



JUDGES MATTER

**Judicial Service Commission interviews
05 October 2017.**

**Free State Division of the High Court
Interview of Ms S. Chesiwe**

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2017 JSC Interviews/Ms S. Chesiwe

CJ M. Mogoeng: Good morning Ms Chesiwe.

Ms S. Chesiwe: Good morning CJ. Are you well?

Ms S. Chesiwe: Yes, I am well.

CJ M. Mogoeng: Are you relaxed?

Ms S Chesiwe: I am trying my best to be relaxed.

CJ M. Mogoeng: All right, I understand. Where did you study?

Ms S Chesiwe: I studied my first degree at Vista University and then the second degree at Free State University.

CJ M. Mogoeng: Yes. And where did you practice law and for how many years? Just take us through that as quickly as you can. What have you been doing in the practice of the law and where? Before we get to the acting stints in the High Court.

Ms S Chesiwe: When I completed my degree, I registered my articles with a law firm of Bezuidenhout Attorneys, and my article there, and -

CJ M. Mogoeng: If you could bring the mike closer so that everybody can hear you. Thank you.

Ms S Chesiwe: When I completed my law degree I registered my articleship with a law firm of Bezuidenhout Attorneys. I stayed at that law firm and remain on as a PA at the same law firm from 2002 until 2007, I was at the same law firm. And then 2008 I left the law firm and then joined the Family Advocates Office.

CJ M. Mogoeng: Two thousand and?

Ms S Chesiwe: And 7.

CJ M. Mogoeng: Yes.

Ms S Chesiwe: From 2002 at the, where I did my articles until 2007.

CJ M. Mogoeng: Yes. Are you still with the Family Advocate?

Ms S Chesiwe: No, I resigned 2015, December so by the time January I availed myself for acting. I had left the office of the Family Advocate.

CJ M. Mogoeng: I beg your pardon, from 2015 where have you been employed?

Ms S Chesiwe: From -

CJ M. Mogoeng: I couldn't make it out.

Ms S Chesiwe: From 2008 until, from - after I left the law practice.

CJ M. Mogoeng: After the Family Advocate where did you go?

Ms S Chesiwe: I immediately went into acting.

CJ M. Mogoeng: I beg your pardon?

Ms S Chesiwe: I immediately went into acting at the High Court.

CJ M. Mogoeng: From 2015?

Ms S Chesiwe: Twenty Sixteen.

CJ M. Mogoeng: Twenty Sixteen. Was it May?

Ms S Chesiwe: January, in January when I started acting.

CJ M. Mogoeng: Twenty Sixteen.

Ms S Chesiwe: I finished at the law firm, at the Family Advocates Office 2015 December.

CJ M. Mogoeng: Yes.

Ms S Chesiwe: Then 2016 January, in January that's when I started acting at the High Court.

CJ M. Mogoeng: Are you still acting?

Ms S Chesiwe: I am still acting as we speak CJ.

CJ M. Mogoeng: Yes. Very well. How did you find your acting stint? Was it a serious challenge or was it not too bad to acclimatise from where you have been to the High Court life?

Ms S Chesiwe: When I started acting it was quite a serious challenge because it was something new. Something that I haven't done before, but as you have your senior judges around you to guide you to take you through it, it became more manageable, more coping and the challenge was up, I was up to the challenge. I was able to manage with the work and I found it quite interesting and I enjoyed it.

CJ M. Mogoeng: And what is the longest period you've kept a judgment reserved for?

Ms S Chesiwe: I try to write my judgments as soon as I have heard the matter. And at least I try by my best that before the end of term I must finalise the judgment.

CJ M. Mogoeng: Well, let me just in terms of months, what is the longest period you've kept a judgment reserved for?

Ms S Chesiwe: In terms of months I would say about three months.

CJ M. Mogoeng: But never, never beyond six months?

Ms S Chesiwe: Not what I can think of. Except one matter that I did in Pretoria High Court. Where the court file, I don't know what should I say, it got lost but could be found nowhere. So, I had to make arrangements to get a duplicate file from the plaintiff's attorneys and by the time they sent me this file I was already back in Bloemfontein, it was in June. So, then they couriered the file to me, a duplicate file. Which I arranged with the attorneys to send to me. But as soon as I got the duplicate file I wrote my judgment and sent it back.

CJ M. Mogoeng: Yes, thank you. Judge President?

