Victims' Claims. She has served on a number of expert missions and regularly acts as a consultant to several governments and civil society organizations.

She addressed the Human Rights Council as an Expert on the 'Right to the Truth' in April 2010 and authored an Expert Paper to the Kampala Review on the International Criminal Court held in Uganda in May 2010: 'Role of Truth Commissions in Peace and Justice.' Ms. Sooka was appointed in July 2010 as a member of an Expert Advisory Panel on Sri Lanka to United Nations Secretary-General Ban Ki-moon. The panel completed its report in March 2011.

During 2010 she also served as expert to: African Union Meeting in Addis in developing policy on Peace and Justice for Mediators; RECOM in Croatia on draft law for the Regional Commission in the former Yugoslavia; and a Conference on 'Lessons Learnt - Gender and the International Criminal Court.'

TOPIC: Access to Justice & the Legal Profession in South Africa for Women: A presentation on the findings and recommendations of CALS/FHR Research Report on Transformation within the Legal Profession.

Ms. Yasmin Sooka discussed the purpose and context of the Research which was conducted by CALS. The research was not designed to be conclusive evidence regarding transformation in the legal profession. Rather, it was designed to test the accuracy of the assumptions identified.

The key research question for the project participants was therefore as follows: why has there been so little change at the senior level of the legal profession, especially in respect of the intersection between race and gender? With a large number of black women graduating from law schools and entering the profession, it is incongruous that the upper echelons are not more integrated.

The Research reflected that as at October 2013, there were 77 women judges out of a total of 239 in South Africa. The JSC processes have resulted in the two women Constitutional Court judges on a bench of 11, and two women Supreme Court of Appeal judges on a bench of 26. While the numbers cited may seem encouraging in respect of the High Courts, gender transformation is simply not taking place higher up in the judiciary.

The transformation – or lack thereof – of the judiciary is not a new debate. Every few years it captures the attention of the profession, the media and South Africans concerned with transformation. At the commencement of the project, South Africa found itself once again in the throes of such discussions.

Today the debate revolves around the question of whether one should appoint judges on the basis of talent or diversity. Diversity is not inconsistent with talent and ability. To say otherwise would suggest that black women, for example, are less capable than white men and are appointed for their diverse characteristics rather than their legal capability. The project seeks to invert that assumption.

THE PRELIMINARY FINDINGS OF THE RESEARCH WERE:

Black women face an array of barriers throughout their legal careers. These barriers differ during the course of the profession. The patterns are depicted below and include:

1. **A shortage of jobs and few connections to established members of the profession:** because the profession remains largely male and white, it is unlikely that black women will have longstanding connections with people in the profession. Connections remain an important part of entering the profession – not necessarily because of nepotism but rather to learn the standard modes of behaviour and how best to conduct oneself within a very particular law culture;
2. **Offers from the corporate sector which cannot be matched by the legal profession:** many outstanding young lawyers move to the corporate sector;
3. **Cultural alienation:** black and/or female lawyers face invisible rules determined by social interaction outside of work. Informal engagement around weekends and sport create alienating cultural practices;
4. **Bias based on historic roles of black women:** many black female lawyers noted that they are associated with their white colleagues' domestic workers, albeit subliminally;
5. **Racism:** there are lawyers who continue to refer to black women as window dressing, a direct form of racism which speaks to the person's race/gender rather than their capability;
6. **Sexual harassment:** women are exposed to a spectrum of alienation based on references to their physicality, from inappropriate and lewd comments, to violence and rape;
7. **Briefing patterns:** both at the Bar and at firms, briefing patterns tend to prefer a small selection of black women and a larger selection of white men. This is due to a reluctance to brief outside one's race and/or sex and also due to client demands (although the inverse is also true in that clients may demand diversity in their legal representation);

8. **Behaviour based on gendered roles:** women are still asked to pour the tea in meetings, even if there are other junior men, reinforcing the domestic assumptions regarding women's roles;
9. **Lack of childcare facilities:** work/family dynamics and social imperatives continue to preference female childcare over male childcare. This is exacerbated by the insistence by senior female members of the Bar that childcare was not – and is not – necessary; and
10. **The trailblazer phenomenon:** exceptional women who have reached the senior levels of the profession have set a standard of excellence required for black women to succeed that does not apply to white men.

She encouraged the participants to read the Research and highlighted the following from the Research in respect of gender discrimination. Various participants made nuanced references to respect. Several female participants observed that they feel that although they are taken seriously within the workplace, they are not taken as seriously as their male colleagues.

One participant remarked that she had felt that she was taken seriously throughout her upbringing, until she began working in a law firm. She noted that this is endemic to the legal profession, and not specific to any one firm. For example, senior members of the profession will assume that, as the only woman in the room, the female staff member will make the coffee.

The same participant noted that ninety per cent of the time, she is the only woman in the room. Her supervising partner ensures that either he or the most junior person in the room makes coffee. However, other partners tend automatically to assume that, as the only female present, she will make the coffee.

Several black women spoke of difficulties that they had in teams supervised by white women. One person gave an example of working in a team that was entirely comprised of women and where, initially, she thought that there would be support and solidarity.

Instead, she was confronted with instances of what she perceived as racial prejudice and discrimination. There must be 'an honest discussion around gender discrimination and the different impacts on black women and white women.'

She indicated that FHR will be pursuing the research further however they need the support of the profession. The Research process revealed that women still face exactly the same issues more than 20 years later. Although women have taken up different positions, the face of gender discrimination has not changed.

A statistical advancement of gender does not promote substantive equality. She reminded the participants of the survey which Adv. R Nyman conducted on behalf of NADEL in respect of gender discrimination and attitudes and the responses she received from the profession.

Yasmin highlighted that the responses are exactly the same and therefore FHR will need organisations like BLA, NADEL and AFT to assist with the research.

The Research paper can be accessed at.
http://www.wits.ac.za/files/qv6nt_097483001409838676.pdf



6. ADV. R. NYMAN, ADVOCATE OF THE HIGH COURT

BIOGRAPHY: Adv. Nyman is a practicing Advocate at the Cape Bar, a human rights lawyer, yoga teacher and Director of Communicare (a non-profit company that provides low cost housing).

She holds a BA (Law), LLB and LLM (Labour Law). She practiced as a lawyer and researcher in the trade union movement, lectured at UWC and was the Director of NADEL'S Human Rights Research and Advocacy Project.

She is also a longstanding former executive member of the WC branch of NADEL and has held the position of National Media Officer within the organisation.

She has litigated extensively in the areas of labour law, public interest law and unfair discrimination law, and has been active in representing indigent persons and communities.

Adv. Nyman is a member of Advocates for Transformation and has been an acting judge in the Western Cape High Court and the Labour Court during the past two years.

TOPIC: 'Remaining ignored and unseen - The impact of briefing patterns on black female advocates'

Adv. Nyman chose to speak about her own experiences as a member of the Cape Bar which, in her view, could be generalised to many other black female advocates.

She highlighted that in her practice, she receives the majority of her briefs from the Office of the State Attorney and the rest from black firms and NGOs. She has not received many briefs from white firms.

Many of these briefs were problematic. She used the one brief as an illustration to the panel.

It was a pro bono brief from one of the big white firms. She was told by the instructing attorney that if she accepted the brief, the firm would get to know her and would most probably make use of her services again.

Needless to say, she had some reservations about the comment having been at the Bar for 12 years and having acted as a judge, she was sure that the firm 'knew her.' She however accepted the brief graciously without voicing her thoughts in the hope that her feelings were wrong.

In the other matter from a white firm, her brief was to note a judgment in the High Court. She hasn't heard from that firm again. In another brief, she did a lot of work but was not paid a cent.

Adv. Nyman explained how today black women slip through the cracks. In terms of affirmative action, black men are selected to fulfil the requirement of 'black people' and 'white' women are selected to fulfil the requirement of 'females'. This means that black women are once again at the bottom of the ladder.

She made reference to two black advocates who were senior to her and who, in her opinion, were very competent female advocates who left the Cape Bar last year as they did not get enough briefs to sustain their practices.

She explained that in her view, the most fundamental right is recognition of one's existence as a human being, that one's presence matters and that one's existence matters. In terms of Ubuntu our humanity comprises of being recognised as a human being by other human beings. 'You are human because I am human. I see you because you see me.' She stated that "...at the Bar, her presence is ignored; she (and others) is not recognised – not by other advocates, not by white firms and not by most black firms. She is only recognised by the State Attorney."

As an Acting Judge for two years, she hardly saw black female advocates in Motion Court, in trials or in opposed or urgent applications. They usually appeared before her occasionally when they represented the State, or in criminal trials as prosecutors.

