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**INADEQUATE REPRESENTATION OF FEMALE ATTORNEYS IN THE  
LEGAL PROFESSION IN SOUTH AFRICA**

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**A Research Paper in partial fulfilment of a Master of Laws (LLM)  
degree in the Faculty of Law**

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**21 May 2023**

## DECLARATION

I, Phelokazi Mbantsa, declare that '*Inadequate representation of female attorneys in the legal profession in South Africa*' is my work, that it has not been submitted before for any degree or examination in any other University, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signature: P. Mbantsa

Date: 21 May 2023



## ACKNOWLEDGEMENTS

I thank God for giving me the strength to complete this Research Paper.

My warmest gratitude goes to my supervisor, Prof Anthony Diala. His commitment, guidance, patience, and motivation throughout made writing this Research Paper possible. I am indebted to him for pushing me further than I thought I could go. This would have not been possible without his fast communication, for always making time to give feedback without any delays.

To my family and friends for their continuous support and prayers.

A special thanks to my parents and sisters for the prayers and for being my source of strength and inspiration.



## DEDICATION

Dedicated to my late niece Mbalentle Lathitha Mbantsa and my late brother Athenkosi Mbantsa. They passed away at a very young age even before they could start attending school.



## ABSTRACT

Female law graduates have significantly increased in South Africa over the past few decades. Yet, female attorneys are still underrepresented in the legal profession. Historically, men have dominated the legal profession and female attorneys frequently experience bias and discrimination that impede their ability to develop in their careers. Using a desktop research method, this study examined the underrepresentation of female attorneys in the legal profession in South Africa. The study reviewed current literature on the topic, as well as case law, constitutions, legislation, journal articles, and other pertinent materials. It sought to discover the extent to which female attorneys in South Africa are represented in a primarily male-dominated legal profession. It indicated that the scarcity of female attorneys is due to a combination of systemic hurdles, gender discrimination, and societal customs. These factors have significant impact on female attorneys' professional experiences, career trajectories, and overall job satisfaction. Based on the review of the literature, the study recommends several potential solutions to address the issue, including implementing policies that address gender bias, providing mentorship and support for female attorneys, and increasing opportunities for female attorneys to advance into leadership positions. This study provides valuable insights for legal practitioners, policymakers, and other stakeholders interested in promoting gender equity and diversity within the legal profession in South Africa.

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## KEYWORDS

Courts

Female attorneys

Gender equality

Legal Practice Act

Legal Profession

Law Society of South Africa

Representation

Patriarchy

The Constitution of the Republic of South Africa



## ABBREVIATIONS

<b>CCOJ</b>	Cape Charter of Justice
<b>CEDAW</b>	The Convention on the Elimination of All Forms of Discrimination Against Women
<b>EEA</b>	Employment Equity Act
<b>LPA</b>	Legal Practice Act
<b>LPC</b>	Legal Practice Council
<b>LSSA</b>	Law Society of South Africa
<b>PEPUDA</b>	Promotion of Equality and Prevention of Unfair Discrimination Act
<b>SA</b>	South Africa
<b>UDHRC</b>	Universal Declaration of Human Rights
<b>WLPA</b>	Women Legal Practitioners Act



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# CHAPTER 1

## INTRODUCTION

### 1.1 Contextual Background

‘When men are oppressed, it’s a tragedy. When women are oppressed, it’s a tradition.’<sup>1</sup> This is how women have always been viewed historically.<sup>2</sup> Women were once not considered ‘persons’ in the eyes of the law.<sup>3</sup> Yet, the Constitution guarantees and promotes equality for all.<sup>4</sup> However, in reality, women are still oppressed and gender inequality still exists in South Africa (SA). Judge President John Hlophe argues that the struggle for equality between men and women is as old as humankind.<sup>5</sup> One of the instances of gender inequality in SA is in the legal profession (the profession).

For many years, the entry of females into the profession as attorneys was not allowed.<sup>6</sup> Attorneys are officers of the court and are registered on the roll of attorneys at the Legal Practice Council (LPC).<sup>7</sup> In terms of the Legal Practice Act (LPA), an attorney is a legal practitioner who is admitted and enrolled to practice as such under the LPA.<sup>8</sup> ‘Overseen by the Law Society of South Africa (LSSA), attorneys work in law firms, government departments, non-governmental organisations (NGOs) and private companies.’<sup>9</sup>

Section 24 of the LPA is the gateway to admission and consequent enrolment. It is satisfied by, in turn, complying with the provisions of section 26(1) of the LPA.<sup>10</sup> In terms of section 24, the High Court must admit a person to practice and authorise them to be enrolled

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<sup>1</sup> Pogrebin LC *Deborah, Golda, and Me: Being Female and Jewish in America*, Anchor (1992).

<sup>2</sup> Unless indicated otherwise, the term ‘women’ is used to denote female attorneys.

<sup>3</sup> Ngcukaitobi T ‘Let the world know that women were once not “persons” in the eyes of the law’ available at <https://mg.co.za/article/2018-08-09-let-the-world-know-that-women-were-once-not-persons-in-the-eyes-of-the-law/> (accessed 01 September 2022).

<sup>4</sup> Section 9(3), the Constitution of the Republic of South Africa 1996.

<sup>5</sup> Judge President John Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 2.

<sup>6</sup> Ngcukaitobi T ‘Let the world know that women were once not “persons” in the eyes of the law’ available at <https://mg.co.za/article/2018-08-09-let-the-world-know-that-women-were-once-not-persons-in-the-eyes-of-the-law/> (accessed 01 September 2022).

<sup>7</sup> Law Society of South Africa ‘Statistics for the attorneys’ profession’ available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

<sup>8</sup> Section 1, Legal Practice Act 28 of 2014.

<sup>9</sup> Masengu T ‘It’s a man’s world: barriers to gender transformation in the South African judiciary. Perspectives from women advocates and attorneys’ (2016) 23(3) *International Journal of the Legal Profession* 310-311.

<sup>10</sup> *Ex Parte: Goosen and Others* (2018/2137) [2019] ZAGPJHC 68; 2019 (3) SA 489 (GJ); [2019] 2 All SA 702 (GJ) at Para 8.

as a legal practitioner upon application if the applicant is a South African citizen or a permanent resident in the Republic, is a fit and proper person, and has submitted a copy of the application to the Council.<sup>11</sup> In addition, in terms of section 26, an applicant must have an LLB degree, must have undergone all the practical vocational training requirements as a candidate attorney, and must have passed a competency-based examination or assessment for candidate legal practitioners.<sup>12</sup> These are the requirements that must be met for an applicant to be admitted as an attorney in terms of section 24 read with section 26(1) of the LPA.

According to the Statistics South Africa (Stats SA) 2011, females make up 26,6 million (51,3 per cent) of the population. This is compared to 25,2 million (48,7 per cent) males.<sup>13</sup> In 2022, the Stats SA mid-year population estimates, further reflect a total number of 60 604 992 population, and 30 980 110 million (51,1 per cent) females compared to 29 624 882 million (48,9 per cent) males.<sup>14</sup> This indicates that there are more females in SA compared to males. Concerning law, according to the Stats LLB graduates in 2017, the number of male graduates was 2241 and the number of female graduates was 2917.<sup>15</sup> Thus, there are more female law graduates compared to male graduates with a 676 gender difference in 2017. In respect of candidate attorneys, as of January 2019, there was a total number of 6669 registered candidate attorneys,<sup>16</sup> 57 per cent were female candidate attorneys, whereas 43 per cent were male candidate attorneys.<sup>17</sup> This indicates that there are more female candidate attorneys compared to males.

In contrast, one would expect the number of admitted female attorneys (female attorneys) to be greater than the number of admitted male attorneys (male attorneys) due to the above Stats. However, in practice that is not the reality. An overview of the attorneys' profession as of January 2019 indicates that there was a total number of 27 223 registered attorneys practising in SA. Out of that number, the total of male attorneys was 16 168 (60 per

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<sup>11</sup> Section 24, Legal Practice Act 28 of 2014.

<sup>12</sup> Section 26, Legal Practice Act 28 of 2014.

<sup>13</sup> Census 2011 *Census in brief* (2012) 19.

<sup>14</sup> Stats SA Mid-year population estimates (2022) viii.

<sup>15</sup> Law Society of South Africa *Statistics for Legal Profession 2017/2018* (2019) 24.