JP M. Molemela: Thank you CJ. Ms Chesiwe, good morning.

Ms S. Chesiwe: Good morning JP.

JP M. Molemela: How are you?

Ms S. Chesiwe: I am good and, how are you?

JP M. Molemela: I'm good, thank you. You've been here before, haven't you?

Ms S. Chesiwe: I have been here before.

JP M. Molemela: I am not going to ask you the questions that I asked last time because the transcript is available, and I believe it's part of the package that has been provided to every commissioner here. I do know, however, that since your last interview you have acted again in our Division and in Gauteng. Is that correct?

Ms S. Chesiwe: It's correct JP. I acted in North and South Gauteng.

JP M. Molemela: And for how long did you act in Gauteng?

Ms S. Chesiwe: In North and South Gauteng I acted for 8 weeks.

JP M. Molemela: For 8 weeks?

Ms S Chesiwe: Yes

JP Molemela: And how did you find the experience as compared to our court?

Ms S Chesiwe: I must say coming from a small Division of the Free State and going to a big Division like the Gauteng North and South kind of a legal culture shock for me when I arrived. And, for example, when I arrived the first day I was given my kind of like a trolley full of files and I naively asked is this for the whole week or two weeks and I was told reading is today tomorrow you are in court. Okay, I dived in and I

started swimming. I found it quite challenging. It was a very, very exciting challenge and I enjoyed it and the nice part is the judges in that court both North and South, you could approach them anytime for guidance, for assistance if you're stuck somewhere. They were always willing to help. But I must say it was quite a great exciting challenge.

JP M. Molemela: Would you say you coped with the work that was allocated to you by the judge president there?

Ms S Chesiwe: Yeah, I definitely coped with the work. I definitely coped with the work because now, fortunately, the Free State Division gave me a foundation and that foundation was such that I was able to cope and manage my cases that were allocated to me. Kind of in a way the North and South Gauteng actually put more concrete on my foundation that I have from the Free State. It was quite a challenge that I was totally able to cope with.

JP Molemela: Thank you CJ.

CJ M. Mogoeng: Thank you very much, Judge President. MEC Mashenene?

MEC Mashenene: Thank you very much, Chief Justice. Morning Mam Chesiwe.

Ms S. Chesiwe: Good morning -

MEC Mashenene: How are you?

Ms S. Chesiwe: I am good and how are you.

MEC Mashenene: Thank you very much. I just want to take from the last question that was raised to you. You acted for 8 weeks in Gauteng?

Ms S. Chesiwe: Gauteng, yes.

MEC Mashenene: Yes. And you indicated that you have got quite necessary experience would you say that you are ready to become a judge?

Ms S. Chesiwe: I would definitely say I am ready to do that. I am ready to become a judge because the exposure I got from both Divisions Free State and North and South Gauteng have mentored, trained, assisted, guided me well to be ready to become a judge.

MEC Mashenene: You, let me just take you to one of the cases that I think you handled. The case of Felix Nkuna and the State, can you talk more about that?

Ms S. Chesiwe: Nkuna?

MEC Mashenene: Ja, of Welkom.

Ms S. Chesiwe: Oh, the criminal case of Welkom?

MEC Mashenene: Yes.

Ms S. Chesiwe: I am trying to recall it. If you, MEC can just give me some clues on that one?

MEC Mashenene: The one of the car. You don't remember that one?

Ms S. Chesiwe: I don't remember that one.

MEC Mashenene: Let me leave that one. Let me take you to Moshe John Mbele you know the case of Moshe John Mbele vs the State?

Ms S. Chesiwe: Yes, that one -

MEC Mashenene: Of the mental capacity? What happened there?

Ms S. Chesiwe: That one there, it was a child who was 13 years and was raped by somebody who was about twenty-something years and the child was mentally impaired and in that case, we, the appellant had applied to request that the judgment, the sentence be reduced as it was harsh, and he was only twenty-one years. So, in that case looking at the compelling and substantial circumstances, that's where I reduced the sentence to I think to it was fifteen years.

MEC Mashenene: The Magistrate gave a life sentence. You change it to fifteen years? Can you talk on that one?

Ms S. Chesiwe: Yeah, I was looking at the issue that he was twenty-one years old. He was still a young man and there was possibilities that he could be rehabilitated given a chance. So, life in that one was quite harsh for him for a young boy of twenty-one years old.

