



NATIONAL FORUM ON THE LEGAL PROFESSION

National Office,
Pretoria, South Africa

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

1. Introduction

Section 98(4) of the Legal Practice Act, 2014 (Act No 28 of 2014) (the LPA) directs that the National Forum on the Legal Profession (the NF) must report to the Minister of Justice and Correctional Services (the Minister) every six months on its activities. This constitutes the Third Report to the Minister on the activities of the NF for the period ending 31st August 2016.

2. Thrust of the Report

The National Forum has been very active in the past quarter and in this report is able at this stage to report on matters albeit due for recommendation to the Minister at the end of the prescribed period being the 1 February 2017. These include mainly the recommendations that fall to be made in terms of Sections 97 and 98 of the Act. These are dealt-with in some detail herein below.

3. The task of the Forum is carried out by its various Committees who meet regularly to ensure consensus on a number of issues which issues are the reported on and endorsed by the Plenary of the Forum. Matters where consensus has not been reached in the committees, are further debated and mediated by the Plenary.

4. Sec 97 (1) (a) – The Governance Committee and the Education, Accreditation and Standards Committee

4.1. The following are some of the matters that have thus far been dealt-with

4.1.1. An election procedure for purposes of constituting the Council is still under consideration Plenary has agreed that there will be two voters roll, one for Advocates where Advocates will vote for Advocates and one for Attorneys where they vote for Attorneys respectively.

4.1.2. The establishment of the Provincial Councils and their areas of jurisdiction, taking into account the factors referred to section 23(2)(a). In the end the accepted proposal is that there shall be nine Provincial Councils albeit of varying size and capacities.

4.1.3. The manner in which the Provincial Councils must be elected is still under discussion and will likely replicate the National character.

4.1.4. All the Practical vocational training requirements that candidate attorneys or pupils must comply with before they can be admitted by the court as a legal practitioner is under discussion and awaiting a final submission from the GCB which is due to hold its AGM in October 2016

4.1.5. .The right of appearance of a candidate legal practitioner in court or any other institution; is under consideration.

4.1.6. A mechanism to wind up the affairs of the National Forum, is work in progress.

5. Sec 97 (1) (b) & (c) - The Rules and Code of Conduct Committee

5.1. The Committee on Rules and Code of Conduct, has made progress in consolidating the Rules and Code of Conduct of both Advocates and Attorneys. Much more work still needs to be done in dealing with

the new category of Advocates, namely those who take instructions directly from Clients.

5.1.1. The following is still work in progress.

Prepare and publish a code of conduct for legal practitioners, candidate legal practitioners and juristic persons-is still in progress and on the verge of finalization;

5.1.2. Making of rules as provided for in section 109(2) – is still work in progress

6. Sec 97 (2) – The Human Resource Committee

The task set out in this section is being undertaken by the Administration and Human Resources Committee.

Agreement with the Law societies, in respect of the transfer of their assets, rights, liabilities, obligations, and staff, to the Council or Provincial Councils has to be reached.

An extensive consultation program has been designed and is being implemented, alongside the assessment of the asset-base of the various Law Societies. An understanding has been reached with the GCB and NFA that there is neither staff nor assets to be transferred to the LPC.

7. Sec 98 (3) -

7.1. The National Forum must, taking into account the Provisions of this Act, conduct a cost analysis, of the operation of the Council (LPC) and Provincial Councils and make recommendations to the Minister for consideration by Parliament, as contemplated in subsection (4), on the funding thereof, with a view to the effective and efficient implementation of the Act.

To this end the Forum has engaged the services of a specialist company to do the cost analysis and thus far has completed the work relating to the current and future expenditure of the Profession.

The Company is now working on the finer details of its report. The Costing Subcommittee, will be engaging the Attorneys Fidelity Fund, and be considering the sources of funding for the Profession under the new legislative regime.

7.2. Transformation of the Legal profession

Pursuant to the discussions the Chair had with the Minister, he Chair has convened an ad Committee on Transformation. The objective of the Committee is to ensure that the idea of transformation is infused in all aspects of the LPC.