<sup>16</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

<sup>17</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

cent) compared to 11 055 (40 per cent) of female attorneys.<sup>18</sup> Overall, it is further estimated that at least 40 per cent of practising legal practitioners in SA today are women, of all races.<sup>19</sup>

Recent Stats for the attorneys' profession as of January 2022 indicates a total of 29 981 registered attorneys. Of this number, male attorneys comprise of 17 267 (58 per cent), whereas female attorneys comprise of 12 714 (42 per cent).<sup>20</sup> I am of the view that the profession is male-dominated and the number of female attorneys represented does not reflect the South African population. Moreover, I hold the same view as Kaganas and Murray, who argue that females are still oppressed in the profession and one reason they are underrepresented is patriarchy and sexism.<sup>21</sup>

## 1.2 Problem Statement

Between 1909 and 1912, Madeline Wookey unsuccessfully challenged the Cape Law Society's refusal to admit her to practice law.<sup>22</sup> Women were allowed to join the profession in March 1923 following the passage of the Women's Legal Practitioners Act.<sup>23</sup> Three years later, Constance Mary Hall became the first woman to be admitted as an attorney in South Africa.<sup>24</sup> Women in SA make up 51,1 per cent of the population,<sup>25</sup> but that is not the case in the labour field. In the profession, recent statistics indicates that women are still underrepresented, while men dominate.<sup>26</sup>

The number of female attorneys in SA is a major problem due to inadequate representation of female attorneys in the profession. To this extent, female attorneys do not

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<sup>18</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

<sup>19</sup> LWFH 'How did women lawyer rights develop in South Africa?' available at <https://lawyersworkingfromhome.co.za/2020/10/09/how-did-women-lawyer-rights-develop-in-south-africa/> (accessed 11 September 2022).

<sup>20</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

<sup>21</sup> Kaganas F and Murray C 'Law and Women's Rights in South Africa, An Overview' 1994 *Acta Juridica* 17.

<sup>22</sup> Goitom H 'Women in History: Lawyers and Judges' available at <https://blogs.loc.gov/law/2015/03/women-in-history-lawyers-and-judges/> (accessed 11 September 2022).

<sup>23</sup> Goitom H 'Women in History: Lawyers and Judges' available at <https://blogs.loc.gov/law/2015/03/women-in-history-lawyers-and-judges/> (accessed 11 September 2022).

<sup>24</sup> Ngcukaitobi T 'Let the world know that women were once not "persons" in the eyes of the law' available at <https://mg.co.za/article/2018-08-09-let-the-world-know-that-women-were-once-not-persons-in-the-eyes-of-the-law/> (accessed 01 September 2022).

<sup>25</sup> Stats SA Mid-year population estimates (2022) viii.

<sup>26</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

have access to the same opportunities or resources as their male counterparts. This is an infringement of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), which is aimed at the prohibition of unfair discrimination on the ground of gender, including denial of access to opportunities<sup>27</sup> and systemic inequality of access to opportunities by women.<sup>28</sup> PEPUDA is one of the legislations that were enacted to promote equal gender representation in the profession. However, female attorneys are still underrepresented.

According to the Commission for Gender Equality, it has been widely reported that females are not adequately represented in the legal profession within SA. Both SA's CEDAW periodic report and the non-governmental shadow report reflect this shortcoming. As such, it must be pointed out that meaningful transformation has been slow in the profession.<sup>29</sup>

### **1.3 Research Aim**

The primary aim of this study is to examine the extent to which female attorneys in SA are represented in a primarily male-dominated legal profession. This will be done by exploring the challenges faced by female attorneys and proposing recommendations to address those challenges to create a legal profession that reflects the gender composition of the country, as mandated by the Constitution. The study will also discuss the existing legal framework that relates to gender equity and diversity in the legal profession. Furthermore, the study will compare the representation of female attorneys in the profession in SA with those of other countries.

### **1.4 Research Questions**

The primary question of this research is *“To what extent are female attorneys in South Africa represented in a primarily male-dominated legal profession?”* In simplifying the main research question, the following sub-questions will be asked:

- a) What challenges do female attorneys face in the legal profession in South Africa?
- b) What are the existing legal frameworks in South Africa that relate to gender equity and diversity in the legal profession?

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<sup>27</sup> Section 8(h), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>28</sup> Section 8(i), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>29</sup> Commission for Gender Equality – A society free from gender oppression and inequality *Lack of Gender Transformation in the Judiciary Investigative Report* (2016) 28.

- c) How are female attorneys in South Africa represented in the legal profession compared to those in other countries?
- d) What measures can improve gender representation in the legal profession?

### **1.5 Methodology**

This study will employ a desktop research method to evaluate the literature on the extent to which female attorneys in South Africa are acknowledged and represented in a primarily male-dominated legal profession. The study will primarily focus on the challenges experienced by female admitted attorneys, but will also take into account the experiences of female candidate attorneys, advocates, and the judiciary. International law instruments and domestic law will be considered. The research will consult a variety of primary sources such as constitutions, legislation and case law as well as secondary sources such as books, articles, and reports to gather relevant information and data to support its findings.

### **1.6 Significance of Research**

The proposed research focuses on the challenges that admitted female attorneys still face in South Africa's male-dominated legal profession. Furthermore, the research addresses the gender gap and the rise of female attorneys from not being recognised to slowly getting recognition in the legal profession. Moreover, it explores how its identified challenges could be resolved for the profession to represent diversity adequately. Though much research exists on females in the legal profession in South Africa, especially female advocates and the judiciary, the proposed study is significant for its focus on admitted female attorneys.

### **1.7 Literature Review**

Since South Africa transitioned to democratic governance, gender equity has been a key factor in the process of drafting legislation and government policy and determining developmental strategies.<sup>30</sup> Consequently, the South African Constitution enshrines the right to gender equality.<sup>31</sup> Watson and Rhoda argue that three important developments shaped the Parliament of South Africa. The first was the interim constitution in 199. The second was the 1994

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<sup>30</sup> Watson J and Rhoda L *WOMEN & LAWMAKING A Study of Civil Society Participation* (2002) 6.

<sup>31</sup> Watson J and Rhoda L *WOMEN & LAWMAKING A Study of Civil Society Participation* (2002) 25.

democratic election, and the third was the 1996 final constitution. Each of these developments recognised and promoted gender equality.<sup>32</sup> The Constitution is the supreme law of the country.<sup>33</sup>

Primarily, in 1914, Davis in his article entitled 'Women as Advocates and Attorneys' stated that, 'the law of nature destined women for the bearing and nurture of children.'<sup>34</sup> He further stated that this is a radical and sacred duty and women would be violating this duty if they were to practice law.<sup>35</sup> Conversely, in 1918, the former Chief Justice of the Orange Free State, Melius De Villiers published a prejudiced article entitled, 'Women and the legal profession.'<sup>36</sup> He argued that it is most undesirable that women should be allowed to become practising members of the legal profession.<sup>37</sup> He was concerned that admitting women as attorneys would have a negative impact and that it would be against nature to allow women to become members of the legal profession.<sup>38</sup> He concluded that admitting women to practice law was not in the interest of the community.<sup>39</sup>

I am of the view that Davis and De Villiers' articles are a true reflection of stereotypes and gender bias that women still suffer in the profession today. Even though these two prejudiced articles were written in 1914 and 1918, sexism and patriarchal standards persist. Moseneke argues that patriarchy and the resultant social inequality and oppression of women and girls remain entrenched.<sup>40</sup> I hold the same view as Moseneke that the oppression of women in the profession is a long-standing problem and that these stereotypes are a clear indication of the tradition of oppression against women. In addition, this gender bias that Moseneke referred to is reflected in the profession, since female attorneys are underrepresented and are still fighting for recognition.

English and Stapleton both argue that 'even though in many cultures, women's traditional role is in the home caring for their families if a woman wishes to be in the home that is her right. It is also her right to work outside the home if she wishes and to receive equal pay

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<sup>32</sup> Watson J and Rhoda L *WOMEN & LAWMAKING A Study of Civil Society Participation* (2002) 6.

<sup>33</sup> Section 2, the Constitution of the Republic of South Africa 1996.

<sup>34</sup> Davis RPB, 'Women as Advocates and Attorneys' (1914) 31 *SALJ* 383.

<sup>35</sup> Davis RPB, 'Women as Advocates and Attorneys' (1914) 31 *SALJ* 383.

<sup>36</sup> De Villiers M 'Women and the legal profession' (1918) 35 *SALJ* 289 (hereafter *Women and the legal profession*).

<sup>37</sup> De Villiers M (1918) 289.

<sup>38</sup> De Villiers M (1918) 290.

<sup>39</sup> De Villiers M (1918) 289.

<sup>40</sup> Moseneke D *All Rise A Judicial Memoir* (2020) 71.

for her work. The state must make this opportunity available.<sup>41</sup> This is because women have the same rights as men.<sup>42</sup>

While much concern has been expressed in literary works about females in the profession in SA, there is no critical analysis of female attorneys. Most of those who have written about females in the profession in SA have concentrated on the critical analysis of the advocates and the judiciary. Their focus was on the appointment of female judges, from the bar to the bench without focusing on a critical analysis of female attorneys.

In her published Masters of Laws Research Paper entitled “Women in the legal profession in South Africa – Traversing the tension from the bar to the bench,”<sup>43</sup> Rudo Runako Chitapi wrote about women in the legal profession in SA. She conducted interviews but focused only on the experience and perspective of women advocates from the bar to the bench. She did not conduct interviews on the experience and perspectives of female attorneys. In addition, Moses Retselisitsoe Phooko and Sibusiso Blessing Radebe in their published journal entitled “Twenty-three years of gender transformation in the Constitutional Court of South Africa: Progress or Regression”<sup>44</sup> have written about gender transformation, however, they focused on the Constitutional Court mainly on the judiciary. The focus was on the appointment of justices there have been fewer female justices than male justices in the Constitutional Court. They argue that there has been slow progress to elevate female justices to the Constitutional Court, but the authors do not say much about female attorneys.

