



# NATIONAL FORUM ON THE LEGAL PROFESSION

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## REPORT BY THE NATIONAL FORUM OF THE LEGAL PROFESSION TO THE MINISTER OF JUSTICE

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### Introduction

1. This constitutes the Second Report to the Minister of Justice by the National Legal Forum in terms of *Section 98(4)*. We are now able to report on some detailed work done by the NF since our last Report in August 2015, the difficulties, challenges faced and the requisite interventions required that we deliver timeously on our mandate.

### Thrust of the Report

2. This Report covers the work done by the NF in the past six months prior to February 2016. Amongst others, it contains the following:
  - the amended list of the members of the NF;
  - the work done and matters under consideration by various Committees of the NF;
  - matters for consideration and resolutions by the NF Plenary;
  - possibility or otherwise of meeting the deadline;
  - interaction with the Department of Justice;
  - Issues for consideration and intervention by the Minister.
3. We shall herein below elaborate on these various subjects in brief details.

## **Membership of the NF**

4. During the period under review, two (2) members of the NF have been recommended by the Judicial Services Commission and appointed to the Bench as Judges in the Free State High Court and Gauteng High Court, being Ms Martha Mbhele (representing the Black Lawyers Association) and Mr Willem van der Linde (representing the General Council of the Bar), respectively.
5. Both have since been replaced as follows:
  - Ms Mbhele by Ms Hlaleleni Kathleen Matolo-Dlepu from the BLA; and
  - Mr Van der Linde by Mr Geoff Budlender from the GCB.
6. For the sake of completion, the updated list of representatives is enclosed hereto as Annexure "A".

## **Report of the Working Committees**

7. The Executive Committee of the NF has delineated from the Act the detailed tasks of the NF. This in turn has been divided into the four Working Committees. Most of the issues are discussed at this level, where consensus is sought to be reached amongst the parties and contentious issues are isolated to be dealt with by the Plenary. The brief reports from each Committee are set out below:

- (i) **Administration and Human Resources Committee**

This Committee's work spread over two broad areas:

- To deal with Human Resource needs and administrative requirements of the NF on the one hand; and

- To deal with the future of the legal profession requirements to the extent that it relates to Human Resource and Administrative capacity on the other hand.

With regards to the first aspects, the Committee has attended to the following:

- The appointment of the Executive Officer, initially Mr Raj Daya, who was seconded from the Rules Board. After a long process of almost 2 months to secure this appointment, Mr Daya resigned on the 8<sup>th</sup> November 2015, due to complaints raised by some stakeholders.
- During this period, very little had been done in terms of capacitating the administrative structure of the NF, both in terms of personnel, assistance to Committees and securing of a work place. As a result, all the work vested with the Committee members, in particular the Chairpersons;
- The Committee proceeded to recruit Acting EO, Ms Charity Mhlungu from the Department of Justice on the 1<sup>st</sup> December 2015;
- The Committee further discussed and recommended an organogram (NF support structure) on the 10<sup>th</sup> December 2015, which was submitted to the Director-General of the Department of Justice and was approved accordingly.
- The Committee conducted interviews to populate the structure, with only the positions of Head of Administration and Senior Researcher filled. Other positions were further advertised and are now under consideration by the Committee.
- Thus far the Acting Executive Officer has been providing invaluable support to the Committees and the Chairpersons. Capacity constraints though abound.

With regard to the second aspect of its work, the Committee is due to attend to the following:

- The design of the Human Resources Plan of the Legal Practice Council (LPC);

- The consultation process with the current employees of various structures of the Profession, who will be affected by the changes;
- The valuation of the Assets (liquid and non-liquid) of the various statutory Law Societies and to consider the process of transferring them to the LPC;
- Assessment of current contracts of goods and services with various components of the Legal Profession and to provide a method of dealing with them.

The Committee's work was slightly impacted by the departure of its former Chairperson, Ms Mbhele.

(ii) Governance Committee

The bulk of the work of the NF is centered on this Committee. The Committee has thus considered the following matters amongst others:

- That there should be 9 Provincial Councils in line with the Country's Constitutional borders with additional Committees in provinces where there is more than one High Court ,to situate at the seat of each of the local divisions.
- A costing exercise is being undertaken to ascertain the financial viability of this proposal;
- There are contending views as to whether or not there should be a common voters roll for both Attorneys and Advocates to elect the Council; this is referred to the next Plenary session of the NF for determination;
- A further contention relates to whether or not non-practicing legal professionals may be allowed to vote and be voted for as members of the LPC;
- It is agreed that race, gender, disability and geographical background shall be considered in making a final determination of the LPC;

- It is recommended that the first elections be held before the dissolution of the Existing Law Societies and the National Forum to ensure smooth transition.

It was further recommended that the LPC will have the following Standing Committees:

- Executive Committee;
- Finance Committee;
- Audit, Risk and Remuneration Committee;
- Human Resources Committee;
- Education and Training Committee;
- Rules and Ethics Committee;
- Communication and Liaison Committee;
- Disciplinary Committee;
- Transformation and Practice Development Committee;
- Research Committee.

