



CSC Evaluation and Monitoring Programme

Promoting Gender Equality in the Judiciary and Legal Profession in South Africa

Dr Tabeth Lynn Masengu



After the fall of the racist and undemocratic Apartheid system in 1994, the Parliament of South Africa passed a progressive new constitution in 1997 that upholds the human rights of its population of 60 million and forbids all forms of discrimination, including gender discrimination.

Nonetheless, realities on the ground have not always lived up to these ideals and there remains a lack of urgency to address gender inequalities in many sectors and professions. Notably, there has been a lack of meaningful gender transformation in the judiciary and legal profession, particularly in leadership positions. At the forefront of the efforts geared towards tackling these prevailing gender inequalities is Tabeth Masengu, a 2010 Commonwealth Alumnus who completed a Master of Laws degree in Human Rights at London School of Economics and Political Science. As a Human Rights Lawyer and Socio-Legal Researcher, Tabeth lodged an evidence-based complaint with the Commission for Gender Equality (CGE) relating to gender discrimination in the judiciary in South Africa in 2012. The complaint directly led to more transparency and accountability in the country's judicial appointment process, and consequently a notable increase in the number of women appointed to leadership positions. Moreover, the Judicial Service Commission (JSC) created a committee, led by the recently appointed Deputy Chief Justice Mandisa

Maya who was previously the first female president of the Supreme Court of Appeal. The committee was established to investigate alleged gender discrimination in the appointment of acting judges and to provide the JSC with recommendations for future appointments. Tabeth also led a Women's Pioneer Mentoring Programme on Leadership between 2015 and 2019 which created opportunities for disadvantaged¹ female law students who were paired with women judicial officers and trained on leadership skills while gaining practical experience and exposure to the judicial system. As part of her advocacy activities on human rights, Tabeth has also conducted workshops on judicial training for judges in Zimbabwe, Tanzania, Zambia, Ghana and Uganda thereby making an impact in the continent of Africa.



Dr Tabeth Lynn Masengu was awarded a Commonwealth Scholarship in 2010 to study for a Master of Laws degree in Human Rights at the London School of Economics and Political Science. Following her Scholarship, she joined the Democratic Governance and Rights Unit (DGRU) at University of Cape Town in 2012 as a Senior Researcher. Her innovative research identified a lack of meaningful gender transformation in the judiciary of South Africa, and these investigations formed the basis of a complaint lodged with the Commission for Gender Equality (CGE) on gender discrimination in the judiciary in South Africa. In her role at DGRU, Tabeth also led the Women's Pioneer Mentoring Programme on Leadership which benefited up to 150 female law students who were paired with and mentored by women magistrates and judges in the Western Province of South Africa. She has also conducted judicial training and facilitated workshops for judges in Zimbabwe, Tanzania, Ghana and Uganda. To further build on her expertise, Tabeth completed a PhD in Public Law in 2020. In her current employment, as an Advocacy Coordinator for European Christian Organisations for Relief and Development (EU-CORD), she leads the development of innovative advocacy approaches focused on influencing human rights policies. Tabeth has held several other influential positions which include serving as the Southern African Correspondent for the Oxford University Human Rights Hub and a Co-Convenor of the Women, Equality and Constitutionalism group of the African Network of Constitutional Lawyers. She has also served as an annual speaker at the South African Chapter of the International Association of Women Judges Annual General Meeting.

1. Women law students lacking networks, financial and social resources to gain access to practical aspects of law.

Human Rights Lawyer and Socio-Legal Researcher

Prior to taking up the Commonwealth Scholarship in 2010 to study for a Master of Laws degree in Human Rights at the London School of Economics and Political Science, Tabeth, who had qualified as an Attorney of the High Court of South Africa, was working as a Programme Manager at Treatment Action Campaign in South Africa. Upon completing her Scholarship, she joined the Democratic Governance and Rights Unit (DGRU) at University of Cape Town in 2012 as a junior Researcher and was later appointed to Senior Researcher in 2016. DGRU is one of Africa's leading research centres on judicial governance issues, and its current research agenda focuses on the Southern African Development Community (SADC) region.