Moreover, Tabeth Masengu in her published article came close to addressing the perspectives of female attorneys.<sup>45</sup> However, her primary focus was on judicial appointments, especially how females’ appointment to the bench and judiciary generally creates a diverse bench in SA. Similarly, the Commission for Gender Equality’s 2016 “Lack of gender transformation in the judiciary – Investigative Report”<sup>46</sup> focused on the judiciary, specifically on the appointment of judges.

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<sup>41</sup> Moseneke D (2020) 71.

<sup>42</sup> Moseneke D (2020) 71.

<sup>43</sup> Chitapi RR *Women in the Legal Profession in South Africa: Traversing the Tension from the Bar to the Bench* (2014) University of Cape Town: Cape Town.

<sup>44</sup> Phooko MR Phooko MR and Radebe SB ‘Twenty-three years of gender transformation in the Constitutional Court of South Africa: Progress or Regression’ (2016) 8 *CCR* 306 – 331.

<sup>45</sup> Masengu T ‘It’s a man’s world: barriers to gender transformation in the South African judiciary. Perspectives from women advocates and attorneys’ (2016) 23(3) *International Journal of the Legal Profession* 305 – 319.

<sup>46</sup> Commission for Gender Equality – A society free from gender oppression and inequality *Lack of Gender Transformation in the Judiciary Investigative Report* (2016) 28 – 207.



Ruth B Cowan discusses patriarchy and sexism in his article entitled “Women’s Representation on the Courts in the Republic of South Africa.”<sup>47</sup> However, it is concerning the obstacles to women’s appointment to the superior courts or the judiciary – particularly the importance of the court to the transformation and the advent of an independent judiciary. Most authors have written about females in the profession. However, they did not critically analyse female attorneys. Their focus was on the advocates and the appointment of judges and the lack of transformation in the South African judiciary.

## **1.8 Chapter Outline**

This paper consists of the following five chapters:

### **Chapter 1 – Introduction of the study**

This chapter will be an introduction to the research paper. It will give the background to the study, what the study aims to achieve, and the significance of the study.

### **Chapter 2 – Legal framework for female attorneys in South Africa: Domestic and international perspectives**

This chapter will sketch the domestic legal framework and international instruments applicable which protect women against gender bias, stereotypes, and patriarchal standards in legal protection.

### **Chapter 3 – Challenges faced by female attorneys in South Africa in the legal profession and law implementation**

This chapter will discuss the strengths, if any, and challenges, issues, gender bias, stereotypes, and patriarchal standards which exist in the implementation of laws applicable to females in the legal profession. The chapter seeks to investigate how the tradition of women's oppression and patriarchal standards in the profession persist.

### **Chapter 4 – Situation of female attorneys in comparative perspective**

This chapter will make a comparison between France on laws applicable to advance females in the legal profession. In France, 55,4 per cent of attorneys are females compared to male attorneys. This is to compare the various laws and policies with the view of gauging whether

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<sup>47</sup> Cowan RB ‘Women’s Representation on the Courts in the Republic of South Africa’ (2006) 6(2) *UMLL Journals* 291 – 318.

the weaknesses in our system are like that of other countries and if any we could take some guidance from them.

### **Chapter 5 –Conclusion and Recommendations**

This chapter concludes the research paper and provides suggestions for enhancing South Africa's laws and policies to advance women's recognition in the legal profession.



## CHAPTER 2

### LEGAL FRAMEWORK FOR FEMALE ATTORNEYS IN SOUTH AFRICA: DOMESTIC AND INTERNATIONAL PERSPECTIVES

#### 2.1 Introduction

This chapter conceptualises the representation of female attorneys within the concept of rights. It will sketch the domestic legal framework and international human rights instruments applicable which protect female attorneys against gender bias, stereotypes, and patriarchal standards. It begins by defining the word, right.

English and Stapleton are of the view that a right is an entitlement you own.<sup>1</sup> ‘It is a claim by you against another to the extent that by exercising your right, you do not prevent someone else from exercising theirs.’<sup>2</sup> Similarly, Evans argues that ‘the moral sense of the term “right” is roughly the idea that someone *ought* to be permitted to do, be, or have something.’<sup>3</sup>

In respect of human rights, Palkhivala argues that human rights are the inalienable rights of all members of the human family. These rights are derived from the inherent dignity and worth of the human person.<sup>4</sup> Comparably, Evans argues that human rights have often been identified with so-called natural rights, which are often said to be rights that flow from human nature.<sup>5</sup> In terms of the United Nations (UN), ‘human rights are rights inherent to all human beings, regardless of sex and everyone is entitled to these rights, without discrimination.’<sup>6</sup> English and Stapleton are of the view that human rights law is about protecting individuals from discrimination.<sup>7</sup> The law applies equally to the rich and poor and women have the same

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<sup>1</sup> English K and Stapleton A *The Human Rights Handbook* (1997) 1.

<sup>2</sup> English K and Stapleton A (1997) 1.

<sup>3</sup> Evans C ‘What are Human Rights?’ in Braham RL (ed) *HUMAN RIGHTS: Contemporary Domestic and International Issues and Conflicts* (1980) 101.

<sup>4</sup> Palkhivala NA ‘Embodiment of Human Rights in Constitutions’ in Braham RL (ed) *HUMAN RIGHTS Contemporary Domestic and International Issues and Conflicts* (1980) 11.

<sup>5</sup> Evans C ‘What are Human Rights?’ in Braham RL (ed) *HUMAN RIGHTS: Contemporary Domestic and International Issues and Conflicts* (1980) 100.

<sup>6</sup> United Nations Peace, dignity and equality on a healthy planet ‘Human Rights’ available at <https://www.un.org/en/global-issues/human-rights#:~:text=Humanper cent20rightsper cent20areper cent20rightsper cent20inherent.andper cent20educationper cent2Cper cent20andper cent20manyper cent20more> (accessed 26 October 2022).

<sup>7</sup> English K and Stapleton A *The Human Rights Handbook* (1997) 3.

rights as men.<sup>8</sup> The right to equality for all is a human right that is enshrined not only in the Constitution<sup>9</sup> but in international human rights instruments as well.

In 1997, in *President of the Republic of South Africa & Another v Hugo*, the court held that:

‘But in light of our own particular history, and our vision for the future, a Constitution was written with equality at its centre. Equality is our Constitution’s focus and organising principle. The importance of equality rights in the Constitution, and the role of the right to equality in our emerging democracy, must both be understood in order to analyse properly whether a violation of the right has occurred.’<sup>10</sup>

The right to equality is a constitutional right. Moreover, the Constitution embraces our past of discrimination against women and affords women the same rights as men.

‘[E]very citizen is equally protected by law.’<sup>11</sup> The right to citizenship is enshrined in section 3 of the Constitution and provides that, ‘all citizens are equally entitled to the rights, privileges and benefits of citizenship and equally subject to the duties and responsibilities of citizenship.’<sup>12</sup> Females are citizens and in terms of section 3(2) of the Constitution all citizens including female attorneys citizens are equally entitled to the rights and benefits of citizenship subject to the same terms and conditions as apply to men. To this extent, in ensuring that female attorneys are allowed to practice law and that their rights are upheld in the legal profession as required not only by the Constitution but by international human rights instruments. The Universal Declaration of Human Rights enshrines the right to equality and Article 7 provides that, all are equal before the law and are entitled without any discrimination to equal protection of the law.<sup>13</sup> Consequently, the Constitution stipulates that the state must respect, protect, promote and fulfil the rights in the Bill of Rights.<sup>14</sup> The following section will provide an analysis of the 1996 Constitution.

## **2.2 Constitution of the Republic of South Africa 1996 (Constitution)**

The Preamble of the Constitution states as follows:

‘We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our

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<sup>8</sup> English K and Stapleton A (1997) 3.

<sup>9</sup> Section 9, the Constitution of the Republic of South Africa of 1996.

<sup>10</sup> *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC) para 74.

<sup>11</sup> The Preamble, the Constitution of the Republic of South Africa 1996.

<sup>12</sup> Section 3(2), the Constitution of the Republic of South Africa 1996.

<sup>13</sup> Article 7, the Universal Declaration of Human Rights 1948.