MEC Mashenene: But you didn't take into consideration that this is rape case of a mentally retarded person and he was given by the Magistrate life sentence. You change it to fifteen years?

Ms S. Chesiwe: Yeah, in my view at the time, like I say MEC it was more looking into the fact that even if you give a sentence is given, sentence it's a deterrence kind of measure where –

CJ M. Mogoeng: In view of the rain, if you could speak harder.

Ms S. Chesiwe: All right. In that matter, it's a matter of looking at the same time at when a person has been sentenced you are not supposed to punish them so severely that you don't give them a chance of rehabilitation. You at the same time looking at the sentence -

CJ M. Mogoeng: I'm sure you can do better than that. The rain is disturbing us so speak as, almost as loud as I do.

Ms S. Chesiwe: Louder? Okay, CJ I will do that.

CJ M. Mogoeng: Okay.

Ms S. Chesiwe: In that matter was more looking at the fact that he is a young man and he has chances of rehabilitation and for the fact that when one looks at sentencing a person you, it's a deterrence to prevent such offenses happen again. So, in that case, I was looking more at balancing the offence with the sentence for him being a young man who needs to be given another chance to rehabilitate.

MEC Mashenene: Okay, thank you, Chief Justice. I won't pursue this particular point any further. The matter that I was trying to establish was that here is the Magistrate giving a severe penalty so that a message must be sent to a person and then that judgment is changed into fifteen years. When a person has basically raped a mentally retarded person. I fail to get grips into that. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you MEC. Minister?

Minister J.M. Masutha: Ms Chesiwe I just wanted to clarify one thing quickly. You said you started acting in 2016 January.

Ms S. Chesiwe: Yes Minister.

Minister J.M. Masutha: There seems to be judgment of 2012 which is reported. In which capacity was involved, what's the name?

Female: State vs B.M.

Minister J.M. Masutha: State vs B.M. Does it relate to you in any way?

Ms S. Chesiwe: The one that was reported it was a matter that I, we were two judges and I wrote the judgment.

Minister J.M. Masutha: It's the 2012 matter?

Ms S. Chesiwe: Twenty twelve, yeah, I was also. In 2012 I acted for one term.

Minister J.M. Masutha: So you actually did act in 20-?

Ms S. Chesiwe: Twenty-twelve.

Minister J.M. Masutha: Twelve.

Ms S. Chesiwe: Yes.

Minister J.M. Masutha: You didn't necessarily start last year to act?

Ms S. Chesiwe: Oh no, Minister the fact that the continuous acting started in 2016. Twenty-twelve I acted for one term and then I stopped. But then 2016 I came back again.

Minister J.M. Masutha: I see. And you said that you served in the State Attorney's Office before you joined the Family Advocate?

Ms S. Chesiwe: Family Advocates Office, I worked in -

Minister J.M. Masutha: For how long were you in the State Attorney's office?

Ms S. Chesiwe: In the Family Advocate's office, not the States Attorney's office the Family Advocate.

Minister J.M. Masutha: Prior to Family Advocate you practiced as an attorney?

Ms S. Chesiwe: I, I was still an attorney but in the office when you are working there you are designated as part of the Family Advocates. But I was still attorney because I did not remove myself from the roll of Attorneys then.

Minister J.M. Masutha: No, no it's fine I just wanted to get a sense of the sequence of your career at [13:32 inaudible]. The question I wanted to check with you. Maybe

let me start with a follow-up on the question by the MEC. I am not sure whether punishment should not rather be commensurate to the severity of a crime taking into account all circumstances involved. Rather than to say that a person, because they were still young when they committed a crime that of itself justifies a more lenient sentence. I am trying to understand the rationale of that like the MEC because the difficulty I have with this is this; as the Minister responsible for the correction system in South Africa I can tell you now that the majority of violent crime inmates are young. Over 60 percent are young people. And there is this phenomenon of the association with violent crime and youthfulness issues of drugs and other factors don't you think it is precisely the reason why you need to send a stronger message to people who commit gruesome offenses that in fact, the mere fact that they're young should not be to their advantage when it comes to the penal system. And wouldn't that actually give us at Corrections more time to actually implement corrective rehabilitation programs including skilling so that when they emerge on the other side they have had sufficient time to actually have their offending behaviour effectively corrected? I am just trying to understand where this notion, is it coming from legislation is it coming from the common law, where is that concept that if you are young by virtue of age, regardless of the severity and gruesome nature of your offense you should necessarily receive leniency from the justice system.