SHE QUESTIONED WHY THIS IS STILL THE POSITION AFTER 20 YEARS OF DEMOCRACY?

She answered it by stating that she believes that the position is political. It is difficult to answer the 'why'. She has been grappling with this for quite some time and has tried to find answers by integrating Marxist philosophy into yoga philosophy and African culture. After some thought, she has begun to believe that the route lies in the failure to examine our own conduct. There is a refusal to recognise the injustices caused by Apartheid and a refusal to recognise who exactly benefitted from Apartheid. The attempts to repair the damage caused by systemic unfair discrimination has been a dismal failure on all fronts. She acknowledges that there is a refusal, among us, to recognise injustice even when it stares us in the face and an absence of the internal struggle to contribute to the common good.

All these acts of immorality add up and are connected to all the misdeeds and violent acts committed against women: women are violated with impunity. There is a connection between this and the fact that black female advocates remain unseen and unrecognised.

Adv. Nyman believes that it is necessary for all of us to do introspection and ask: 'In what way have I contributed to advancing the position of women where I am. How do I treat my domestic worker? Do I have the power to promote a "black" woman?' As an attorney, I would ask: 'In what way have I influenced my client to break the briefing patterns and urged him or her to brief a "black" female advocate?'

While the issues of unfair discrimination and affirmative action are addressed in the Constitution and the Employment Equity Act, she believes that it is necessary for us to embrace these provisions. It is necessary for us to see the law as transformative, as a means of transforming our society for the common good.

She stated that the Legal Practice Act has a few provisions relating to the empowerment of black women in the legal profession and she welcomed the Act. The role of the State Attorney's office and State Departments -local, provincial and national level- in briefing black female advocates is also welcomed. She ended off by expressing her gratitude to these organs of state for their current briefing patterns and the attempts they make to empower black women in the legal profession.



7. CHARLENE MAY, ACTING DIRECTOR, LEGAL RESOURCES CENTRE

BIOGRAPHY: May is the current Acting Regional Director of the Legal Resources Centre's Cape Town office. She holds an LLB degree from the University of the Western Cape and is an admitted attorney.

She completed her articles of community service at the Legal Resources Centre and works in the focus area dedicated to gender, equality and non-discrimination.

Her work has largely focused on women's rights and realizing the right to equality and non-discrimination for women and vulnerable groups within South African society. Ms. May has authored a number of publications for the LRC and other civil society organisations on gender and women's rights as well as the law pertaining to non-profit organisations.

She is also a member of the Management Board of the Wellness Foundation an organisation geared towards providing psycho-social support and recognition to community care workers.

She has participated in panel discussions on women's right to equality at the UN Commission on the Status of Women as well as facilitated panel discussions at the United Nations High Commission for Refugees NGO Dialogue on sexual orientation and gender identity.

TOPIC: 'Can we attain substantive equality and transformation through legislation and policy alone?'

Internationally, South Africa has become known for our relatively good performance when measuring gender equality. Ms. May began by citing the Millennium Development Goal Report of 2013, and commented that 'the target of eliminating gender disparity in primary education and secondary education has been achieved [and] we are likely to achieve the target of proportionate seats in parliament, held by women, by 2015.'

SHE THEN DREW OUR ATTENTION TO CERTAIN CONTRADICTIONAL REALITIES IN SOUTH AFRICA TODAY:

"One in 10 girls will miss four days of school on average per month because of her period, female employees tend to earn only 77% of what their male counterparts earn, women's unpaid work is not calculated and has no economic value – women spend more than twice as many minutes on unpaid care work than men, young girls in rural areas are still being abducted, raped and then forced into marriage, in rural parts of KZN women still take their cases to traditional courts where they will not be heard unless they are represented by men and gender reassignment surgery through a public hospital in this country currently has a 26-year waiting list."

She explored why these instances were relevant to the discussion and why it should be relevant to a discussion of gender transformation of the legal profession. Women, it was stated are not a homogenous group. As people, we are all individuals and have very different needs and circumstances.

She believes that women are all different and therefore require their needs to be addressed differently. *'The solution for a rural woman will not be the solution for an urban woman, the remedy for a girl growing up in Rondebosch and who faces discrimination is not the remedy for the girl growing up in Lusikisiki.'*

Ms. May challenged those in attendance to apply their minds logically and explain why that if the analogies she mentioned are true, legislation and policies are developed that do not speak to the individual? She questioned why the dialogue on gender equality and transformation is still relegated to special occasions and commemorative dates such as during August and 16 Days of Activism? Or during Women's Month? Or on Women's Day?

She encouraged participants as a society, to begin to have those uncomfortable conversations. Too much of what we talk about and how we talk is framed within our level of comfort. She posed the question to the entire group: 'How many of us present here today know how many children our secretary has or how she gets them to school? Are they in aftercare? Better yet, would any of you be prepared to arrange her office hours to accommodate her other obligations?'

Ms. May said that the reality, in South Africa, is that women and men are not the same. The playing field is not level. She believes that we need to begin to address all the substantive issues that stand in women's way of empowering themselves.

It is not enough to have a law or policy in place that seeks to advance women, but which does not acknowledge that equality cannot be based on a formulaic system.

In her opinion, our current legal framework is very much geared towards principles of equality and non-discrimination. We have the Constitution, the Promotion of Equality and the Prevention of Unfair Discrimination Act, and the Labour Relations Act, amongst the legislation geared to addressing discrimination.

REFERRING TO THE CEDAW COMMITTEE, SHE QUOTED:

'South Africa has gone a long way in promoting equality through the introduction of legislation; however, nothing has been done to substantively address women's equality within a legal and policy framework. Discrimination in general terms is therefore being addressed, but there is nothing that specifically speaks to the empowerment of women, and the promotion of gender and women's equality in South Africa?'

She concluded with a question a participant raised at a recent Gender Equality Symposium: *'If the thing standing in my way is my vagina how do I begin to challenge that?'*



8. NOXOLO MABUDA, PRESIDENT, SOUTH AFRICAN WOMEN LAWYERS

BIOGRAPHY: Miss Maduba is the founder and a Director of Maduba Attorneys in currently practising on her own account specializing in litigation and corporate governance advisory services etc, since January 2013.

She holds a B. Proc. from the University of Transkei as well as a Certificate in Leadership Development (CPLD) from Wits Business School.

She was admitted as an Attorney in 2000 and has been practicing since then. She has worked as a Justice Centre Executive with Legal Aid SA in the Colesberg, Kimberley and Bloemfontein promoting the interests of the marginalized groups and communities.

In 2011, she was elected and the National President of the South African Women Lawyers Association (SAWLA), an advocacy group aimed at advancing women in the legal profession and women's human rights in general. She was further re-elected for the second term in March 2014. She is the current President of the organisation.

She is the NEC member for the Black Lawyers Association and is one of the two Councillors representing South Africa in the SADC Lawyers Association. She is a single mother of one and currently stays with her 16-year-old son in Bloemfontein.

TOPIC: 'Overcoming challenges faced by Women in the legal profession'

Internationally, South Africa has become known for our relatively good performance when measuring gender equality. Ms. May began by citing the Millennium Development Goal Report of 2013, and commented that 'the target of eliminating gender disparity in primary education and secondary education has been achieved [and] we are likely to achieve the target of proportionate seats in parliament, held by women, by 2015.'

'As at 20 July 2014, the statistics of women in the South African Judiciary show that out of 243 Judges, only 79 were women; with only two in the judicial Leadership and another two on the eleven-person bench of the Constitutional Court. According to the General Council of the Bar, only 25% of Advocates are women. On the other hand, for some surprising reason, 56% of the Candidate Attorneys are women; however, 37% only of admitted Attorneys are women.'

Ms. Mabuda believes that these statistics show the patriarchal nature of the profession, which has been the status quo for several years.

While the progress is noted, there is still more to be done to ensure the gender transformation of the judiciary. While there have been legislative review processes undertaken over the years to address the legacy of discrimination against women, there have been challenges experienced in the implementation of those legislations.

The President of SAWLA referred to the newspaper article, 14 September 2014 Sunday Times, which released an extract of a report by the Wits University's Centre for Applied Legal Studies and Foundation for Human Rights which exposed how a number of black female lawyers are being used for 'window dressing to lure clients and act as tea ladies in meetings.'

This is just the tip of the iceberg on how unfriendly the profession is towards women. Ms. Mabuda however believes that if one only focuses on the challenges and does not investigate finding ways of addressing them, the profession will remain as male-dominated as it still is today.