<sup>14</sup> Section 7(2), the Constitution of the Republic of South Africa 1996.

country and Believe that South Africa belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt the Constitution as the Supreme law of the Republic so as to – Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law...<sup>15</sup>

It is obvious that ‘discrimination founded on gender or sex was manifestly a serious concern of the drafters of the Constitution.’<sup>16</sup> Watson and Rhoda argue that ‘three important developments shaped the Parliament of South Africa. The first was the 1993 interim constitution; the second was the 1994 democratic election; and the third was the 1996 final constitution. Each of these developments recognised and promoted gender equality.’<sup>17</sup> The Constitution is the supreme law of the country.<sup>18</sup> The Republic of South Africa is one, sovereign, democratic state founded on human dignity, the achievement of equality and the advancement of human rights and freedoms<sup>19</sup> as well as on the supremacy of the constitution and the rule of law.<sup>20</sup>

In terms of the Constitution, everyone is equal before the law<sup>21</sup> and the state<sup>22</sup> or any other person may not unfairly discriminate directly or indirectly<sup>23</sup> against anyone on one or more grounds, including but not limited to gender and sex.<sup>24</sup> The Constitution was drafted with equality at its core while taking into consideration our unique past and vision for the future. Our Constitution's organizing theme and focal point is equality between men and women.<sup>25</sup>

In 1994, South Africa became a constitutional democracy.<sup>26</sup> Moreover, since it transitioned to democratic governance, gender equity has been a key factor in the process of drafting legislation and government policy and in determining developmental strategies.<sup>27</sup> The South African Constitution enshrines the right to gender equality and it is within this framework that legislators are obliged to consider the gendered implications of national laws,

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<sup>15</sup> The Preamble, the Constitution of the Republic of South Africa 1996.

<sup>16</sup> *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC) para 73.

<sup>17</sup> Watson J and Rhoda L *WOMEN & LAWMAKING A Study of Civil Society Participation* (2002) 6.

<sup>18</sup> The Constitution of the Republic of South Africa 1996, section 2 – ‘The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.’

<sup>19</sup> Section 1(a), the Constitution of the Republic of South Africa 1996.

<sup>20</sup> Section 1(c), the Constitution of the Republic of South Africa 1996.

<sup>21</sup> Section 9(1), the Constitution of the Republic of South Africa 1996.

<sup>22</sup> Section 9(3), the Constitution of the Republic of South Africa 1996.

<sup>23</sup> Section 9(3), the Constitution of the Republic of South Africa 1996.

<sup>24</sup> Section 9(4), the Constitution of the Republic of South Africa 1996.

<sup>25</sup> *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC) para 74.

<sup>26</sup> Meintjies L, Singh P and du Preez M *et al Introduction to South African Law Fresh Perspective* (2008) 44.

<sup>27</sup> Watson J and Rhoda L *WOMEN & LAWMAKING A Study of Civil Society Participation* (2002) 6.

provincial ordinances and municipal bylaws.<sup>28</sup> This is no easy challenge, given South Africa's rich legacy of sexist laws and policies.<sup>29</sup> To this extent, the Bill of Rights is a cornerstone of democracy in South Africa and enshrines the rights of all people and affirms the value of equality.<sup>30</sup> The South African state must respect, protect, promote and fulfil the rights in the Bill of Rights.<sup>31</sup> In addition, according to the Constitution, the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.<sup>32</sup>

Admission of females into the profession has taken a long time to get to where it is now. There was a time in history when the laws of the country did not permit females to practice law.<sup>33</sup> Females were only allowed to join the profession from March 1923 following the passage of the Women Legal Practitioners Act (WLPA).<sup>34</sup>

### 2.3 Women Legal Practitioners Act 7 of 1923

The right of women to be enrolled as attorneys are enshrined in section 1 of the WLPA, which provides that 'women shall be entitled to be admitted to practise and to be enrolled as attorneys subject to the same terms and conditions as apply to men.'<sup>35</sup> The WLPA came into operation on 26 March 1923.<sup>36</sup> Only then were women accorded the right to be admitted as attorneys.<sup>37</sup> Since the *Incorporated Law Society v Wookey* (Wookey case)<sup>38</sup> in 1912, Ms Wookey was not allowed to practice law on the grounds of gender, women were not considered as persons.<sup>39</sup> The position changed on 26 March 1923. Women became persons and from then were admitted as attorneys into the profession.<sup>40</sup> Years later, after the adoption of the WLPA, the Attorneys Act came into force in 1979.

<sup>28</sup> Watson J and Rhoda L (2002) 25.

<sup>29</sup> Watson J and Rhoda L (2002) 25.

<sup>30</sup> Section 7(1), the constitution of the Republic of South Africa 1996.

<sup>31</sup> Section 7(2), the constitution of the Republic of South Africa 1996.

<sup>32</sup> Section 8(1), the constitution of the Republic of South Africa 1996.

<sup>33</sup> Ngcukaitobi T 'Let the world know that women were once not "persons" in the eyes of the law' available at <https://mg.co.za/article/2018-08-09-let-the-world-know-that-women-were-once-not-persons-in-the-eyes-of-the-law/> (accessed 01 September 2022).

<sup>34</sup> Goitom H 'Women in History: Lawyers and Judges' available at <https://blogs.loc.gov/law/2015/03/women-in-history-lawyers-and-judges/> (accessed 11 September 2022).

<sup>35</sup> Section 1, Women Legal Practitioners Act 7 of 1923.

<sup>36</sup> Women Legal Practitioners Act 7 of 1923.

<sup>37</sup> LWFH 'How did women lawyer rights develop in South Africa?' available at <https://lawyersworkingfromhome.co.za/2020/10/09/how-did-women-lawyer-rights-develop-in-south-africa/> (accessed 11 September 2022).

<sup>38</sup> *Incorporated Law Society v Wookey* 1912 AD 623.

<sup>39</sup> *Incorporated Law Society v Wookey* 1912 AD 623.

<sup>40</sup> Blum K 'Portia today: no need to "drag"' (1990) 3(1) *Sabinet African Journals* 12.

## 2.4 Attorneys Act 53 of 1979

One of the purposes of the Attorneys Act was to consolidate the laws relating to the admission and practice of attorneys.<sup>41</sup> The Attorneys Act repealed the WLPA as a whole.<sup>42</sup> In turn, the LPA in 2018 repealed the Attorneys Act.<sup>43</sup> These repealed Acts were gender-neutral, but the culture, political atmosphere, attitudes of society and the traditions of the legal profession continued to favour male legal practitioners for many years.<sup>44</sup>

Female attorneys were not only protected in the Attorneys Act but in the Employment Equity Act of 1988 when it came into effect.

## 2.5 Employment Equity Act 55 of 1988 (EEA)

The EEA's purpose is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination.<sup>45</sup> The EEA applies to all employers and employees.<sup>46</sup> However, the EEA does not apply to members of the National Defence Force, the National Intelligence Agency or the South African Secret Service.<sup>47</sup> Two years after the promulgation of EEA, the Promotion of Equality and Unfair Discrimination Act (PEPUDA) came into force.

## 2.6 Promotion of Equality and Unfair Discrimination Act 4 of 2000 (PEPUDA)

The Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality.<sup>48</sup> In 2000, PEPUDA came into operation and one of its objectives is to enact legislation required by section 9<sup>49</sup> of the Constitution.<sup>50</sup> The main objective of the PEPUDA is to prevent and prohibit unfair

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<sup>41</sup> Preamble, Attorneys Act 53 of 1979.

<sup>42</sup> LWFH 'How did women lawyer rights develop in South Africa?' available at <https://lawyersworkingfromhome.co.za/2020/10/09/how-did-women-lawyer-rights-develop-in-south-africa/> (accessed 11 September 2022).

<sup>43</sup> *Ex Parte: Goosen and Others* (2018/2137) [2019] ZAGPJHC 68; 2019 (3) SA 489 (GJ); [2019] 2 All SA 702 (GJ) at Para 8.

<sup>44</sup> LWFH 'How did women lawyer rights develop in South Africa?' available at <https://lawyersworkingfromhome.co.za/2020/10/09/how-did-women-lawyer-rights-develop-in-south-africa/> (accessed 11 September 2022).

<sup>45</sup> Section 2, Employment Equity Act 55 of 1988.

<sup>46</sup> Section 4(1), Employment Equity Act 55 of 1988.

<sup>47</sup> Section 4(3), Employment Equity Act 55 of 1988.

<sup>48</sup> Section 9(4), the Constitution of the Republic of South Africa 1996.

<sup>49</sup> The Constitution of the Republic of South Africa, section 9(4) – 'National legislation must be enacted to prevent or prohibit unfair discrimination.'

<sup>50</sup> Section 2(a), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

discrimination. Furthermore, it is to provide measures to prevent and prohibit unfair discrimination on one grounds; including gender and sexual orientation.<sup>51</sup> Another aim is ‘the prohibition of unfair discrimination on the ground of gender which includes but is not limited to denial of access to opportunities<sup>52</sup> and systemic inequality of access to opportunities by women.’<sup>53</sup>

I hold the view that as required by the Constitution, legislation has been passed to promote the recognition and representation of female attorneys. To this extent, these legislations aim to address historical prejudice against female attorneys and to promote equality in the profession.