Ms S. Chesiwwe: Minister if I may say, it's not as if it's by reducing the sentence of a youthful person you are moving away from the legislation applicable in that case. It's a matter of if you look at that at that time when you look at the substantial and compelling circumstances of the person it makes you determine that the sentence can be reduced in order to accommodate.

Minister J.M. Masutha: Perhaps let me put my question differently. My apologies Chief Justice, to pursue this point in this manner. Where is the victim in all of this? Because I seem to hear a lot about reaching out to the offender and accommodating the offender taking into account as you put it yourself, the youthfulness. Isn't the starting point supposed to be the impact of the crime on the victim before we talk of anybody else?

Ms S. Chesiwe: It does Minister. For that purposes in most cases that's why we, victim impact report is requested. To see the impact of the offense on the victim. So even if we look at the accused person the victim is also taken into consideration.

Minister J.M. Masutha: But I haven't heard that sense, so far, in your motivation for why the reduction of sentence was seen by yourself as the appropriate response to that situation. I am just worried that it seems as if we get so preoccupied with trying to find ways of accommodating the circumstances of the perpetrator and paying I wouldn't say lip service, but at least you know, paying less attention to the impact of the offense on the victim themselves. Would you disagree with me?

Ms S. Chesiwe: I would not disagree, Minister, because in most instances victims report requests are made to check the impact of the crime on the victim. Although it might be that the balance is not well equal between the victim and the perpetrator, but the victim is taken into consideration with regard to the victim's impact report. In this instance.

Minister J.M. Masutha: And just finally Chief Justice I'm, I'm concerned about if I look at the balance of your legal work experience you've been an attorney all-and-all for about is it three, four years?

Ms S. Chesiwe: If I count from my article, two years of the article ship and from the date of admission it will be another about three, four years.

Minister J.M. Masutha: And -

Ms S. Chesiwe: In private practice.

Minister J.M. Masutha: The balance of your legal career was as a Family Advocate apart from the acting stints.

Ms S. Chesiwe: Yes Minister.

Minister J.M. Masutha: And that's for how long?

Ms S. Chesiwe: In the Family Advocates Office plus minus a period of about 8 years.

Minister J.M. Masutha: You know I, I must say that's why I want to put it to you that I have this feeling that apart from the fact that you were given an opportunity to act and it seems as if you did well I am not convinced that you have allowed yourself sufficient opportunity to ground yourself in the practice of law sufficient for you to avail yourself at this stage. Would you disagree with me, and if you do can you motivate why you disagree with me?

Ms S. Chesiwe: Minister with regard to the issue of experience I would say it shouldn't be a deterrence to give a person an opportunity. Quoting the CJ when he was briefing the LSA briefings where he said, a person shouldn't be written off unless you have seen that person's potential capacities and opportunities to give that person a chance. In, meaning that, in the sentence where, in the situation where it is said experience is lacking if the person has the potential, has a spirit of a teachable spirit person is prepared to work hard, the energy and the motivation I believe and the issue of lack of experience shouldn't be a deterrent just to give that person a chance to prove themselves.

Minister J.M. Masutha: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Minister. Colleagues I know it's very early in the morning please two questions unless it's strictly necessary and please no preamble. Please. Commissioner Nyambi?

Comm A.J. Nyambi: Thanks, CJ. Morning Ms Chesiwe.

Ms S. Chesiwe: Good morning Commissioner.

Comm A.J. Nyambi: The last time you were here you described the experience as nerve wrecking and that have, may have resonated with Commissioner Modise to let it go as you struggled defining judicial accountability and that was a few months ago.

I am sure this time you feel more comfortable indulging us on what your understanding of judicial accountability is.

Ms S. Chesiwe: Yes Commissioner. With regard to the judicial accountability being part of the separation of powers of the judiciary; the judiciary is accountable to the Constitution and to the people of South Africa. In most cases when it comes to accountability the judgments that are delivered must be delivered on time, but be done expeditely and with regard to that accountability the OCG Office came up with the norms and standards for the judges to ensure that they are accountable. And with norms and standards parting, being part of accountability flows the cash, the case flow management of cases where cases are monitored from point of entry to point of exit to ensure that cases are attended to. There is set certainty with regard to trials. There is set certainty with regard to postponement and judgments are delivered on time. Cases are given enough time, cases don't lie dormant in the system to prevent a set-up where there is no accountability to the public or with regard to the Constitution. So, in terms of accountability, the judges have to be accountable to the Constitution and to the people of South Africa by ensuring that their judgments are delivered on time and expeditiously.