She believes that in addressing the challenges faced by women in the legal profession, 'we (black women) need to find ways into and to stay in the legal profession.' The high percentage of female candidate attorneys entering the profession is a beacon of hope for the change of the patriarchy of the profession. She would like to develop trends that are aimed at challenging the current status and empowering the woman. It is important to her that women move away from the PHD (pull her down) Syndrome. Women lawyers should give support to each other and not exert their energy into negatively competing against each other.

'The key component will be networking and through associations like gender Desks in their respective organisations like NADEL, BLA and SAWLA. As soon as these networks and engagements become less resilient there will be a lack of platforms to give each other support and find tactical ways of addressing the issues as a collective. With the number of advocacy groups for women in the legal profession, there is a wider pool to discuss and tackle gender issues and their disparities, something that was non-existent 20 years ago.'

Ms. Mabuda challenged all women lawyers to not allow the profession to change them but rather change the profession. She suggested women in the field need to create a level of flexibility and support that allows them to balance the demands of their day to day lives with the demands of the legal profession. Their lifestyles should embrace their cultural, social and economic demands while still acknowledging the nature of the profession.

To propel women to enter into, and stay in the legal profession, they need to be performance-driven, and can acquire this expertise through taking on challenging cases. She believes that women lawyers can develop client generation tactics without compromising their integrity. This role must not be left with the senior partners in the law firm who will, still, mostly be men.

Quoting from her past experiences coming up in the field, she found that women lawyers need to have good mentors and more experienced ones should offer mentoring services through programmes. Choosing a mentor should however not always be gender biased as women do have their 'converted male counterparts' that are willing to be part of the mentoring equation.

She examined the promulgation of the Legal Practice Act which was assented on the 20 of September 2014. The Act provides for a number of committees, commencing with the National Council that will investigate the smooth transition of its implementation. She hopes that all women lawyers, through their organisations and stakeholders, that form part of the Council, ensure that there is a 50/50 gender representation.

'Women lawyers should make a difference by being confident about the contribution they make in the legal profession, in an independent manner. They should highlight the active roles women in the legal profession have played in reaching to where we are by looking at the best practices from women who have made it.'

She ended off her talk with a quote from author Gail Evans, referring to his book: *Play like a Man, Win like a Woman*: 'Business is as much a game as any other board, individual or team sports game... men wrote the rules because they were alone.'



9. MOHUBE ONICCA PHAHLANE, DOJ&CD, ACTING CHIEF LITIGATION OFFICER

BIOGRAPHY: Ms. Mohube Onicca Phahlane is a litigation specialist who holds a BA degree obtained through the University of South Africa and an LLB with the University of Durban Westville.

Ms. Phahlane started her legal career with Malan & Van Wyk Attorneys in 1995. She was admitted as an Attorney in the High Court of South Africa in 1997 and joined the Department of Justice and Constitutional Development in 1999 as an Assistant State Attorney. She was later promoted to Senior Assistant State Attorney.

During 2008 she was appointed as Deputy State Attorney and from April to October 2012 she was appointed as an Acting Head for the Office of the State Attorney, Pretoria.

She is currently an Acting Chief Litigation Officer in the Office of the State Attorney, one of the six main branches within the Department of Justice and Constitutional Development.

TOPIC: 'The allocation of briefs and how the profession can support the transformation agenda of the DOJ&CD to promote gender inclusivity and transformation within the legal profession'

Ms. Phahlane advises that the Chief Litigation Branch is mainly responsible for the allocation of briefs. The Branch has four chief directorates: State Attorney Offices, Legal Services, Legal Research and Quality and Operations Management.

In terms of the State Attorney Act, the Office of the State Attorney provides legal advisory and litigation services on behalf of the Government of the Republic, including any law, practice or custom performed by attorneys, notaries and conveyancers. There are twelve State Attorney Offices located countrywide at the High Court.

The Chief Directorate of Legal Services is divided into two directorates: Law Enforcement and Legal Process. The Law Enforcement Directorate renders legal support services to the Department of Justice and Constitutional Development, and its functionaries in respect of litigation, debt recovery and legal liability.

The Legal Process Directorate provides legal advisory services relating to expungements and pardon applications. The Chief Directorate of Legal Research conducts legal research on behalf of the branch. The Chief Directorate of Operations and Performance Quality management is responsible for the provision of Performance Quality Management and Management Oversight in the operations of the State Attorney Offices.

The enhancement of Litigation Services is the branch's strategic objective. The two key performance indicators, which relate to gender and racial empowerment, are:

- increased value of briefs allocated to previously disadvantaged practitioners to 75% of the total value of briefs; and
- 50% of enrolled cases successfully concluded by the State Attorneys.

Ms. Phahlane quoted a range of statistics compiled by the Office of the State Attorney, which are displayed in the section below. The statistics present performance achievements per key result and are the set targets of the branch.

'For the period under review, the branch issued 4115 briefs to counsel as opposed to 3206 in the 2012/13 financial year. The number of briefs increased by 909 from the previous financial year figures. Out of the 4115 briefs issued to counsel in 2013/14 period, 3641(88.48%) was allocated to previously disadvantaged individuals. A total number of 1378 of the total briefs issued in 2013/14 which translate to 33.48% was allocated to female counsel.'

TABLE ONE: NUMBER OF BRIEFS:			
POPULATION GROUP	GENDER		GRAND TOTAL
	FEMALE	MALE	
AFRICAN	760	1829	2589
COLOURED	123	223	346
INDIAN	331	211	542
WHITE	164	474	638
Grand Total	1378	2737	4115

“The money paid to counsel in the 2013/14 financial year amounts to R641 874 613. The payment made in 2013/14 decreased by R42 717 140 from R684 591 753 in the 2012/13 financial year. The target for 2013/14 was to pay a minimum of 75% of the total payments to previously disadvantaged counsel. An amount of R482 386 444 was paid to previously disadvantaged individuals, which translates to 75.15%. The target exceeded by 0.15%.”

TABLE TWO: COUNSEL PAYMENTS: PREVIOUSLY DISADVANTAGED INDIVIDUAL: 2013/14					
RANDS (R)					
QUARTERLY	AFRICAN	COLOURED	INDIAN	WHITE (FEMALE)	GRAND TOTAL
Quarter 1:	99 908 216	10 130 723	22 119 684	5 882 470	138 041 093
Quarter 2:	78 187 181	6 167 441	16 48 533	3 914 687	89 917 842
Quarter 3:	104 419 481	12 274 320	21 611 775	3 772 332	142 077 908
Quarter 4:	70 717 261	7 436 923	14 678 881	4 736 528	97 569 593
Grand Total	353 232 139	36 009 407	60 058 873	18 306 017	467 660 436
% per Population group	76.11%	7.76%	16.13%	3.94%	

“In 2013/14 financial year an amount of R113 974 012 was paid to female counsel, which is 17.6% of the total payments.”

TABLE THREE: COUNSEL PAYMENTS PER GENDER: 2013/14			
RANDS (R)			
QUARTERLY	FEMALE	MALE	GRAND TOTAL
Quarter 1:	33 394 507	152 146 569	185 541 076
Quarter 2:	24 037 996	120 255 994	144 293 990
Quarter 3:	31 598 931	152 680 117	184 279 048
Quarter 4:	24 942 576	102 814 918	127 757 494
Grand Total	113 974 010	527 897 598	641 871 608
% per Population group	17.76%	82.24%	

“The total number of enrolled and finalized cases for 2013/14 financial year was 1236. 794 cases were won and were 442 lost. The target set for the 2013/14 financial year was 50% and 61% was achieved. The branch exceeded the branch target by 11%.”

10. DISCUSSION

The panel discussion was chaired by Seehaam Samaai, the Branch Secretary of NADEL Western Cape. There was general agreement that although considerable progress has been made towards the institutionalisation of women's rights and gender equality; the legal profession remained largely untransformed and continues to lag behind in achieving gender and racial equality.

NADEL believes that transformation of the legal profession is an essential component in the transformation of the judiciary, and it is imperative for significant steps to be taken by both the profession and government in addressing the existing gender disparities.

It was recorded that the panelists have many years of legal experience and have worked tirelessly in promoting gender equality within communities as well as the organised legal profession. NADEL and all the participants have recommitted themselves to working towards the genuine transformation of the legal profession in our country and broader society.