## **2.7 Legal Practice Act 28 of 2014 (LPA)**

On 1 November 2018, the LPA came into force and the Admission of Advocates Act and the Attorneys Act were repealed.<sup>54</sup> The LPA applies to all legal practitioners and candidate legal practitioners.<sup>55</sup> The purpose of the LPA is to provide a legislative framework for the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution and ensures that the rule of law is upheld.<sup>56</sup> The objective and effect of the LPA are deliberately to revolutionise the regulation of the South African legal profession.<sup>57</sup>

Section 39(1) of the Constitution provides that ‘when interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; must consider international law; and may consider foreign law.’<sup>58</sup> Consequently, section 233 of the Constitution further provides that ‘when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.’<sup>59</sup>

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<sup>51</sup> Commission for Gender Equality *The Bare Minimum - Commission for Gender Equality Report on South Africa's Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations* (2020) 79.

<sup>52</sup> Section 8(h), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>53</sup> Section 8(i), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>54</sup> *Ex Parte: Goosen and Others* (2018/2137) [2019] ZAGPJHC 68; 2019 (3) SA 489 (GJ); [2019] 2 All SA 702 (GJ) at Para 8.

<sup>55</sup> Section 2, Legal Practice Act 28 of 2014.

<sup>56</sup> Section 3(a), Legal Practice Act 28 of 2014.

<sup>57</sup> *Ex Parte: Goosen and Others* (2018/2137) [2019] ZAGPJHC 68; 2019 (3) SA 489 (GJ); [2019] 2 All SA 702 (GJ) at Para 9.

<sup>58</sup> Section 39(1), the Constitution of the Republic of South Africa 1996.

<sup>59</sup> Section 233, the Constitution of the Republic of South Africa 1996.



Primarily, section 39 of the Constitution addresses the interpretation of the Bill of Rights and provides for international law to be considered. This implies that South African courts have a duty and are bound to consider international law when interpreting the Bill of Rights. Conversely, section 233 of the Constitution addresses the application of international law in the interpretation of legislation, if it is a law that South Africa ratified and is binding. Section 2 of the Constitution provides that the Constitution is the supreme law of the country and any law inconsistent with it is invalid.<sup>60</sup> Therefore, international law must be in line and consistent with the Bill of Rights.

## **2.8. The Universal Declaration of Human Rights 1948 (UDHR)**

Braham is of the view that the first major step toward the formulation of an 'international bill of human rights' was the adoption by the General Assembly of the UDHR on December 10, 1948.<sup>61</sup> He further indicates that the UDHR, drafted by the Commission on Human Rights, enumerates many specific rights including equality before the law.<sup>62</sup>

The right to equality is enshrined in Article 7 of the UDHR and provides that, 'all are equal before the law and are entitled without any discrimination to equal protection of the law. Thus, all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'<sup>63</sup>

The UDHR was enacted in 1948, however, it remains as relevant as it was on the day it was adopted in 1948.<sup>64</sup> It was the first document that articulated the rights and freedoms to which every human being is equally and inalienably entitled.<sup>65</sup> Consequently, the UDHR and the Constitution of South Africa share much in common in principles to promote and protect the rights to equality and freedom from discrimination of all people. To this extent, the UDHR is a milestone document which underpins all international human rights law, it was drafted by representatives from different legal and cultural backgrounds from across the world and

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<sup>60</sup> Section 2, the Constitution of the Republic of South Africa 1996.

<sup>61</sup> Braham RL *HUMAN RIGHTS Contemporary Domestic and International Issues and Conflicts* (1980) 5.

<sup>62</sup> Braham RL (1980) 5.

<sup>63</sup> Article 7, Universal Declaration of Human Rights 1948.

<sup>64</sup> United Nations 'Universal Declaration of Human Rights'

[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) (accessed 9 September 2022).

<sup>65</sup> United Nations 'Universal Declaration of Human Rights'

[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) (accessed 9 September 2022).

continues to inspire the achievement of equality.<sup>66</sup> Other than the UDHR, there is an important treaty that is relevant to the representation of female attorneys in SA.

## **2.9. Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)**

Banda is of the view that in the context of the development of human rights, CEDAW is the best-known of the human rights instruments for women.<sup>67</sup> CEDAW came into force on 3 September 1981 and SA ratified the CEDAW in 1995.<sup>68</sup> CEDAW is crafted based on three principles which entail the principle of substantive equality, the principle of non-discrimination and the principle of state obligation.<sup>69</sup> In addition, CEDAW requires States Parties to embody the principle of equality of men and women in their national constitutions or other legislation if not yet incorporated therein.<sup>70</sup>

Article 1 of CEDAW provides that:

‘For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’

Consequently, Article 15 of CEDAW enshrines the right to equality and provides that, ‘States Parties shall accord to women equality with men before the law.’<sup>71</sup>

In the field of employment, Article 11 of CEDAW provides that, ‘States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, the same rights including the right to work as an inalienable right of all human beings; the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment’<sup>72</sup>

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<sup>66</sup> South African Human Rights Commission ‘South Africa celebrates the 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights (UDHR)’ available at <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1686-south-africa-celebrates-the-70th-anniversary-of-the-universal-declaration-of-human-rights-udhr> (accessed on 23 August 2022).

<sup>67</sup> Banda F *WOMEN, LAW AND HUMAN RIGHTS An African perspective* (2005) 298.

<sup>68</sup> Commission for Gender Equality *The Bare Minimum - Commission for Gender Equality Report on South Africa’s Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations* (2020) 7.

<sup>69</sup> Commission for Gender Equality *The Bare Minimum - Commission for Gender Equality Report on South Africa’s Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations* (2020) 7.

<sup>70</sup> Article 2, the Convention on the Elimination of All forms of Discrimination Against Women 1979.

<sup>71</sup> Article 15, the Convention on the Elimination of All forms of Discrimination Against Women 1979.

<sup>72</sup> Article 11, the Convention on the Elimination of All forms of Discrimination Against Women 1979.

SA is one of the member States that ratified the CEDAW, making it legally binding. SA is then required to pass laws to ensure that female attorneys' rights are upheld and as in terms of Article 11 to take all appropriate measures to eliminate discrimination against women in the legal profession.

## **2.10 African Charter on Human and Peoples' Rights 1981 (African Charter)**

SA, as one of the African member states, signed and ratified the African Charter on 9 July 1996 with reservations and declarations.<sup>73</sup> In terms of Article 2, 'every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind including the ground of sex.'<sup>74</sup> Similarly, Article 3 of the African Charter provides that 'every individual shall be equal before the law and every individual shall be entitled to equal protection of the law.'<sup>75</sup> Furthermore, every individual shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of men over women.<sup>76</sup>

In terms of Article 18(3) of the African Charter, SA has a duty of ensuring the elimination of every discrimination against women and ensuring the protection of the rights of women as stipulated in international declarations and conventions.<sup>77</sup>

## **2.11 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 (Protocol)**

Banda is of the view that the adoption of the African Protocol on Women's Rights in 2003 put women's rights on the continent's centre stage.<sup>78</sup> The Protocol states that 'States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard, they shall: take corrective and positive action in those areas where discrimination against women in law continues to exist.'<sup>79</sup> The protocol further provides that States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, to achieve the elimination of harmful cultural and traditional practices and all other

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<sup>73</sup> African Commission on Human and Peoples' Rights 'Ratification Table:- African Charter on Human and Peoples' Rights' available at <https://www.achpr.org/ratificationtable?id=49> (accessed 23 October 2022).

<sup>74</sup> Article 2, the African Charter on Human and Peoples' Rights 1981.

<sup>75</sup> Article 3, the African Charter on Human and Peoples' Rights 1981.

<sup>76</sup> Article 19, the African Charter on Human and Peoples' Rights 1981.

<sup>77</sup> Article 18(3), the African Charter on Human and Peoples' Rights 1981.

<sup>78</sup> Banda F *WOMEN, LAW AND HUMAN RIGHTS An African perspective* (2005) 298.

<sup>79</sup> Article 2(1)(d), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men.<sup>80</sup>

## 2.12 Chapter Conclusion

Human rights are rights inherent in all human beings regardless of sex and gender. Everyone is entitled to these rights without discrimination. The Constitution redresses our past of discriminatory laws and prejudice against women and affords women the same rights as men.

Women's rights in SA are explored by looking at various human rights instruments, and domestic and international laws which have one main purpose: to prevent or prohibit unfair discrimination and to promote the achievement of equality. These laws are not limited to the Constitution,<sup>81</sup> the EEA,<sup>82</sup> the PEPUDA,<sup>83</sup> the UDHR,<sup>84</sup> the CEDAW,<sup>85</sup> the African Charter<sup>86</sup> and the Protocol on the Rights of Women.<sup>87</sup> Their objective is the prohibition of unfair discrimination on the grounds of sex and gender which includes but is not limited to denial of access to opportunities and systemic inequality of access to opportunities by women. Similarly, they all share much in common in spirit, principles, and values as statements of intent by humanity to stand up, promote and protect the rights to equality and freedom from discrimination of all people.

Discrimination against female attorneys in the field of employment and the legal profession is prohibited to ensure, based on the equality of men and women, the same rights including the right to work as an inalienable right of all human beings and the right to the same employment opportunities. Accordingly, various domestic and international laws have been passed to address discrimination and promote equality. The next chapter will examine the challenges female attorneys face in the implementation of domestic laws that protect their representation in the profession.

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<sup>80</sup> Article 2(2), Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003.