Comm A.J. Nyambi: Have you visited what happened the previous time you were here before coming today?

Ms S. Chesiwe: Have I visited?

Comm A.J. Nyambi: Have you bothered to check the previous interviews the last time you here?

Ms S. Chesiwe: I checked my previous interviews. The transcripts.

Comm A.J. Nyambi: Thank you CJ.

CJ M. Mogoeng: Thank you very much Commissioner Nyambi.

Comm J. Malema: Follow-up CJ.

CJ M. Mogoeng: Yes Commissioner Malema?

Comm J. Malema: What do you mean you account to the Constitution? Isn't the Constitution a document like this? So how do you account to it? You account to a Constitution. What do you mean by that?

Ms S. Chesiwe: Oh what I mean is that the Constitution gives the judiciary in terms of Section 165 the judiciary authority to do things, to show that the judiciary is independent, it's impartial, it's accessible. And the judges must be the guardian of the Constitution, respect the Constitution and protect it at all times.

CJ M. Mogoeng: Commissioner Norman?

Comm Norman: Thank you, Chief Justice. Good morning Acting Judge Chesiwe.

Ms S. Chesiwe: Good morning mam.

Comm Norman: I just want to direct you to the reserve judgments that are listed in paragraph 9.5 of your application, page 11.

Ms S. Chesiwe: Let me just look at it. Paragraph 9?

Comm Norman: Nine point five.

Ms S. Chesiwe: Yes.

Comm Norman: What is the status of those judgments now?

Ms S. Chesiwe: They have all been handed down.

Comm Norman: When were they handed down?

Ms S. Chesiwe: I don't recall the date of Jeanne and Ngule, but the one that I explained earlier on the Amos one that, when I said the file was lost was handed down sometime in August. But the other two ones were handed earlier on.

Comm Norman: Yes, are they -

Ms S. Chesiwe: I think in June, cause July, in July, because in July I was doing re-, I was on in North Gauteng doing a parted matter during recess.

Comm Norman: Yeah okay. What, maybe my first question should have been are they from the Free State Division or they from Gauteng?

Ms S. Chesiwe: No, Gauteng.

Comm Norman: All of them?

Ms S. Chesiwe: Gauteng Division, all of them.

Comm Norman: Okay, but they've all been handed down?

Ms S. Chesiwe: They've all be handed down.

Comm Norman: Okay. How have you found your experience as a family advocate because you've been there for 8 years? How have you related that experience to what you are currently doing now in the High Court and the work that has been allocated to you? Have you found that experience to be of value to you?

Ms S. Chesiwe: I've found it to be of value to me because when you look at the High Court is upper guardian of all minor children and the Constitution Section 20 guarantees all children's interest. And the Children's Act as well guarantees the children's, minor children's interest. So, when working in the High Court I could apply what I had – [27:02 inaudible] between the Family Advocates Office with regard to the minor child's best interest in the High Court. Having, taking in mind that the High

Court is the upper guardian of all minor children. So, in that way, I could bring together that experience into the High Court space.

Comm Norman: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Norma. Commissioner Stork?

Comm Stork: Thank you very much CJ. Good morning Ms Chesiwe.

Ms S. Chesiwe: Good morning Commissioner.

Comm Stork: Yes, since your last interview and then your interview today, that you are appearing before us as the commission I just want to find out from you what has been the, what has been any significant improvement from your side. From the last interview and now?

Ms S. Chesiwe: From the last interview to now I would say because I continued acting. I feel I've gradually matured with regard, especially with regard to writing my judgments. I have gained more experience to know how to go about writing them and I've been even more better understanding how to handle the workload and manage with the workload and cope with the workload.

Comm Stork: Okay, and then lastly what do you think that you, why do you think that you are ready to be appointed as a judge?

Ms S. Chesiwe: I believe I'm ready to be appointed because I have been acting for a period of time now and my experience with acting different divisions has taught me coping skills, managing skills, being able to handle the workload and being able to regard the work as a very serious work that needs to, your 100 percent attention. So as far as I am concerned at this stage I believe I am confident enough now to face the challenge of being appointed as a judge.