The audience participated in an in-depth discussion with questions being posed for comment by the panel. The following challenges were raised:

- The huge number of female LLB students graduating from university, which number is not reflected in the profession.
- Treatment of black women lawyers (and males) within private practice;
- The issue of legal professionals working for the state not being able to act on the bench. (This matter was addressed by the Chief Litigation officer and she indicated that according to her there is no such prohibition)
- The introduction rule of the Bar prohibits the young advocates to meet with the State Attorney, government structures etc. How can the DOJ&CD play a much more pro-active role via the State Attorney to ensure that black advocates and especially black female advocates are instructed by the State Attorney not only to improve the stats but also to ensure qualitative impact and outcome on the recipient of the brief;
- FHR to extend the research to all legal professionals within the state and private practice;
- Women networking opportunities and the role of DOJ&CD to play an active role in the promotion of gender equality in the legal profession;
- Promotion of internships at institutions like the Bar, Law Societies, South African Women Lawyers similar to the DOJ&CD Law Clinic candidate attorney programme;
- DOJ&CD to consider a similar programme for advocates at the bar via AFT.

11. VOTE OF THANKS

Adv. C. Brown delivered the vote of thanks on behalf of NADEL Western Cape. She acknowledged the presence of all of the various speakers, members of NADEL, Black Lawyers Association, Advocates for Transformation, the Cape Law Society, the University Law Clinics, the State Attorney and the Master's Office.

Being black and a female at the Cape Bar was a daunting experience. It is especially hard because of the solitary nature of an Advocate's work, there are no real support structures in place to guide young female advocates. She hopes that women in the Bar will begin to work in supporting each other and improve their situation from within.

She ended off by reciting a poem.

12. ACKNOWLEDGMENTS

- NADEL extends its heartfelt gratitude to the CEO and Staff of the Cape Law Society for providing their support and for allowing access to their venue.
- We are also indebted to the Foundation for Human Rights for partnering with us in this initiative.
- NADEL also acknowledges and thanks Zaikas for providing the catering.

DATED AT CAPE TOWN ON THIS 23 DAY OF OCTOBER 2014

DR. J. MOSES

CHAIRPERSON

NADEL WESTERN CAPE

S. SAMAAI

BRANCH SECRETARY

NADEL WESTERN CAPE

APPENDIX 4: NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS “GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION PROJECT”: IMPLEMENTATION PLAN 30 APRIL 2015

TABLE OF CONTENTS

1. BACKGROUND TO THE PROJECT
2. PURPOSE OF THE IMPLEMENTATION PLAN
3. PERIOD OF THE PROJECT
4. KEY PROJECT ACTIVITIES
5. KEY DATES IN TERMS OF ACTIVITIES
6. IMPLEMENTING AGENTS AND GOVERNANCE OF THE PROJECT
7. HUMAN RESOURCE REQUIREMENTS (ACTIVITY 1)
8. CONSULTATION PROCESS WITH STAKEHOLDERS
9. PROJECT ACTIVITIES
10. BUDGET & REPORTING
11. POINTS OF CONTACT
12. CONCLUSION

1. BACKGROUND TO THE PROJECT

- 1.1 An analysis of the 20 years of Democratic Governance indicates that while considerable progress has been made regarding the institutionalisation of women's rights and gender equality, South Africa still faces many challenges.
- 1.2 To achieve a society free of racism and sexism, the country must undergo a paradigm shift regarding the way in which resources are allocated and how people relate to each other.
- 1.3 These challenges, which face the country, have been translated into national priorities. All of these priorities have compelling gender dimensions, which needs to be addressed if the country is to advance towards women's empowerment and gender equality.
- 1.4 Transformation of the legal profession is essential for the transformation of the judiciary and significant steps in this direction have been taken by both the profession and government.
- 1.5 Government has introduced legislation to promote transformation and enforce ethical behaviour within the legal profession. However, we need to understand how government will be implementing the legislation and how it intends to address the gender transformation challenges.
- 1.6 NADEL, as a key stakeholder within the legal profession, acknowledges that considerable progress has been made towards the institutionalisation of women's rights and gender equality; however, the legal profession remains largely untransformed and continues to lag behind in achieving gender and racial equality.
- 1.7 According to records of the General Council of the Bar, as at 30 April 2012 there are 2 384 practicing advocates, with 76% of them being male, 24% female and 73% white and 27% black. Further, according to figures from the Law Society of South Africa, as at 5 May 2012 there are 21 007 practicing attorneys, 65% are male, 35% female, 65% white and 34% black, (the remaining 1% race was not specified). The average of the two professions shows that there are 23 391 legal practitioners in total, 67% of which are male, 33% female, 66% white and 33% black. NADEL believes that the current gender and racial disparities have also negatively impacted the status of equality of the judiciary at the High Courts, the Supreme Court of Appeal and the Constitutional Court. This is evident in the Judicial Service Commission (JSC) numbers that reports that as at 31 May 2012 they are 237 judges, 34% are white, 66% black, 71,7% male and 28,7% female.
- 1.8 NADEL believes that transformation of the legal profession is an essential component in the transformation of the judiciary and it is imperative for significant steps to be taken by both the profession and government in addressing the existing gender disparities.
- 1.9 Discussions, Research and Advocacy on the topic will assist in stimulating robust debates and identify key issues and challenges facing the legal profession, which will contribute to increased efforts by the organised profession and government to promote the integration of women in the profession and the creation of an enabling environment for women to pursue a career in law. A paradigm shift is crucial if one is required to promote and give effect to the Constitutional principles of equality within the legal profession.

- 1.10 NADEL has therefore undertaken a project to facilitate dialogue sessions with women lawyers, advocates and legal professionals in the legal profession aimed at stimulating robust debates and identify key issues/challenges facing the legal profession in respect of gender transformation. These dialogue sessions will focus on the nature of increased efforts required to promote the integration of women in the legal profession and the creation of an enabling environment for women to pursue a career in law.
- 1.11 The dialogues, which will be held across the country will amongst others provide a platform for discussions on the strides made towards the attainment of women empowerment and gender equality, while also critically assess persistent shortcomings and gaps in the legal framework and programmes of public, private and social sectors that lead to women not benefiting from the country's empowerment and development initiatives and also propose ways in which to change the status quo.
- 1.12 NADEL in consultation and with the support of its national partners, BLA, SAWLA, LSSA, DOJ&CD etc. will also be conducting a national survey on the challenges facing women lawyers 20 years after democracy. NADEL with the support of its members and Foundation for Human Rights will compile a comprehensive report on its findings for further deliberations by governments, the organised profession and relevant decision-makers.

2. PURPOSE OF THE IMPLEMENTATION PLAN

To ensure the overall success of the project, NADEL has drafted an implementation plan which will guide all stakeholders, implementing agents, facilitators on the purpose, objectives, aims, outcomes, outputs, activities, timeframes and related budgets.

3. PERIOD OF THE PROJECT

The project will be conducted between the period 1 April 2015 – 31 March 2016.

4. KEY PROJECT ACTIVITIES

- APPOINTMENT OF PROJECT TEAM, FACILITATORS AND STAFF
- FACILITATION OF THE CORE GROUP MEETINGS
- FACILITATION OF THE 2 x REFERENCE GROUP MEETINGS
- LAUNCH OF THE GENDER DIALOGUE PROJECT (Proposed Cape Town)
- GENDER DIALOGUE SESSIONS WITHIN THE NINE PROVINCES
- CONDUCTING OF THE NATIONAL RESEARCH
- COMPILATION OF THE RESEARCH REPORT
- NETWORKING & ADVOCACY
- FUNDER REPORTING (PROJECT & FINANCES)

5. KEY DATES IN TERMS OF ACTIVITIES

A Detailed project plan has been drafted. A copy is attached herewith.