The committee is due to consider the following reports in order to formulate a transformations strategy:

- Transformation of the Legal Profession Report by Center for Applied Legal Studies,
- Report on the Briefing Patterns Summit convened by the LSSA on the 31 March,
- The Final draft of The Legal Services Charter; and
- Incorporating this in the proposed changes to the Act, to ensure that it is not left to the discretion of the Council but it is enforceable.

A detailed report will therefore be presented in the next report.

7.3. Membership of the National Forum

- During the period under review there are two members of the Forum who resigned, Advocates Daluxolo Mpofu SC and Thami Ncongwane Sc, both from the Advocates for Transformation. They have been replaced by:
 - Adv. Roseline Nyman and
 - Adv. Elizabeth Baloyi-Mere, both from AFT.

8. Report on Recommendations to Minister due on 1 February 2017

In order to do this task, the Forum has consulted with the Department of Justice and have ascertained the nature and format of reporting that is required. A report on the various recommendations to the Minister is underway, to be finalized by a select Committee comprising of the following members:

- Mr Lutendo Sigogo,
- Mr Jan Stemmet,
- Adv. Elizabeth Baloyi-Mere

The recommendations that are being prepared will cover the following areas that have been considered by the Forum in its various Committees and in its Plenary;

- Elections procedure for the purposes of constituting a Council,
- Establishment of various Provincial Councils, their areas of jurisdiction and practical consideration of the facts set out in Section 23 (2),
- The manner in which Provincial Councils are to be elected,
- Practical vocational training for Candidate Attorneys and Pupils before admission as Legal Practitioners,
- The Right of Appearance of Candidate Legal Practitioners in Court or any other related forum,
- Mechanism to wind up the affairs of the National Forum,
- Preparation and Publication of Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and legal entities,
- Design of the Regulatory Provisions and Rules in line with Section 109 (2),
- Agreement with the Statutory Law Societies in respect of transfer of assets, rights, liabilities and obligations and staff to the Legal Council or Provincial Council.

Most of these undertakings will be reported on, at the next Plenary meeting scheduled for the 26th November 2016, early enough to be able to meet the deadline of February 2017. Part of the Report shall indicate whether or not an extension will be required. We believe though that should there be a timely Agreement with the Statutory Law Societies and the requested legislative amendment, as set out below.

9. National Forum Budget

NF was allocated a budget of R16, 4mil for the year 2016/17. As at, end of August 2016, the National Forum has spent an amount of R2, 99 mil. This expenditure comprises of:

Compensation of NF employees –	R1, 17 mil
NF members’ honoraria	R0.63 mil
Travel, subsistence, venue costs	R0.55 mil
Goods & Services	R0.64 mil

Cognizant of the fact that the Forum is using public funds undertakes to provide quarterly financial report.

10. Request for amendment of the LPA

The NF has addressed a memorandum to the Department requesting amendment to the LPA. This request is necessitated by the realization that the Act as is now does not provide for the smooth transition from the current law societies to the LPC. If the request is acceded to the NF will be in a position to draw Regulations and Rules in terms sections 94 and 95 of the LPA so that, when the remainder of the chapters of the Act come into effect, the LPC will be ready to be fully operational. The response is still awaited.

11. Conclusion

We confirm that there is spirit of great cooperation within the Forum. The members do differ on issues but the debates are robust and constructive. Where necessary meetings and consultations are held between Exco and Chairmen of the Committees and other stakeholders to facilitate progress

Meetings of the Committees are ongoing prior to the scheduled plenary session to be held on the 26th November, from which the content of the report on Recommendations will be discussed and settled.

We stand ready to meet with the Minister to further expand on the submissions made herein at the Minister’s convenience.

**The Executive Committee
National Forum**

**Adv Kgomo tso Moroka SC (Chairperson)
Mr. Max Boqwana (Vice Chairperson)
Ms. Charity Mhlungu (Executive Officer)
28 September 2016**