Comm Stork: Thank you CJ.

CJ M. Mogoeng: Thank you very much, Commissioner Stork. Judge President Hlophe?

JP J. Hlophe: Thank you, Chief Justice. I have two questions for you. The first relates to skilled briefing patterns. There is a perception out there that black practitioners' particularly African women do not get good work which prepares them to take their rightful place on the Bench, were this Commission to appoint you for a permanent appointment do you believe that the judiciary should be actively involved in terms ensuring that the briefing patterns are not skewed in other words that the playing field is levelled?

Ms S. Chesiwe: I believe so Commissioner Hlophe. For the mere fact that from my perspective as a woman staying longer in private practice ends up not having enough briefings. You don't have much work that you receive. In fact, most of the work will be your divorces, maintenance and things like those. So, it would be quite an important thing if the judiciary can get involved where briefing patterns are shared equally with women in private practice, to make women stay there. Because in most cases what happens as a woman you leave private practice. You join government for purposes of stability of income cause, there is no work coming your way. So, you go to a position where you are in the comfortable position where you are stable in the profession that you will be because briefing is quite skewed when it comes to private practice for women.

JP J. Hlophe: Secondly Chief Justice as a black woman have you experienced sexism and racism, and have you experienced personally sexism and racism? And what can be done by the judiciary to address this, particularly the sexism and racism in the profession and on the Bench?

Ms S. Chesiwe: In the profession itself and private practice level yes, sexism that I've experienced. But in the Bench, I've not experienced any because we, we in the Bench we treated as equal even if you're acting you are treated as equal. And how that can be done is to ensure that systems are in place to monitor whether it is through the Law Society or through the different Bar Councils to ensure that the different bodies comply with those monitoring tools to ensure that the sexism or

racism doesn't happen around law firms or Bar councils where the females are involved. Because even if you're at the Bar Council you'll still get the petty, the small briefings which are not major briefings for you to go to court. Like I said you'll get your divorces, you'll get your maintenance, you'll get you Rule 43's; you don't get those major corporate briefings. And that's what I am saying, in the end, you end up moving away from private practice and move into government position for purposes of its kind of like I won't win this situation.

JP J. Hlophe: Thank you, Chief Justice. No further questions.

CJ M. Mogoeng: Thank you Judge President Hlophe. Commissioner Nkosi-Thomas?

Comm L. Nkosi-Thomas: Thank you, Chief Justice. Good morning Ms Chesuwe.

Ms S. Chesuwe: Good morning mam.

Comm L. Nkosi-Thomas: On page 14 of the questionnaire if I might direct your attention there, please. Towards the foot of the page.

Ms S. Chesuwe: Yes.

Comm L. Nkosi-Thomas: There's a question there that says, but asks if there are any other relevant matters, or if there's any relevant matter that you wish to bring to the attention of the commission. And you said that you conducted a judicial inspection. Would you like to tell us more about that, please?

Ms S. Chesuwe: Yes Commissioner what happened here I was on circuit court in Kroonstad and I was requested by our JP to go and conduct a prison inspection at the Kroonstad Correctional Services, which I did. I did the female section, the children section, the juveniles and the male section. What I discovered; the female section it's not crowded. The numbers are in, are okay. Because most of the females are some of them are with their children. And then the male section is totally overcrowded. And never mind the overcrowding the way the place looks it's like it's

not maintained, it's not clean, it's just conditions that are not nice for a human being to stay in. But most of the time, of the prison wardens, are doing their best to make the stay of the prisoners as comfortable as possible. And then with regard to the female section, the children are kept there within that same environment of the parent, of the mother, where the child will be released about at 18 months or 2 years out of prison to the family. The mother remains behind. And what I discovered that those children are quite traumatised because just approaching the child, the child cries hysterically because the child doesn't know people from outside. So, the concern I also had was when this child gets released to a family member who he has not seen in that time it causes quite a lot of trauma. But the prison officials said it is a problem that they are sitting with, cause the family members don't want to come and visit or to take care of this child, cause it's kind of like a burden for them to take a child if the mother is still in prison. But the issue of overcrowding is there. I observed it and it's quite a serious problem.

Comm L. Nkosi-Thomas: Yes, would you say that that inspection has empowered you for purposes of discharging your judicial functions were you to be appointed?