ACTIVITY		DUE DATE/ COMMENCEMENT /IMPLEMENTATION DATE
1	Inception of Project (start) Appointment of Project team, Consultants etc.	15 May 2015
2	First Stakeholder Meeting (BLA, NADEL, SAWLA, CLS) (date is subject to the LSSA meeting at National)	30 May 2015
3	Commencement of Field Research	30 July 2015
4	Second Stakeholder Meeting with Women Judges Association	30 July 2014
5	First Reference Group Meeting & Cape Town Dialogue Session & Official Launch of the Project (Third stakeholder meeting)	13 June 2015
6	Dialogue Session 2 (Province TBA)	25 July 2015
7	Dialogue Session 3 (Province TBA)	15 August 2015
8	Dialogue Session 4 (Province TBA)	29 August 2015
9	Dialogue Session 5 (Province TBA)	12 September 2015
10	Dialogue Session 6 (Province TBA)	26 September
11	Dialogue Session 7 (Province TBA)	17 October 2015
12	Dialogue Session 8 (Province TBA)	31 October 2015
13	Dialogue Session 9 (Province TBA)	7 November 2015
14	Second Reference Group Meeting	21 November 2015
15	Final Report due by Consultants	29 February 2016
16	Submit to FHR (in word)	1 March 2016
17	Final Designed Report submitted to FHR	15 March 2016
18	Media Briefing	21 March 2016

6. IMPLEMENTING AGENTS AND GOVERNANCE OF THE PROJECT

- 6.1 NADEL will be the project owner and responsible for its overall governance and implementation. NADEL has appointed a **NADEL PROJECT TEAM & COORDINATOR** to engage with its **National EXCO and GENERAL SECRETARY of NADEL**.
- 6.2 The NADEL Project Team will appoint and identify a **CORE GROUP** of individuals to assist with the project management of the activities of the project.
- 6.3 NADEL will also facilitate the appointment of a **REFERENCE GROUP**, who will consist of individuals who are gender experts or who has a history promoting gender equality within the legal profession and who renowned for their gender advocacy activities within the different international, national and local sectors. The **REFERENCE GROUP** will provide guidance to NADEL on the focus of the dialogue and research project.
- 6.4 NADEL will appoint and employ **FACILITATORS** to assist with the implementation of the Project and facilitate the coordination of the dialogue sessions within the nine provinces. The **FACILITATORS** will appoint **INTERNS** to assist them with the capturing of the research data and the compilation of the research. The Facilitators will enter into a **SERVICE LEVEL** Agreement with NADEL and will be accountable to the NADEL and its delegated officials. NADEL will also appoint or make available a **PROJECT ADMINISTRATOR** who will assist the **PROJECT TEAM, COORDINATOR and FACILITATORS** in respect of all administrative activities and logistics relating to the project.
- 6.5 NADEL will set up **PROVINCIAL PROJECT TEAMS/COMMITTEES** to assist the Facilitators with the coordination of the Dialogue Sessions in the various Provinces.

7. HUMAN RESOURCE REQUIREMENTS (ACTIVITY 1)

- 7.1 NADEL is a voluntary association of members and has an administrative Project Office based in Cape Town.
- 7.2 NADEL has branches that are managed on a voluntary basis by the Branch Executive Committees.
- 7.3 The project will appoint and/or contract facilitators to assist NADEL with the implementation of the project.
- 7.4 The Project will appoint an project administrator for the duration of the project and 1 or 2 interns to assist with the collection and compilation of the Research.
- 7.5 The Project will be based in Cape Town.
- 7.6 The Branch will appoint a bookkeeper to assist the Branch Treasurer with the payments.
- 7.7 The Project will also contribute towards an accountant (if necessary) and the cost of an auditing company to assist with submitting audited financial statements to FHR.

8. CONSULTATION PROCESS WITH STAKEHOLDERS

- 8.1 NADEL Project team have engaged with EXCO of NADEL (via the President and SG) and will further consult with the Provincial Branches and Gender Desk on the Project.
- 8.2 The NADEL Project Team and facilitators will consult with BLA, SAWLA and LSSA on the Project and the relevant Provincial Law Societies on the project.
- 8.3 The consultation process is still on-going and will be continues during the duration of the project on a provincial level.

9. PROJECT ACTIVITIES

9.1 APPOINTMENT OF FACILITATORS (CONSULTANTS) & PROJECT ADMINISTRATIVE STAFF

- Draft Service Level Agreements and Project Contracts
- Appointment of facilitators/consultants

9.2 FACILITATION OF THE CORE GROUP MEETINGS

- Identify a CORE Group of Experts to assist the Facilitators and Project Team;
- Draft correspondence to CORE GROUP inviting them to attend;
- Facilitator facilitates the first CORE Group Meetings
- Attend meetings with the Project Staff; (9 meetings)
- Assist with Dialogue Sessions (if required) (9 in the various provinces)
- Provide guidance on the research and management of the Project;
- Assist with the Drafting and/or Editing of the final report;

9.3 FACILITATION OF THE 2 x REFERENCE GROUP MEETINGS

- Identify a the attendees of the Reference Group of Experts to assist the Facilitators and Project Team;
- Draft correspondence to Reference GROUP attendees inviting them to attend;

- Identify approximately 30 Key Gender Activists to form part of the Reference Group
- Dialogue /Roundtable Session to be held with Reference Group;
- Reference Group Meeting to be held before the Commencement of the Project;
- Identify Key Note Speaker and facilitators of first session; (BEFORE JULY 2015)
- Draft 3 to 4 hour programme and obtain approval from Project Team;
- Second Reference Group Meeting to be held in November 2015 to advise reference group of progress of project
- See Annexure A for the DRAFT Programme and Annexure B of the proposed guestlist;

9.4 LAUNCH OF THE PROVINCIAL DIALOGUES

- The Launch of the Project and Provincial Dialogues will be facilitated in June 2015 by the Provincial Team, Core and Reference Group;
- The following provinces have been identified:
 - Cape Town – Area Central Cape Town (Reference and Provincial Launch together)
 - KZN - Durban
 - Guateng – JHB
 - Limpopo - Area TBA
 - Mpumalanga – Area TBA
 - North West – Area TBA
 - Eastern Cape – Port Elizabeth or Mtata
 - Free State – Bloemfontein
 - Northwest (either with Free State or in Upington or Kimberley)
 - It will be held after the meeting of the Reference Group meeting and will be in the form of a Dinner;
- It will be held after the meeting of the Reference Group meeting and will be in the form of a Dinner;

- Approximately 100 women lawyers to be invited to the Provincial Dialogue session and Launch;
- The participation of the following **stakeholders** is critical in ensuring the success of this launch:
 - NADEL Executive (as the lead agent)
 - BLA
 - SAWLA
 - Reference and Core Group members;
 - LSSA
 - Local Law Society (depending on the Province)
 - General Bar Association
 - Local Bar Association
 - AFT
 - FHR
 - DOJ&CD
 - Department of the Premier
 - Department of Community Safety
 - South African Police Services
 - National Prosecuting Authority
 - Judiciary / Magistracy
 - Human Rights Commission
 - Commission on Gender Equality
 - Public Protector
 - Legal Aid South Africa
 - University Legal Aid Clinics
 - Paralegals
 - Non-governmental organisations (with a special focus on organisations promoting women rights organisations)
 - Academia

- **A draft programme** for the launch is attached hereto and marked “**Annexure D**;
- **Local organising Committee** to draft the report of the session and submit to facilitator;
- The objective of these dialogue sessions is to ensure that as many women lawyers are informed of the dialogue session and the research;
- The outline of the draft programme for these dialogue sessions will be topic-based; e.g. challenges facing women lawyers; the role of women lawyers in promoting access to justice; etc.
- All the relevant stakeholders must participate in dialogue sessions to ensure the success thereof. In this instance, the NADEL local organising committee must assist the facilitator /National co-ordinator with the participation of local stakeholders and of the programme and identify a keynote speaker.
- The only foreseeable financial implications for these dialogue sessions are for venue hire, PA system hire, printing of programmes; catering and gift for the key note speaker;

9.6 CONDUCTING OF THE NATIONAL RESEARCH

- Identify the communication strategy of the survey
 - Online
 - Email
 - Post
 - Fax
- Identify contact point for the survey
- Compilation of survey questions
- Finalise questionnaire
- Forward questionnaire between the period June - July
- Capture the survey questionnaire end July

9.7 COMPILATION OF THE RESEARCH REPORT

- Analyse the survey questionnaire
- Compile the dialogue reports
- Compile the Report

9.8 NETWORKING & ADVOCACY

- Finalise the outcome of the Research Report with the reference group
- Engage with DOJ&CD and organised profession regarding the outcomes
- Facilitate a reference group workshop to discuss the report outcomes

- Engage with Minister of Women in the Presidency
- Media briefing regarding the Outcomes of the Report
- Finalise the Communication strategy
- Speakers to be identified by Project team per province. Discussions to be hosted by NADEL Gender Desk
- Communications to include media advocacy through:
 - Local community newspapers;
 - Mainstream media newspapers;
 - Local community radio stations; and
 - Mainstream radio stations.

9.9 FUNDER REPORTING (PROJECT & FINANCES)

- Report to funder as per contract requirements
- Monthly income and expenditure report submitted by treasurer to the Project Team
- Compile project financial expenditure report to funder
- Audit the financials

10. BUDGET & REPORTING

Budget as per the Approved Funding Proposal.