<sup>81</sup> The Constitution of the Republic of South Africa 1996.

<sup>82</sup> Employment Equity Act 55 of 1988.

<sup>83</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>84</sup> Universal Declaration of Human Rights 1948.

<sup>85</sup> Convention on the Elimination of All forms of Discrimination Against Women 1979.

<sup>86</sup> The African Charter on Human and Peoples' Rights 1981.

<sup>87</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003.

## CHAPTER 3

### CHALLENGES FACED BY FEMALE ATTORNEYS IN SOUTH AFRICA IN THE LEGAL PROFESSION AND LAW IMPLEMENTATION

#### 3.1 Introduction

Equality is our Constitution's focus and organising principle and must be understood to analyse properly whether a violation of the right has occurred.<sup>1</sup> Furthermore, the Constitution acknowledges past injustices and tries to repair historical divides to construct a society founded on democratic ideals, social fairness, and fundamental human rights.<sup>2</sup> Due to past instances of biased treatment, disparities, and biased attitudes against females, SA has a record of unjust discrimination,<sup>3</sup> the Constitution made a deliberate effort to grant women equal rights to men, including equal protection under the law and equal access to its benefits.<sup>4</sup> Female attorneys can now practice law and have the same rights and responsibilities as their male counterparts.<sup>5</sup> Even though laws may have made it easier for female attorneys to enter the legal field, they also presented them with difficulties and obstacles within the profession.<sup>6</sup>

This chapter will discuss the strengths, if any, as well as the obstacles, concerns, gender prejudice, stereotypes, and patriarchal norms that exist in the execution of legislation affecting women in the legal profession. The chapter seeks to investigate how the tradition of women's oppression and patriarchal standards persists.

#### 3.2 Representation of women in the legal profession in South Africa

According to the Lawyers Profession Data, there were 24 330 attorneys in total as of January 2016, with 15 133 (60 per cent) of them being male attorneys and 9197 (40 per cent) being female attorneys.<sup>7</sup> As of January 2019, the profession had a total of 27,223 attorneys, 16 168 (60 per cent) were male attorneys, and 11 055 (40 per cent) were female attorneys.<sup>8</sup> In 2022,

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<sup>1</sup> *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC) para 74.

<sup>2</sup> The Preamble, the Constitution of the Republic of South Africa 1996.

<sup>3</sup> The Preamble, the Constitution of the Republic of South Africa 1996.

<sup>4</sup> Section 9(1), the Constitution of the Republic of South Africa 1996.

<sup>5</sup> Section 1, Women Legal Practitioners Act 7 of 1923.

<sup>6</sup> *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC) para 74.

<sup>7</sup> Law Society of South Africa *Attorney's Profession in South Africa* (2016) 5.

<sup>8</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

the number of attorneys slightly changed in favour of women where representation of women in the legal profession increased to 42 per cent, while men dominated 58 per cent of the legal profession.<sup>9</sup>

Ganguli, Hausmann, and Viarengo suggest that women have almost achieved equality with men in terms of new hires at major law firms. However, my perspective differs, as I believe that women still have a long way to go before they reach parity with men, particularly in new hires at large law firms. According to the statistics above, the number of female attorneys in SA does not reflect the proportion of females in the population. Due to this, statistics show that women are still underrepresented in the legal profession. In line with this, I share the same opinion as O'Connor, who believes that until the percentage of female attorneys approaches 50 per cent, we cannot claim to have achieved true success in promoting gender equality in the legal profession.<sup>10</sup> Judge President John Hlophe further argues that there is still a long way to go before we can say the issue of gender discrimination and other issues that accompany it have been satisfactorily resolved.<sup>11</sup>

Ganguli, Hausmann, and Viarengo assert that women continue to occupy a significantly small number of leadership positions across the entire profession.<sup>12</sup> Likewise, the Commission for Gender Equality's 2016 Investigative Report indicates that men are primarily in charge of the highest positions in the profession, including senior partners at law firms, senior counsel at the Bar, and senior members of the judiciary. This trend is also observed in private practice.<sup>13</sup> SA's major corporate law firms are still dominated by white men, especially their upper echelons.<sup>14</sup> The absence of women in top positions in the corporate, financial, and legal sectors, and among top income earners, has been widely documented.<sup>15</sup> Compared to other professions,

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<sup>9</sup> Law Society of South Africa 'Statistics for the attorneys' profession' available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).

<sup>10</sup> O'Connor SD 'The Challenge of a Woman in Law' in Shetreet S (ed) *Women in Law* (1998) 7.

<sup>11</sup> Judge President Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 22.

<sup>12</sup> Ganguli I, Hausmann R and Viarengo M 'Around the world in the profession: Women get in, but not up' available at <https://cepr.org/voxeu/columns/around-world-legal-profession-women-get-not> (accessed 27 August 2022).

<sup>13</sup> Commission for Gender Equality – A society free from gender oppression and inequality *Lack of Gender Transformation in the Judiciary Investigative Report* (2016) 28.

<sup>14</sup> Commission for Gender Equality – A society free from gender oppression and inequality *Lack of Gender Transformation in the Judiciary Investigative Report* (2016) 28.

<sup>15</sup> Ganguli I, Hausmann R and Viarengo M 'Around the world in the profession: Women get in, but not up' available at <https://cepr.org/voxeu/columns/around-world-legal-profession-women-get-not> (accessed 27 August 2022).

the legal sector has significant disparities in gender representation in leadership positions, although entry levels have been at near parity for many years.<sup>16</sup>

Based on the Commission for Gender Equality's 2016 Investigative Report, it was found that in 2013, 12 major companies surveyed had 80 per cent of their chief executives being white men, as were 72 per cent of all managing partners. This trend was also reflected in the ownership and compensation systems of these companies, with 53 per cent of all equity partners being white males.<sup>17</sup> Statistics from the profession reveal a slow increase in women entering and remaining in the profession.<sup>18</sup> This suggests that women entering the profession do not advance through to senior levels.<sup>19</sup>

The Attorneys' Profession in SA 2016 Review by the Law Society of SA presents an examination of how South African law firms have developed in response to the obstacles encountered in the profession in 2016.<sup>20</sup> In terms of transformational issues, a comparison was conducted between the years 2008 and 2016 to examine gender differences. However, for my analysis, I will be focusing on the comparison concerning the firm's ownership, decision-making processes, court appearances, and briefing patterns.

Regarding firm ownership, the comparison conducted between 2008 and 2016 revealed that in 2008, 67 per cent of law firms were fully owned by men, while 9 per cent had mixed ownership (both male and female attorneys), and 25 per cent were female-owned.<sup>21</sup> In contrast, the comparison conducted in 2016 showed that 53 per cent of law firms were fully owned by men, 27 per cent had mixed ownership, and 20 per cent were fully owned by women.<sup>22</sup> Based on the results, there was a 14 per cent decrease in fully male-owned firms and a 5 per cent decrease in fully female-owned firms in SA from 2008 to 2016. However, mixed ownership increased by 18 per cent during the same period. These findings suggest that although there was progress in terms of reducing the number of male-owned firms, there was no significant

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<sup>16</sup> Ganguli I, Hausmann R and Viarengo M 'Around the world in the profession: Women get in, but not up' available at <https://cepr.org/voxeu/columns/around-world-legal-profession-women-get-not> (accessed 27 August 2022).

<sup>17</sup> Commission for Gender Equality – A society free from gender oppression and inequality *Lack of Gender Transformation in the Judiciary Investigative Report* (2016) 28.

<sup>18</sup> Blum K 'Portia today: no need to "drag"' (1990) 3(1) *Sabinet African Journals* 12.

<sup>19</sup> Blum K (1990) 12.

<sup>20</sup> Law Society of South Africa *Attorney's Profession in South Africa* (2016) 2.

<sup>21</sup> Law Society of South Africa (2016) 21.

<sup>22</sup> Law Society of South Africa (2016) 21.

improvement in the representation of women as fully-owned law firms decreased by 5 per cent. This indicates that women still face challenges in advancing in the profession.

In respect of decision making, in firms that are fully female owned, there is typically minimal male input in the decision making process.<sup>23</sup> While fully male owned firms may make an effort to include female decision makers, in most mixed-ownership firms, 50 per cent or less of the decision makers are female.<sup>24</sup>

Regarding court appearances and briefing patterns, specifically in the High Court, 52 per cent of female attorneys reported that they do not personally appear in the High Court, but instead only brief advocates.<sup>25</sup> Out of the female attorneys surveyed, only 25 per cent indicated that they appear in the High Court,<sup>26</sup> and 22 per cent of female attorneys stated that they do not appear in the High Court.<sup>27</sup>

According to Kaganas and Murray, ‘patriarchy and its resultant gender discrimination relegated women to motherhood and confined them to the home under male dominance.’<sup>28</sup> To this extent, O’Connor argues that women were thought to be ill-qualified for adversarial litigation because it required sharp logic and shrewd negotiation, as well as exposure to the unjust and immoral.<sup>29</sup> I share the same viewpoint as Ganguli, Hausmann, and Viarengo that women get admitted as attorneys, find employment at law firms, and appear in courts, with some women not appearing in court at all.<sup>30</sup> Female attorneys are often not promoted to higher positions, such as judges, firm owners, or influential roles within law firms. While it is widely acknowledged that there has been an increase in the number of women in the profession over the years. Although progress has been made, it has been slow. Women can enter the profession, but they often remain in the same positions and are not promoted to senior roles. This is supported by Masengu who holds that ‘Although statistics do reveal an increase in women in

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<sup>23</sup> Law Society of South Africa (2016) 21.