While with DGRU, Tabeth pioneered and led the gender arm of the judicial governance advocacy work, focusing on promoting the inclusion of more women in the judiciary and legal profession. As part of this work, DGRU worked in partnership with Sonke Gender Justice - a South African-based NGO that advocates for gender justice and gender transformation - lodging a complaint with the Commission of Gender Equality pertaining to gender discrimination in the appointment of judicial officers in South Africa.

'I created the first ever gender transformation (gender diversity) project in the judiciary in South Africa. Based at the Democratic Governance and Rights Unit at UCT, this project grew to have national and regional impact.'

Moreover, while with DGRU Tabeth facilitated Judges' forums to promote knowledge exchange for magistrates and legal professionals. She also conducted judicial training and facilitated workshops for judges in Zimbabwe, Tanzania, Ghana and Uganda.



Open Law Ghana workshop in February 2016.

As part of her academic responsibilities, Tabeth co-lectured a course on Governance at the University of Cape Town, and supervised Master of Laws (LLM) students' theses. She has also been a guest lecturer on several undergraduate and postgraduate programmes including the London School of Economics and Political Science and University of Cape Town Human Rights Summer School, the Women and Law in Society Masters class, the Law and Society in Africa residential school, the Women and Law Research seminars and Governing under the Constitution.

Her passion for advancing gender equality in the judiciary and legal system gave her the impetus to pursue joint PhD studies in Public Law with the University of Cape Town and Ghent University in Belgium in 2016 to build on the knowledge and skills acquired while on her Commonwealth Scholarship.

'The scholarship allowed me to gain work opportunities in Human Rights Law and to pursue a joint doctorate degree in law. I am the University of Cape Town's (UCT) first ever joint doctorate degree holder from the Faculty of Law. This historical achievement could not have been possible if I had not completed my Master of Human Rights Law as a Commonwealth Scholar.'

In her published PhD thesis entitled, 'What Lies Beneath: The Complex Nature of Appointing Women Judges in Zambia and South Africa,' Tabeth's study revealed that various elements of the appointment process were affected by bias, discrimination, exclusion, and a traditional definition of merit, that invariably devalues women's contributions and attributes. She recommended improvements to the appointment systems in both countries and emphasised the need for a multi-sector response. Further, in November 2021, Tabeth was announced as the first recipient of the Christof Heyns Memorial Thesis Award conferred by Pretoria University Law Press (PULP). This inaugural award was for the best thesis by an African doctoral candidate completed in 2020.

As part of her consultancy work taken up following her PhD studies, Tabeth supported the European Commission for the Efficiency of Justice (which consists of 47 member states of the Council of Europe) by conducting in-depth research on gender equality in the recruitment process and access to positions of responsibility in the judiciaries of the Council of Europe. Based on the evidence from the research conducted, she provided recommendations and best practices for member states.

Tabeth currently works as the Advocacy Coordinator for the European Christian Organisations for Relief and Development (EU-CORD) where she is tasked with developing an advocacy approach that supports its members' advocacy initiatives, overseeing key policies and events, and identifying opportunities to influence policies on human rights.

Empowering Women Law Students and Women Judicial Officers to be Leaders

While working under the Democratic Governance and Rights Unit (DGRU) at the University of Cape Town, Tabeth led the Women's Pioneer Mentoring Programme on Leadership from 2015-2019. The programme was co-designed by DGRU with the International Association of Women Judges, a feminist NGO whose members are women judges from around the world committed to addressing gender bias, ending discriminatory laws, advancing gender-responsive courts, and promoting human rights for all.



Women's Pioneer Leadership Training Weekend 2015.

Funded by the Norwegian Embassy, the mentoring programme is aimed at equipping women law students and women judicial officers with relevant skills for leadership. While the project was targeted at women law students in general, the initial phase focused on the most disadvantaged individuals within this group, particularly women students who did not have adequate financial resources and networks to leverage to gain access and exposure to the practical aspects of law.