11. POINTS OF CONTACT

ACTIVITY	DETAILS	CONTACT NUMBER
Project Sponsor/Funder	Foundation for Human Rights Project Coordinator: Lucreciaz Seafeld	lucreciosa2004@yahoo.com lseafeld@fhr.org.za 0789086334
NADEL Project/Program Coordinator	Seehaam Samaai	nadelwc@gmail.com seehaam.samaai@gmail.com 0833843448

12. CONCLUSION

It is hoped that through the initiatives outlined above that we will be able to further promote gender transformation within the legal profession and restore the public's confidence in the legal system.

APPENDIX 5: NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS “GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION PROJECT”: NARRATIVE REPORT ON IMPLEMENTATION, 2015

REPORTING PERIOD: JULY 2015 – DECEMBER 2015



**NADEL GENDER PROJECT STAKEHOLDER DINNER
HELD 25 JULY 2016, PREMIER HOTEL, CAPE TOWN
MEMBERS OF THE REFERENCE GROUP & NADEL GENDER CONVENORS**

1. INTRODUCTION

An analysis of the 20 years of Democratic Governance indicates that considerable progress has been made in respect of the formal recognition of gender equality and the promotion of women's rights in particular.

In order to give effect to the rights enshrined in the Constitution in respect of gender equality we need to begin an examination and reflection on the mainstreaming of gender equality and women's rights and whether women within the legal profession are experiencing substantive equality within the workplace.

The implementation of the Gender Transformation within the legal profession is positioned within this environment. It has been a turbulent time in the country with much heightened awareness on transformation ranging from our institutions of higher learning, our economic discourse and of course within the legal profession itself.

The Report seeks to update the National Association of Democratic Lawyers (NADEL) on the implementation of its Project titled: *Gender Transformation within the Legal Profession*. This report is an interim report compiled at the halfway mark in the implementation of the Project.

Reference is made to discussions, deliberations and outcomes these are listed merely as indicators of the implementation against the outcomes and activities undertaken and has no bearing on the actual findings, which will be contained in the research report.

The findings and analysis will therefore be contained in a written report which will be submitted at the end of the Project period as the final outcomes document. This document will contain the outcomes of the dialogue sessions, questionnaires, interviews and recommendations of the participants in this process.

2. KEY DELIVERABLES:

The activity plan lists a number of key deliverables, and we hereby aim to provide key information in respect of the key deliverables.

2.1 THE REFERENCE GROUP, 25 JULY 2015, PREMIER HOTEL

During the months of July and August, individual women were identified from within the legal profession to serve as a Reference Group to the NADEL on the implementation of the project. They helped to guide a process by identifying key areas of concern where intervention was needed, shared their own experiences and methodologies for transformation as well as participated in the formulation of the final Questionnaire which has been distributed to women practitioners.

The Reference Group emphasized the need for a process lead by women and informed by women, which has been at the foundation of how the project has been implemented thus far.

1	Brigitte Mabandla	Former Minister of DOJ&CD & SAWLA ICON and Patron	bmabandla@telkomsa.net
2	Yasmin Sooka	FHR	ysooka@fhr.org.za
3	Lucrecia Seafeld	FHR	lseafeld@fhr.org.za
4	Adv M J Maluleke	Department of Women in the Presidency	mikateko@malule@women.gov.za
5	Ntibidi Rampete	DOJ&CD Gender Directorate	Nrampete@justice.gov.za
6	Noxolo Maduba	SAWLA President	Noxolo.maduba@sawla.org.za
7	Keketso Maema	CGE	keketso@cge.org.za
8	Nolundi Nyati	Black Lawyers Association & Acting Magistrate	nbnyati@gmail.com
9	Adv R Nyman	NADEL and Advocate at the Cape Bar	nymanr@law.co.za
10	Prof Waheeda Armien	PPF Chairperson and UCT academic	warmien@gmail.com
11	Adv Monique Davis	Advocates for Transformation	Monique@capebar.co.za
12	Magistrate Pearl Andrews	Magistrate	PAndrews@justice.gov.za
13	Harshna Munglee	National Gender Convenor & & NADEL Project Team member	hm@hmung-lee.co.za
14	Adv Chandré Brown	NADEL WC Gender Convenor	advbrown@telkomsa.net
15	Fathima Bibi Mahomed	NADEL KZN/Project Rep & NADEL Project Team member	faathima.mahomed@gmail.com
16	Crystal Hariklia Cambanis	NADEL Gauteng Gender Convenor	rmmohana@iafrica.com
17	Nolitha Jali	NADEL Free State Gender Convenor	NolithaJ@legal-aid.co.za
18	Tumiso Faith Kekana	NADEL Limpopo Gender Convenor	tumishofaith75@gmail.com
19	Bongelwa Ntsonge	NADEL Eastern Cape Gender Convenor	mnotyesi@telkomsa.net/ntsongebp@gmail.com
20	Suraya Williams	Office of the Chief State Law Advisor & South African women lawyers Association Western Cape Executive member	SuWilliams@justice.gov.za
21	Seehaam Samaai	NADEL NEC member and Gender Project Team Coordinator	seehaam.samaai@gmail.com

2.2 DIALOGUE SESSIONS

During the reporting period dialogue sessions were hosted in Cape Town, Johannesburg, Kimberley, Durban, East London as well as Bloemfontein. The Dialogue sessions of course have been a critical key deliverable, but also critical to the overall objective of the Project.

During the Reference Group session it became clear that there were limited spaces for women within the profession to engage with one another, but also for them to reflect on their role and position within the profession.

Perhaps what was unplanned or unforeseen was the need expressed by women for such spaces, and as we moved within the provinces and engaged, we have come to realise that an unforeseen outcome has been that women have been provided opportunities to engage¹⁸⁶ with one another on the issues that affects them within the profession.

The dialogue sessions have connected women legal practitioners. This has enabled, in provinces such as the Northern Cape and the Free State, women legal practitioners to form informal support networks.

The Project Team is assisted by the Gender Conveners of the different branches to organise and host the workshops.

We provide a brief summary of each of the Dialogues that have been facilitated thus far without providing any detail into findings as once again these will be contained in the final report.

2.2.1 Cape Town (Western Cape), 1 August 2015, Premier Hotel, Cape Town

The Cape Town dialogue was the first engagement with women from the legal profession. It is worth noting that invitations extended to the Cape Bar and the Cape Law Society were taken up by women, and so along with a member of the Cape Town organising committee of Nadel, this dialogue session included three men¹⁸⁷.

The Dialogue was well attended by members of the Cape Bar, attorneys from the Cape Law Society as well as some academics, and attorneys employed by the offices of the South African Human Rights Commission as well as the State Attorney and the National Prosecuting Authority. The discussion was very focused on identifying challenges as well as suggested solutions.

Attached herewith is the Programme marked Annexure 3.

¹⁸⁶ The need for such spaces and the role of the organized profession will be explored in further detail in the final research report.

¹⁸⁷ The Cape Law Society representative, The President of the Cape Town Bar, and a member of NADEL WC

2.2.2 **Johannesburg (Gauteng) 17 October 2015, Webber Wetzel Office, Sandton**

The Johannesburg dialogue was arranged by the local organising committee in Gauteng with input from the project management team. It was hosted at the offices of Webber Wentzel, which was welcomed and perhaps also an indication of commitment to creating spaces for transformative dialogue within the profession.

The session was more focused on finding solutions as participants expressed great frustration that research was undertaken and that problems have been identified, but that these issues are not being addressed within the profession. There was some analysis as to why transformation was taking place at such a slow pace and what could be done in order to realise it for women within the profession.

2.2.3 **Kimberley (Northern Cape) 30 October 2015, Flamingo Bay Casino, Kimberley**

The Kimberley session was scheduled to coincide with the Cape Law Society Annual General Meeting as it was anticipated that that event would garner bigger participation. Unfortunately, the AGM was badly attended and therefore the dialogue was not as well attended as the other two sessions. The small group of women and three men¹⁸⁸ who participated however was able to focus on issues that were very specific to the province.

Issues explored included racial discrimination as well as conservative and discriminatory culture within the province. This provided rather unique insight into the legal profession in the biggest province in the country with the smallest contingent of legal professionals. The session was attended by women who were in private practice, law clinic, the state attorney's office as well as the National Prosecuting Authority.

2.2.4 **Durban Dialogue, 21 November 2015, Southern Sun, Elangeni**

The session in Durban was well organised and very well attended. There was a mixed group of men¹⁸⁹ and women within the legal profession. The session was engaging and at times difficult as new concepts were explored around cultural capital and its role within transformation.