<sup>24</sup> Law Society of South Africa (2016) 22.

<sup>25</sup> Law Society of South Africa (2016) 33.

<sup>26</sup> Law Society of South Africa (2016) 33.

<sup>27</sup> Law Society of South Africa (2016) 33.

<sup>28</sup> Kaganas F and Murray C ‘Law and Women’s Rights in South Africa, An Overview’ 1994 *Acta Juridica* 17.

<sup>29</sup> O’Connor SD ‘The Challenge of a Woman in Law’ in Shetreet S (ed) *Women in Law* (1998) 6.

<sup>30</sup> Ganguli I, Hausmann R and Viarengo M ‘Around the world in the profession: Women get in, but not up’ available at <https://cepr.org/voxeu/columns/around-world-legal-profession-women-get-not> (accessed 27 August 2022).



the profession the progress has been slow. While the number of female attorneys has greatly improved from a decade ago, the statistics alone are insufficient to prove that all is well.’<sup>31</sup>

Female attorneys are inadequately represented in various aspects of the profession, including court appearances, ownership of law firms, decision-making, and promotion to higher positions of power. This list is not exhaustive, and statistical data suggests that women are not advancing at the same rate as their male counterparts. Judge President John Hlophe has expressed the opinion that the type of legal work that practitioners are exposed to is often influenced by gender.<sup>32</sup> He further asserts that the entire profession is dominated by men, and this bias is upheld from the attorney's profession to the upper echelons of the advocate's profession.<sup>33</sup> I hold the same view as Judge President John Hlophe that ‘the system is cruel to women, women who become admitted legal practitioners year in and year out but they are not being retained in the profession compared to men.’<sup>34</sup> Female attorneys are still oppressed by patriarchal standards, past injustices, and prejudice.

According to Kaye, two widely used expressions can be used to illustrate the concept of patriarchy in the profession. The first is glass ceiling and highlights that men and women do not advance to the highest ranks at the same pace. Women are unable to get the top. The second expression is the mommy track, implies that women who choose flexible or part-time schedules could not be eligible for possibilities for promotion to higher positions, including partnership ranks.<sup>35</sup> Epstein shares the opinion that while a few women have been able to attain high levels in the profession, such as becoming partners in large firms, federal court judges, or law school professors, there is still a ceiling that distinguishes women from men in their representation in the most prestigious positions in the law.<sup>36</sup> The obligations, their lack of taste for power, and residual discriminatory practices in the legal establishment.<sup>37</sup>

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<sup>31</sup> Masengu T ‘It’s a man’s world: barriers to gender transformation in the South African judiciary. Perspectives from women advocates and attorneys’ (2016) 23(3) *International Journal of the Legal Profession* 310-311.

<sup>32</sup> Judge President Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 27.

<sup>33</sup> Judge President Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 27.

<sup>34</sup> Judge President Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 27.

<sup>35</sup> Kaye JS ‘Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality’ (1988) 57(1) *Fordham Law Review* 120.

<sup>36</sup> Epstein CF ‘Reaching for the Top: “The Glass Ceiling and Women in the Law”’ in Shetreet S (ed) *Women in Law* (1998) 126.

<sup>37</sup> Epstein CF (1998) 126.

### 3.3 Implementation of laws to uphold female attorneys' rights.

It is not in dispute that male and female attorneys are equally protected by the law<sup>38</sup> and entitled to the privileges and benefits of citizenship and equally subject to the duties and responsibilities of citizenship.<sup>39</sup> It is acknowledged that although there are laws in place that promote gender equality, male and female attorneys are not considered equal in practice. Female attorneys continue to face the consequences of previous discrimination.

The EEA's purpose is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination.<sup>40</sup> The EEA applies to female attorneys in accordance with section 4(1) of the EEA.<sup>41</sup> Furthermore, the EEA read with PEPUDA have been violated. Section 8(h) and section 8(i) of the PEPUDA provide for the prohibition of unfair discrimination on the ground of gender, which includes denial of access to opportunities<sup>42</sup> and systemic inequality of access to opportunities by women.<sup>43</sup> Female attorneys are facing obstacles in their career advancement, particularly in attaining senior positions within law firms. Despite comprising 40 per cent of the total number of attorneys, female attorneys are still outnumbered by their male counterparts, indicating a lack of gender parity in the profession. This is due to enduring patriarchal standards and past discrimination, which have resulted in unequal opportunities and male attorneys being favoured over their female counterparts. The underrepresentation of females in the profession is inconsistent with the constitutional principles of equality and diversity, which require a more balanced gender representation.

When interpreting domestic laws, international laws must be considered.<sup>44</sup> The UDHR and the CEDAW include provisions that are violated when female attorneys face discrimination in the profession. In particular, Article 11 of CEDAW requires SA to take appropriate measures to eliminate discrimination against female attorneys, to ensure that men and women have equal rights, including the right to work as an inalienable human right. This includes the right to the same employment opportunities and the application of the same criteria for selection in matters of employment.<sup>45</sup> There is a discrepancy in job opportunities within the

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<sup>38</sup> Section 9(1), the Constitution of the Republic of South Africa 1996.

<sup>39</sup> Section 3(3), the Constitution of the Republic of South Africa 1996.

<sup>40</sup> Section 2, Employment Equity Act 55 of 1988.

<sup>41</sup> Section 4(1), Employment Equity Act 55 of 1988.

<sup>42</sup> Section 8(h), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>43</sup> Section 8(i), Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>44</sup> Section 39(1)(b), the Constitution of the Republic of South Africa 1996.

<sup>45</sup> Article 11, the Convention on the Elimination of All forms of Discrimination Against Women 1979.

profession, with men being favoured over women in higher positions. This is evidenced by the recent judicial appointment for the position of Chief Justice at the Constitutional Court of South Africa, where a male legal practitioner was appointed as Chief Justice over a female legal practitioner. This demonstrates that men are still given priority over women in terms of career advancement within the profession.

### **3.4 Strengths and progress in female legal practitioners' representation**

There are positive aspects, such as in the judicial appointment to fill two positions of Chief Justice and Deputy Chief Justice of South Africa at the Constitutional Court. The Judicial Services Commission interviewed five candidates.<sup>46</sup> Out of those five, there was only one woman, Judge Mandisa Maya and rest of the candidates were men.

Judge Owen Rogers, who was one of the male candidate judges, argued that it is time for the potential judicial contribution of candidates to trump race and gender considerations.<sup>47</sup> Although Judge Mandisa Maya was not appointed as Chief Justice, she has been appointed as Deputy Chief Justice effective from September 1, 2022. Notably, she is the first woman to hold such a position. In addition, at the time of her appointment she was holding the position of President of the Supreme Court of Appeal.<sup>48</sup> 'Judge Mandisa Maya became the first female (and black) President of the second highest court in the country, the Supreme Court of Appeal in 2017.'<sup>49</sup>

President Cyril Ramaphosa stated that this appointment as Deputy Chief Justice will bring positive change to the judiciary.<sup>50</sup> He further added that 'Justice Maya will contribute to the ongoing transformation process of the judiciary. Her ascendancy to the apex court will

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<sup>46</sup> Bhengu L 'JSC Interviews: Candidate says appointment should be based on judicial contribution, not race or gender' available at <http://www.news24.com/news24/southafrica/news/jsc-interviews-candidate-says-appointment-should-be-based-on-judicial-contribution-not-race-or-gender-20220405> (accessed 17 August 2022).

<sup>47</sup> Bhengu L 'JSC Interviews: Candidate says appointment should be based on judicial contribution, not race or gender' available at <http://www.news24.com/newa24/southafrica/jsc-interviews-candidate-says-appointment-should-be-based-on-judicial-contribution-not-race-or-gender-20220405> (accessed 17 August 2022).

<sup>48</sup> Magadla M '5 things to know about South Africa's new deputy chief justice, Mandisa Maya' available at <https://www.news24.com/truelove/lifestyle/careers/5-things-to-know-about-south-africas-new-deputy-chief-justice-mandisa-maya-20220725> (accessed on 23 August 2022).

<sup>49</sup> Judge President John Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 2.