'Without my Master's degree, I wouldn't have had the knowledge I had on women's rights and gender, so I wouldn't be where I am today without that knowledge. It helped me to create the mentorship programme, to start this novel project on women and to do regional advocacy work.'

As part of this project, mentoring law students involved pairing them with women judicial officers, facilitating leadership retreats, and running skills acquisition programmes. The programme was extremely successful in providing women law students with the opportunity to gain practical experience through mentorship and internships.

'Every year, at least 30 LLB women students from University of Cape Town and University of the Western Cape completed the leadership programme and graduated from the university. So, between 2015-2019 when I led the project at least 150 women students were paired with and mentored by women magistrates and judges in the Western Province. These students were exposed to the court room, the correctional service system for youth and they all partook in an annual leadership training. The project increased mentoring opportunities for women law students, improved their confidence, leadership skills and research skills.'

Moreover, the mentoring programme exposed the students to various aspects of the law profession enabling them to identify different career paths that they could pursue within the law industry.

'A lot of the students grew in confidence and they learnt about different avenues of law they could pursue. Because of participating in the programme, some students ended up doing prosecutorial courses that they never would have anticipated studying. Others went into academia, which was previously seen as a profession for lawyers that doesn't pay well. Because the magistrates who took them under their wing exposed them to the court, they had to write reports, so their research skills improved. Others developed long-term relationships with judicial officers who provided references when they were applying for jobs upon completing their studies.'

Advocating for Gender Equality in Law: A Campaign to Increase the Number of Women Judges in South Africa

Working for the Democratic Governance and Rights Unit (DGRU) gave Tabeth the platform to conduct innovative research and to lead advocacy activities in line with her research interests which include gender, women's rights and the law, judicial governance and constitutionalism and equality.



Panel discussion in 2019 on judicial governance in South Africa and the Southern African Region.

'As an expert in women's rights, I infused that in my work. At that time, all DGRU did was judicial governance. I created the gender aspect, and I conducted intensive research and advocacy in this area. My women's rights course in my LLM helped me identify gender discrimination and it helped me find ways to approach my job tasks.'

Her research investigations revealed that there was a lack of gender transformation in the judiciary of South Africa. Guided by Tabeth's research findings on gender inequalities in the judiciary, and backed by the identified regional and international best practices in the law profession, DGRU partnered with Sonke Gender Justice to produce an evidence-based investigative report which formed the basis for a complaint lodged with the Commission for Gender Equality (CGE) on gender discrimination in the judiciary in South Africa.

'When it came to identifying international best practices available from the committee of women's rights, the CEDAW committee, that information I learnt from my LLM, I was able to include in the investigation report for our complaint.'

According to the Constitution of the Republic of South Africa 108 of 1996, section 187 (1) of the Constitution, the Commission for Gender Equality is specifically mandated to: Promote respect for gender equality and the protection, development, and attainment of gender equality; Monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality; and Assess the observance of gender equality.

Cited in the complaint were the President, the Chief Justice of the country and the head of the Judicial Service Commission who is responsible for appointing judges. Prompted by the complaint, the Commission for Gender Equality issued an investigative report on the lack of gender transformation in the judiciary that was made public. Following the complaint, the judicial appointing body created guidelines for the appointment of acting judges. Organisations such as the International Association of Women Judges, and the Women's Legal Centre also endorsed the complaint and it attracted interest from a number of journalists and media outlets who wrote articles and conducted interviews with relevant stakeholders.

'In 2012, I co-submitted the first ever complaint on gender discrimination in the judiciary to the Commission for Gender Equality (CGE) in South Africa. In 2016, the CGE's Investigative report confirmed my allegations and issued wide ranging recommendations to improve gender representation in the judiciary and legal profession.'

Tabeth further expanded on the outcomes of this work by pushing for immediate action to address gender inequalities in the Judiciary of South Africa.