The Durban participants, much like in Gauteng and Cape Town, expressed a need for greater and faster transformation. Indicative of a province where participants had access to information and resources the discussion was very focused on confronting problems with recommendations and suggestions for transformation.

188 The Master of the High Court Kimberley, the Chairperson of the Cape Law Society and a representative of the Law Society

189 It is worth noting that men were not particularly excluded or targeted to attend the session. There was some reference to including more men in dialogue sessions, but it was also expressed that men dominate spaces where dialogues and engagements on the legal profession take place, and therefore men are already part of the discussions.

2.2.5 **East London 28 November 2015, King David Hotel**

The Eastern Cape session was held in East London and was well organised. There were some logistical issues in terms of the size of the province and the possibility of hosting a further dialogue in Port Elizabeth to allow for wider participation¹⁹⁰.

The session was more focused on inner reflection and the role that women should play within their own empowerment. The focus was therefore different, but given the rural context in which many of the women work in the profession it was perhaps indicative of greater advocacy, support and network building that needs to take place in the province in order to address concerns around empowerment of women within the profession.

Attached herewith is the Programme marked Annexure 7.

2.2.6 **Bloemfontein Dialogue 5 December 2015, Protea Hotel, Bloemfontein**

The Bloemfontein session was well organised in partnership with the South African Women's Lawyers Association. The attendance did not include any men as it was expressed that women deserved to have a space in which they could share their own experiences and come up with solutions to their own problems. This was an exceptionally strong sentiment that set the tone for a positive and constructive unpacking on the intersectionality between race and gender in the province. Once again the issue of cultural capital became a driving force in the discussion¹⁹¹.

3. FORMAL DINNERS (CT, KIMBERLEY AND BLOEMFONTEIN)

The Project was launched with a Dinner the evening of the Reference Group Meeting. The Dinner was used as an opportunity to celebrate women in the legal profession and former Minister of Justice and Constitutional Development Ms. Bridget Mabandla was the key note speaker. This event provided a unique opportunity to engage with the former Minister, but also for her to reflect on her tenure as Minister and how she approached the issue of transformation. Of course during her tenure specific judicial training was offered to female practitioners. Ms. Mabandla had the opportunity to reflect on a key issue of ongoing training and education and whether only women required training to be appointed to the judiciary and the compromises that were made in order to begin on a road towards transformation as well as the continued need to pursue with vigor the gender transformation debate.

The second dinner was hosted in Kimberly following the dialogue session in the afternoon. The dinners allowed for the opportunity of motivation, reflection and learning from key note speakers and to celebrate the women practitioners within the provinces.

¹⁹⁰ This option will be explored depending on time and budget availability in 2016

¹⁹¹ Theory of cultural capital and the role it played in unpacking issues within the provinces will be addressed in detail in the research report.

4. STAKEHOLDER ENGAGEMENTS

The Project team members attended various workshops, conferences and functions to raise awareness and to request support for the Project.

International Association of Women Judges Association 2015 Africa Regional Conference 7 – 10 August 2015

Comrade Crystal Hariklia Cambanis attended the Conference on behalf of NADEL. She made participants aware of the Project and distributed the questionnaire and the concept note at the Conference

Cape Law Society AGM 29 and 30 October 2015

NADEL was given an opportunity to address the members of the CLS. Comrade Seehaam Samaai delivered a paper on the project, setting out the aims, objective and outputs of the project. Members were requested to participate in the project. The Questionnaires were also distributed.

International Association of Women Judges Association Gala Dinner– Cape Town Chapter 28 November 2015

NADEL hosted a table and engaged with the women judges, magistrates and legal professionals at the Gala Dinner in respect of the project and distributed the Questionnaire.

5. THE QUESTIONNAIRE

With inputs from the Reference Group a Questionnaire has been compiled in order to expand the reach of the input and to focus the research on particular areas of concern and intervention.

The Questionnaire has been distributed to participants in the dialogue sessions but has also been disseminated wider in order to get as many voices participating in the debate and feeding into the findings. Because of the nature of the information sought, the questionnaire is lengthy and so has taken some time to complete.

Time was set aside for this purpose at the dialogue sessions and has thus far it has been positively received by participants.

Requests have been sent to the other professional bodies within the profession to request that the questionnaire be circulated to their members for completion and input into the process.

A separate email account has been set up to receive electronic copies of the questionnaires in instances where individuals wanted time to complete the form and to forward it at a later stage. A copy of the Questionnaire is attached hereto.

An online version of the questionnaire has also been created and will be forwarded to the members and various stakeholders.

6. MEDIA & COMMUNICATION

An article on the Gender Project Launch was published in the September edition of DE REBUS.

http://www.myvirtualpaper.com/doc/derebus/de_rebus_drd_september_2015/2015082001/

A popular version of the DIALOGUES will also be drafted. (Example attached)

7. PLANNED WAY FORWARD

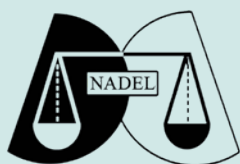
We remain on track to complete the Project on schedule.

Further dialogues are planned for the beginning of the 2016 year in Mpumalanga, North West and Limpopo. The current activities plan would see us complete the dialogue sessions by the end of January 2016.

We aim to embark on strategic interviews in January 2016 with individuals within the profession who hold key positions and who have shown an interest in contributing to the discussion on methodologies for transformation. Whereafter the focus will shift to the completion of the written report.

APPENDIX 6:

NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS RESOLUTION ON SEXUAL HARASSMENT & GENDER BASED VIOLENCE IN THE LEGAL PROFESSION



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NOTING THAT:

1. Sexual Violence, harassment and grooming are common but major barriers in the workplace for women.
2. The legal profession is not immune to these discriminatory and violent behaviours.
3. On the surface there are various laws, internal HR related policies and professional and ethical disciplinary rules to address these challenges, these processes fail to take into account the lived realities of professional women (in particularly black women) , the power dynamics and skewed power structures within the legal profession which can have an opposite effect to what the process has envisaged and be more harmful and damaging to the women (and to those within the sector) both on a personal and professional level.
4. The current legal processes lends itself to indirect forms of discrimination and secondary victimization, which perpetuates and creates systemic discriminatory practices, if not addressed in a proper manner by the legal profession and it impacts greatly on the advancement of women within the legal profession.
5. Women in the legal profession is in a unique predicament as they work within a sector where there is a general assumption that employers (law firms) and societies will apply fair and just principles to the processes and that there will be equality of arms.
6. More times than not the process will be 'self-preserving,' the women are victimised and they are left on their own to legally fend for themselves.

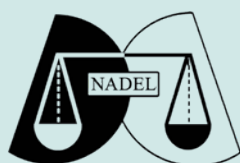
IT IS RESOLVED THAT:

1. There is an obligation on the profession to address this major barrier to gender transformation.
2. That a panel constituting inter alia BLA, NADEL, SAWLA & other like-minded organisations convene a workshop to discuss these barriers and the need to have a separate sexual harassment rule and practice within the disciplinary code and if necessary establish a committee to monitor the outcomes.
3. A Communications strategy be devised to communicate to employers and employees their rights, remedies and obligations incorporating inter alia the following:
 - a. Ensuring that policies once adopted are adequately implemented and that ways are not found to circumvent policies.
 - b. Ensuring that Education and training sessions around gender sensitivity and correct behaviour are introduced in order to reshape organisational culture.
4. Law societies and bar councils and other like organisations address sexual harassment by their members and it should be considered professional misconduct and rules and procedures need to be put in place.