Ms S. Chesiwe: Yes, it has done that. And I forgot to mention that I also did another inspection with Judge van der Westhuizen at the Grootvlei Prison but in this case, I didn't write a report because he was leading the investigation. We just working with him. But it has empowered me. It made me realise actually how serious is the conditions in prisons.

Comm L. Nkosi-Thomas: Thank Ms Chesiwe and thank you, Chief Justice.

Ms S. Chesiwe: Thank mam.

CJ M. Mogoeng: Thank you Advocate Nkosi-Thomas. Commissioner Nkosi?

Comm Nkosi: Thank you, Chief Justice. In the questionnaire page 3.

Ms S. Chesiwe: Page?

Comm Nkosi: Page 3.

Ms S. Chesiwe: Page 3.

Comm Nkosi: You indicate that in 1998 to 2002 you were a member of the African National Congress and that membership lapsed. And then 2006 to 2009 you took membership of the Democratic Alliance in that membership lapsed as well. Do you belong to any political organization now?

Ms S. Chesiwe: Currently I don't belong to any political parties because I realised that if you want to serve the Bench you cannot be a member to any political parties. So, currently, I'm apolitical.

Comm Nkosi: Last time that's the last question. Last time we, if you remember we debated about your understanding of the difference between motion and trials. Do you understand now the difference between those two?

Ms S. Chesiwe: Yes, now I yes.

Comm Nkosi: At least you've picked up on that.

Ms S. Chesiwe: I've picked up on that.

Comm Nkosi: Thank you very much.

Ms S. Chesiwe: Thank you.

CJ M. Mogoeng: Thank you. Thank you, Commissioner Nkosi. Professor Motshekga?

Prof M.S. Motshekga: Ms Chesiwe I visited Sun City Correctional Centre with a group of men. We visited a ward where mothers were staying with their children and when we entered as men the children cried and ran away from all of us.

Ms S. Chesiwe: It's exactly like that.

Prof M.S. Motshekga: Now do you think that children should be kept in prison with their mothers? If so what would be impact of such tension when these kids grow up as women who must be married but they run away from men?

Ms S. Chesiwe: Commissioner Motshekga like I said it, it always traumatises me when I was there. Because I am a woman for that matter and I wanted to pick up the child. The child was hysterical and it rea-, it made me realise that the impact this child has, or these children have when they're in prison with their mothers, it's quite a serious impact. We don't know how deep it goes when this child, children grow up. I even made a recommendation to request that although it is issues of budget, if the children when they are in prison can be put in a creche outside the prison where they meet other kids, other men, cause in the creche. Meaning that the child will be exposed to other people not only to prison people around them. That the trauma of seeing new people will not be as traumatic for the poor child. It is quite a serious thing Commissioner Motshekga that I also had an issue about it.

Prof Motshekga: Do you think a budget should really take precedence over the future of this children because there is a lot of wastage outside. Shouldn't we prioritise the children other than the budget?

Ms S. Chesiwe: It should actually be done like that. I even recommended that the Department of Social Development should get involved where they either get a family member who comes and visit the child on various occasions that the child bonds with somebody from outside. Social Development gets involved on the basis that they must attempt to see how they can make things easier to get the child out of the system where the child will be with family members or in a place where he can be cared for outside the prison. The whole things about children should actually not be in prison.

CJ M. Mogoeng: Thank you, Prof. Commissioner Smith.

Comm Smith: Thank you, Chief Justice. On the issue of the briefing patterns in your acting period in both Gauteng as well as the Free State do you know and can you say who the State Attorney, the briefing patterns of the State Attorney's Office?

Ms S. Chesiwe: Truly speaking those who appeared before me was senior counsel if I need to see it was white male senior counsels that appeared before me. Meaning the briefing patterns of the State Attorney was briefed to male senior counsels.

Comm Smith: Which is concerning from a, from the point of fact that the State Attorney's Office is exactly what it is. It represents the State.

Ms S. Chesiwe: It represents the State, but it would be fair if the briefings are given to everybody who is prepared to appear for the State.

Comm Smith: No I agree with that. Thank you, Chief Justice.

CJ M. Mogoeng: Many thanks, Commissioner Smith. Ms Chesiwe thank you very much for coming. You're excused, mam.

Ms S. Chesiwe: Thank you Chief Commissioner and thank to the whole commission panel.

CJ M. Mogoeng: Thank you.