'Following the complaint, the Judicial Service Commission created a committee to scrutinise and advise on appointments and it is led by a woman who is the president of the Supreme Court of Appeal. There is now more transparency and accountability in the judicial appointment process. Women appointments have increased from four to nine, and there has been an increase in engagement to address the challenges women face and the recognition of my work as the expert in gender and judging in South Africa. For example, prior to 2012 there was less than 10% of the media reporting on women, judges, or gender in judicial governance or research conducted in this area. Between the years of 2012-2016 when I created the project and developed networks to conduct advocacy, the reporting and research on the issue tripled. At least 70% of the media communication that covered gender imbalance and gender related obstacles to appointment either referenced to my work or featured me. We also started working more closely with the International Association for Women Judges in South Africa, lobbying for more women appointments in the judiciary.'

Tabeth and her colleagues went on to expand their advocacy activities promoting gender equality and the inclusion of more women in leadership positions in the judiciary beyond South Africa. This included embarking on tours of other countries in the region to create awareness on this issue. In Malawi, a leadership workshop was held in collaboration with the South African Chapter of the International Association of Women Judges and the Women Judges Association of Malawi. Workshops were also conducted in Zimbabwe and Zambia, in collaboration with Equality Now. Tabeth also participated in judges' workshops in Tanzania and Uganda. This created an awareness on gender issues and had an impact across Africa.

Influencing Human Rights Policies for Council of Europe Member States

Through her innovative research work on gender issues and human rights, Tabeth has become recognised as a distinguished researcher with several influential academic publications, reports, policy recommendations, briefing notes for governments, multilateral funders, judicial stakeholders, and membership of relevant regional bodies such as the Southern African Chief Justice's forum.

'To date, I have published 11 peer-reviewed journal articles and book chapters. In addition, as the winner of the PULP doctoral thesis award, my thesis which focused on the appointment of women judges in South Africa and Zambia, will be published into a book. My previous knowledge from my LLM that I have drawn on and improved on contributed to my now being widely published and recognised as an expert in this field. As a result, I was commissioned to conduct a study for the Council of Europe's Commission (CEPEJ), GT-QUAL Working Group in respect to producing an in-depth research report on gender equality in judges' recruitment process and access to positions of responsibility.'

As part of her work with the Council of Europe, Tabeth conducted research on the 47 member states, investigating gender diversity in their judiciaries, identifying challenges and possible solutions. Based on her research findings, she is currently drafting guidelines for the Council of Europe member states to support gender diversity in the judiciary and to inform and influence a shift in policies from member states to promote more women in this sector. Moreover, her research findings will lay a foundation for future research projects relating to gender issues.

'The knowledge that I've had from my Master's degree regarding human rights and developmental issues was critical to where I am now. My understanding now, my experience and my vision for human rights and women's rights would not have been where it was if I didn't have that Master's foundation in LLM.'

Reminiscing about her social experience of studying in the UK, Tabeth highlighted her enjoyment interacting and exchanging ideas with students and lecturers from various backgrounds at the London School of Economics and Political Science. While on Scholarship, she also attended several events held by the Commonwealth Scholarship Commission that gave her a platform to establish friendships with Commonwealth Scholars who were studying in other UK institutions. Tabeth also found studying and living in London convenient for accessing wider social events and as a great base for travelling around Europe, all experiences that she found thoroughly enriching.

Looking ahead, Tabeth is determined to continue being a change agent, focusing her advocacy work and innovative research on addressing human rights issues. Now in her new role as an Advocacy Officer, Tabeth's attention is focused on using advocacy to impact the policy and practice of the European Union in respect to their global partnerships.

More about Dr Tabeth Lynn Masengu's work

<https://static.pmg.org.za/171031CGE-Lack-of-Gender-.pdf>

<https://biblio.ugent.be/publication/8703694>

<https://www.elgaronline.com/view/edcoll/9781788113199/9781788113199.00023.xml>

<https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9780429327865-14/one-sauce-geese-another-gander-tabeth-masengu>

<https://www.eupublishing.com/doi/abs/10.3366/ajicl.2016.0174>

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