APPENDIX 7:

NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

“GENDER TRANSFORMATION WITHIN THE LEGAL PROFESSION PROJECT”: PROVINCIAL PROGRAMMES



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NADEL Bloemfontein	Gender Dialogue Panel Discussion	The Protea Hotel, Nelson Mandela Drive, Bloemfontein.
Time: December 04 2015	Programme	Speaker & Panelist – Programme Director: Ms. S Samaai
13:30 – 14:00	Arrival and Registration	Ms. Nolitha Jali and Ms. Astrid Bezuidenhout
14:00 – 14:10	Opening/Welcome and prayer	Ms. Nolitha Jali
14:10 – 14:20	Purpose and Objective of the Project	Ms. Seehaam Samaai
14:20 to 14:30	Introduction of Chairperson and panelist	Ms. Astrid Bezuidenhout
14:30 – 15:20	SHARING OF EXPERIENCES Gender Transformation in the Legal Profession: Being a Woman in the Legal profession; Challenges facing women legal practitioners, Lessons learnt and how government and the organised profession can/should promote gender transformation.	CHAIRPERSON: MS. NOXOLO MADUBA • Adv. C. Naidoo: Legal Services Mangaung Metropolitan Municipality • Adv. Elsa Smith: Deputy Director of Public Prosecutions; NPA – Bloemfontein • Ms. Tabeth Masengu: DGRU
15:20 – 15:30	SNACKS, TEA & COMFORT BREAK	ALL PARTICIPANTS
15:30 – 16:15	Dissemination and Completion of the Questionnaires by Participants	Ms. Charlene May – Facilitator
16:15 – 16:50	Facilitated Discussion	Ms. Charlene May – Facilitator
16:50 – 17:00	Vote of Thanks	Ms. Thobeka Moleko
18:00	Stakeholder Dinner	The Protea Hotel
STAKEHOLDER DINNER: 18:00 – DRESS CODE: FORMAL		

NADEL: *Moving Women's Agenda Forward*



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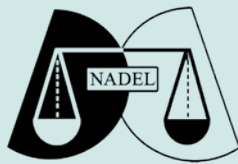
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NADEL Mpumalanga, Limpopo & North West Province	Gender Dialogue Sessions	Held in Rustenburg
Time: 06 August 2016	Programme	Programme Director: Ms. S. Samaai
	Arrival and Registration	Ms. Fazoe Sydow
15h00 – 15h10	Opening & Welcome	Ms. Seehaam Samaai / Ms. Nthabiseng Khwinana
15h10 – 15h30	Feedback and findings from previous regional sessions	Ms. Mandi Mudarikwa
15h30 – 16h15	Dissemination and Completion of the Questionnaire (Tea Break)	Ms. Mandi Mudarikwa
16h15 – 17h00	Facilitated Discussion	Ms. Charlene May
17h00 – 17h10	Way forward	Ms. Seeham Samaai
17h10 – 17h15	Vote of Thanks	Ms. Seeham Samaai

NADEL: *Moving women's agenda forward*



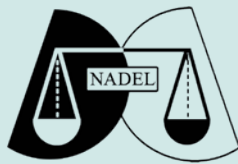
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Cape Town	Gender Dialogue Discussion	
Time: 01 AUGUST 2015	Programme	Speaker & Panelist
Brunch will be served		
9:30 – 10:00	Arrival and Registration	Brunch Served
10:00 – 10:10	Meditation and Centering	Adv. Roseline Nyman
10:10 – 10:20	Opening & Welcome	Adv. Chandre Brown Gender Convenor Western Cape Branch
10:20 – 10:30	Purpose and Objective of the Project	Seehaam Samaai National Project Team Coordinator
10:30 – 11:20	SHARING OF EXPERIENCE Being a Woman in the Legal profession	CHAIRPERSON: ADV. ROSELINE NYMAN • Honourable Judge Rosheni Allie: Judge of the Western Cape High Court • Ms. Nolundi Nyati: SAWLA WC & Acting Magistrate • Adv. Nazreen Bawa: Advocate at the Cape Bar • Ms. Suraya Williams: Attorney and Legal Advisor (Government) • Prof Waheeda Amien: PPF Chairperson & Academic
11:20 – 11:30	Tea and comfort break	
11:30 – 12:00	Facilitated Discussion	Charlene May and Mandi Mudarikwa Facilitators
11:30 – 12:00	Dissemination and Completion of the Questionnaire	Charlene May and Mandi Mudarikwa Facilitators
11:30 – 12:00	Way Forward	Adv .F Nagia Luddy Branch Executive Member
12:50 – 13:00	Vote of Thanks	Greg Duncan Branch Executive Member
5 min Closure Mediation and Thanks		
NADEL: <i>Moving women's agenda forward</i>		



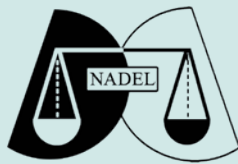
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	Gender transformation of the legal profession – supper & stakeholder engagement	Kimberly, Northern Cape
Time: 31 OCTOBER 2015	Programme	Speaker & Panelist Programme Director– Seehaam Samaai
Brunch will be served		
18h00 – 18h10	Welcome	Mr. Mvuso Notyesi NADEL – Vice Chairperson
18h10 – 18h20	NADEL's commitment Transformation to continued Gender	Seehaam Samaai NADEL – Gender Project Task TeamCoordinator
18:20 – 18:30	The first course is served	
18h30 – 18:35	Introduction to Key Note Speaker	Adv. Chandre Brown NADEL Western Cape Gender Coordinator
18:35 – 19h00	KEYNOTE ADDRESS LESSONS LEARNT: Gender transformation within the legal profession, challenges and advances made in the last 20 years of democracy in South Africa	The Honourable Judge Bulelwa Pakati Judge of the Northern Cape High Court
19h00 – 20h30	Dinner is served	
20h50– 21h00	A word of thanks and reflection Dessert and coffee is served (questionnaire available at the registration desk)	Mr. Ashraf Mahomed NADEL – NEC member



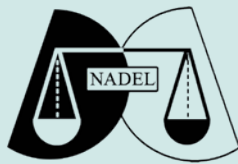
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NADEL Eastern Cape	Gender Dialogue Panel Discussion	
Time: 28 November 2015	Programme	Speaker & Panelist Programme Director: Ms. S. Samaai
08:30 – 09:00	Arrival and Registration	Ms. Bongelwa Ntsonge
09:00 – 9:10	Opening & Welcome	Ms. Xoliswa Bacela
09:10 – 09:25	Purpose & Objective of the Programme	Ms. Seehaam Samaai
09:25 – 09:30	Introduction of the Keynote Speaker	Ms. Bulelwa Nomjana-Ndzondo
09:30 – 09:45	Keynote address	The Honourable Judge Buyiswa Majiki
09:45 – 09:55	Introduction of Chairperson and participants	Ms. Bulelwa Nomjana-Ndzondo / Ms. Odwa Nyembezi
09:55 – 11:00	SHARING OF EXPERIENCES Gender Transformation in the Legal Profession: <i>Being a Woman in the Legal profession; Challenges facing women legal practitioners, Lessons learnt and how government and the organised profession can/should promote gender transformation.</i>	CHAIRPERSON: SEEHAAM SAMAAI • Adv. T Mqobi Bisho Society of Advocates • Ms. VT Gqiba Chief Magistrate East London • Ms. K Oosthuyesen CGE • Ms. N. Pakade BLA
11:00 – 11:15	Tea & Comfort Break	
11:15 – 12:00	Facilitated Discussion	Ms. Mandi Mudarikwa – Facilitator
12:00 – 13:00	Dissemination and Completion of the Questionnaire	Ms. Mandi Mudarikwa – Facilitator
13:00 – 13:20	Way Forward & Support from Stakeholders	Ms. Seehaam Samaai
13:20 – 13:30	Vote of Thanks	Ms. Memory Sosibo
NADEL: Moving women's agenda forward		



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NADEL Kwa-Zulu Natal	Gender Dialogue Panel Discussion	
Time: 21 NOVEMBER 2015	Programme	Speaker & Panelist Programme Director: Ms. S. Samaai
08:30 – 09:00	Arrival and Registration	Fazoe Sydow
09:00 – 9:10	National Anthem	
09:10 – 09:20	Opening & Welcome	Asha Sewpersad
09:20 – 09:35	Purpose & Objective of the Programme	Seehaam Samaai
09:35 – 09:45	Introduction of Chairperson and participants	Seehaam/Asha
09:45 – 11:00	SHARING OF EXPERIENCES <i>Being a Woman in the Legal profession; Challenges facing women legal practitioners, lessons learnt and how government and the organized profession can/should promote gender transformation.</i>	CHAIRPERSON: THE HONOURABLE JUDGE T. POYO • Ms. Taryn Powys: CGE Ms. Mimi Memka: BLA • The Honourable Judge Kate Pillay: IAWJ • Ms. Lungile Magoso: SAWLA • Ms. Tabeth Masengu: DGRU • Ms. Pat Moodley: DOJ • Ms. Sharon Marks AJ: Magistrate
11:00 – 11:15	Tea & Comfort Break	
11:15 – 12:00	Introduction of Facilliators Facilitated Discussion	Savera Maharaj and Logesh Perumal Charlene May and Mandi Mudarikwa – Facilitators
12:00 – 13:00	Dissemination and Completion of the Questionnaire	Charlene May and Mandi Mudarikwa – Facilitators
13:00 – 13:20	Way Forward & Support from Stakeholders	Ms. Seehaam Samaai
13:20 – 13:30	Vote of Thanks	Ugeshnee Naicker
13:30	Lunch	
NADEL: <i>Moving women’s agenda forward</i>		