In the final analysis, the Provincial Councils will reflect the identical proportions of Attorneys and Advocates as is in the LPC.

The Governance Committee is in the process of conducting a detailed cost analysis of the future governance structure and will also be looking at funding sources. This task cuts across all the Committees.

The Governance Committee has had a meeting with the Department of Justice in respect of the legislative concerns raised by the Committee. A synopsis of that meeting is reflected herein below.

(iii) Rules and Code of Conduct Committee

In view of the Regulatory responsibilities of the LPC, it is important that the matter of Rules and Conduct be dealt with timeously and studiously by the NF.

The Attorneys, through LSSA have coordinated a process where the different Rules of various Law Societies were consolidated into a Uniform Rule Compendium. The Uniform Rules have now been endorsed by all the Judge Presidents, where the Law

Societies reside and also by the Chief Justice. For completion, we advise that these Rules have been published in the Government Gazette on the 1<sup>st</sup> March 2016.

A draft set of Rules, specifically applicable to the Advocates, have also been completed and under consideration by the Committee. Part of the consideration is whether all the Rules (Attorneys/Advocates) will be consolidated into a single document or placed separately.

There are further specific Rules on which the Committee is working:

- Code of Good Practice, which must incorporate broad principles and values enshrined in our Constitution;
- Rules relating to training and assessment of candidates;
- Rules regarding briefing of Advocates by Attorneys and by the public;
- Rules regarding legal services, which may be rendered, in respect of Section 34(2)(b) dealing with Advocates with Trust Accounts;
- Rules under section 95 in order to prepare for a smooth transition to the LPC

(iv) Education, Accreditation and Standards Committee

A number of members of this Committee also sit in other Committees: the Rules and Code of Conduct Committee and the Governance Committee; therefore, there is a great deal of overlap.

The Committee is currently considering the future of Professional Legal Education in particular:

- Practical vocational training requirements. The Committee have enlisted the services of the current CEO of the LSSA, who is also the Director of Legal Education and Development (LEAD) to look at the future curriculum;
- Further, the Committee is considering whether Advocates should attend training on some course work;
- Furthermore, the Committee is considering workplace training, looking at amending the nature and duration of the contract and regulations of the outcome.

(v) Interactions with the Department of Justice

There have been interactions with the Department of Justice, in particular in respect of the following:

- Mr Raj Daya's secondment and further Ms Mhlungu's appointment. Considerable delays were experienced in this respect;
- The approval of the NF Personnel Structure, which guides the Admin and HR Committee;
- The budget and honoraria for NF members;

- A meeting was held with Ms K Pillay from the DoJ to commence discussions, specifically on the Transformation of the Profession to which we pointed the deficiency of the Act in this respect;
- The Governance Committee attended a meeting with the Legislative Drafters of the DoJ to discuss the transitional arrangements, specifically the overlap between the dissolution of the Law Societies and the promulgation of the LPC. The idea is to avoid a possibility of a vacuum where Law Societies are dissolved before the LPC come into operation;
- To date, despite various meetings, the NF still has no offices from which to operate. Interaction with the Department of Public Works has not helped.

We also view the report and the meeting with the Minister to resolve any outstanding matters in respect of these interactions.

#### **Possible extension of the term of the National Forum**

8. This is not meant to be a request for such an eventuality, but just to highlight some of the constraints experienced:

- The NF was inaugurated almost two months after the time prescribed by the Act;
- There was a further delay of almost 8 months to procure an administrative staff component;
- To date, the NF is not fully capacitated and still has no premises from which to operate.

In the meantime, members have been doing their work using their own resources. The cumulative effect of things raised herein has a possibility of delaying the work of the NF.

## General

9. The matters raised in this submission have been considered by the Plenary of the NF. The Executive Committee, in driving the process, have adopted the following approach:

- Consider the list of responsibilities of the NF as set out in the Act, such schedule was submitted in our previous report;
- Take note of the work already done;
- Isolate areas that needs Plenary approval;
- Devise a method to deal with those matters that are contentious amongst the parties.

Our next report will therefore focus on this aspect of our work, which will be to gauge what has been done and what still needs to be done. This will be considered at our next meeting on the 23<sup>rd</sup> April 2016.

We can confirm formally that the parties in the NF are fully cooperating and this level of focus has assisted us to make the kind of progress we have accomplished.

We are looking forward to meeting with the Minister to discuss these and other aspects towards finalization of this task.

**EXECUTIVE COMMITTEE**

**NATIONAL FORUM**

**ADV. KGOMOTSO MOROKA (CHAIRPERSON)**

**MR MAX BOQWANA (VICE CHAIRPERSON)**

**MS CHARITY MHLUNGU (ACTING EX. OFFICER)**

**10 MARCH 2016**