<sup>50</sup> Magadla M '5 things to know about South Africa's new deputy chief justice, Mandisa Maya' available at <https://www.news24.com/truelove/lifestyle/careers/5-things-to-know-about-south-africas-new-deputy-chief-justice-mandisa-maya-20220725> (accessed on 23 August 2022).

serve as a beacon of hope for scores of young women and make them believe that South Africa is a country of possibilities, regardless of gender, social or economic circumstances.’<sup>51</sup>

I share the same perspective as President Cyril Ramaphosa that Justice Maya's appointment has a positive impact not only in the judiciary but in the profession. SA is moving in the right direction. However, progress has been sluggish, as it took 27 years after the adoption of the Constitution in 1996 for a woman to be appointed as Deputy Chief Justice. One can only hope that it will not take another 27 years for a woman to become Chief Justice in SA. Additionally, I agree with Judge President John Hlophe's assertion that the profession has not yet undergone a true transformation<sup>52</sup> and that the profession must be able to attract and retain women.<sup>53</sup> He further argues that:

‘The fraternity is steeped in its very conservative traditions and thus will take a long time to truly transform the legal profession. Although so much has changed over the years, yet so little has changed. Our women continue to be undermined and insulted, often, in the most subtle of ways. The hardships our women had to endure and overcome to get to this point is simply forgotten and degraded, for the convenience of men.’<sup>54</sup>

### **3.5 Personal Experience in the legal profession**

The profession is plagued by a significant level of patriarchy. I spent two years, from March 2020 to March 2022, working as a candidate attorney at Legal Aid South Africa (LASA), where I was completing my articles. During this time, I attended court every day, except on Fridays when I had consultations with my clients. I appeared in the district magistrate's court. Unfortunately, before joining LASA, I also faced harassment in another law firm. This experience was distressing and opened my eyes to the fact that some men in positions of power use their authority to exploit women in the legal profession.

In my experience at LASA, there were instances where my clients, the accused persons that I represented in court, belittled me because of my gender. When I first started, I was replacing a male candidate legal practitioner in that court I was assigned to in my period of

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<sup>51</sup> Magadla M ‘5 things to know about South Africa’s new deputy chief justice, Mandisa Maya’ available at <https://www.news24.com/truelove/lifestyle/careers/5-things-to-know-about-south-africas-new-deputy-chief-justice-mandisa-maya-20220725> (accessed on 23 August 2022).

<sup>52</sup> Judge President John Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 31.

<sup>53</sup> Judge President John Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 32.

<sup>54</sup> Judge President John Hlophe *Challenges Facing Black Female Legal Practitioners in the South African High Courts* (2021) 33.

articles. As a young woman fresh out of university, male accused persons questioned my qualifications and ability to win their cases. Many of them lacked confidence in me and acted as though they had already lost their cases. Those who were in custody did not believe that I could persuade the court to grant them bail during their bail applications.

Initially, when some of the male attorneys first saw me in court, they belittled me. But as they heard me addressing the court during court proceedings, they were occasionally surprised by my knowledge and ability. One of them even expressed his admiration, saying that he was impressed with my expertise as a young woman and offered me a job with him once I am admitted.

Patriarchal attitude is even apparent among some magistrates. I recall an incident where the regular magistrate was absent for weeks in court. The magistrate pro tem, who was male, would often question and challenge me in court to test my legal knowledge. Whenever I made a request citing a particular section, he would publicly question me further and unnecessarily provide additional information, even on topics I already knew of. This behaviour demonstrated a lack of respect towards me as a female attorney and was based on gender stereotypes. I fail to understand what the male magistrate was attempting to prove by questioning me in an open court in front of my clients and colleagues. At that time, I had already acquired nearly two years of experience in the profession and I was well-versed in criminal procedure. It was only myself who was subjected to such scrutiny, the other male attorneys did not receive the same treatment when appearing before him.

After the court, while I was doing my administrative tasks as usual as I was about to go, the magistrate requested me stay, and we were left alone. He began to engage in a personal conversation with me, inquiring about me and even asking for my phone number. This behaviour was inappropriate and unprofessional, given his position of power.

Based on my experience of working in court for two years, it was evident that female attorneys were underrepresented compared to their male counterparts. In my court, it was common for two or three days to pass without seeing a female legal practitioner. When they did appear, it was often to represent female accused persons. Additionally, there were only two female attorneys who confirmed that they owned their law firms, with the majority working for male-owned firms. Through conversations with attorneys, I would often inquire about which law firm they worked for and who owned it.

I noticed that there were only a few female attorneys who appeared in court, and even they were often limited to handling remand cases. I have a female attorney friend who has been working for a male-led law firm for over a year, but she has yet to run a trial or even a bail application. This is despite her being an admitted attorney with the necessary experience and skills. Unfortunately, this seems to be a common practice among law firms, where female attorneys are only assigned to postpone matters and are not allowed to handle more challenging cases. When it comes to the more exciting aspects of a case, such as formal bail applications or trials, male attorneys are often sent in, even if a female attorney has the requisite experience. This type of behaviour is disheartening, as it not only hinders the career growth of female attorneys but also undermines their capabilities and skills.

### **3.6 Chapter conclusion**

The admission of women into the profession has been a long and slow process. At one point in history, women were not allowed to practice law due to the country's laws. However, the adoption of the WLPA in 1923 changed this status quo and paved the way for female attorneys to practice law. Despite progress in female representation in the profession, it has been slow, and the profession still has a long way to go before it reflects the gender composition of the country as required by the Constitution. Female attorneys continue to face prejudice and underrepresentation, which hinders the achievement of the Constitution's objectives.

Despite laws being put in place to advance female attorneys' rights, women continue to face significant barriers to advancement in the profession. The profession remains male-dominated, with limited access to equal opportunities for women. Male attorneys are often preferred over female attorneys, which is a clear violation of the laws that were created to address past injustice and prejudice against women. Therefore, it cannot be claimed that equality has been achieved when such violations persist.

## CHAPTER 4

### SITUATION OF FEMALE ATTORNEYS IN COMPARATIVE PERSPECTIVE

#### 4.1 Introduction

‘Women have played vital roles in the growth of the practice of law. Whether it be defending clients in court, representing companies, or making powerful rulings, female lawyers continue to fight for justice and pave the way for women in the field.’<sup>1</sup> Moreover, ‘society suffers when talented and highly trained professionals do not work.’<sup>2</sup>

The issue of underrepresentation of female attorneys in the profession is not limited to SA alone. It is a global phenomenon that affects many other countries as well. The lack of gender diversity in the profession is a significant concern, and efforts to address this issue should be a priority worldwide. ‘For a long time, legal professions in Europe were exclusively male. Although most countries had given women access to the legal professions by the early 20th century.’<sup>3</sup> According to O’Connor women were thought to be ill-qualified for adversarial litigation because it required sharp logic and shrewd negotiation, as well as exposure to the unjust and immoral.<sup>4</sup>

Women, like other parts of the workforce, have been entering the profession in considerable numbers in recent decades.<sup>5</sup> Women are joining the French legal profession in stronger numbers than men.<sup>6</sup> The profession has grown more diverse and inclusive.<sup>7</sup> Kaye argues that ‘the relaxation of entry barriers for women lawyers is no longer news; the books and articles chronicling their arrival are interesting reading, but they are history books. The news now, after decades of a solid, visible presence, is that women lawyers have not truly “arrived” in the profession at all. The verdict is that women have surmounted one barrier only

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<sup>1</sup> The Colleges of Law ‘6 Famous Female Lawyers and their Impact on the Field’

<https://www.collegesoflaw.edu/blog/2021/03/24/6-famous-female-lawyers-and-their-impact-on-the-field/> (accessed 19 October 2022).

<sup>2</sup> Bambauer JR and Rahman T ‘The Quiet Resignation: Why Do So Many Female Lawyers Abandon Their Careers?’ (2020) 10(3) *UC Irvine Law Review* 853.

<sup>3</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 12.

<sup>4</sup> O’Connor SD ‘The Challenge of a Woman in Law’ in Shetreet S (ed) *Women in Law* (1998) 6.

<sup>5</sup> Kaye JS ‘Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality’ (1988) 57(1) *Fordham Law Review* 119.

<sup>6</sup> The Global Legal Post ‘Female lawyers hit French glass ceiling’ available at <https://www.globallegalpost.com/news/female-lawyers-hit-french-glass-ceiling-88740210> (accessed 20 October 2022).

<sup>7</sup> Choroszewicz M and Kay F ‘Understanding Gender Inequality in the Legal Profession’ (2022) *Bloomsbury Publishing* 6.

to encounter another.’<sup>8</sup> For a very long time, women have traditionally had a significant presence in the field of law in France.<sup>9</sup> ‘Nevertheless, the French lawyer workforce, public as well as corporate was 57 per cent female in 2020.’<sup>10</sup>

This chapter will examine the situation of female attorneys from a comparative perspective, drawing a comparison between SA and France regarding laws applicable to advancing women's rights in the profession. The purpose is to compare the various laws and policies and gauge whether any weaknesses in our system are similar to those in other countries. Additionally, if any we could take guidance from other countries to strengthen our laws and policies.

## 4.2 History of female attorneys in France

The constitutions passed in the European countries in the 19<sup>th</sup> century contained equality principles but women were denied and had no access to higher education and to the profession.<sup>11</sup> It was the early women's movement that criticized this situation as discriminatory and fought for women's admission to universities and subsequent access to the profession.<sup>12</sup> The first woman was admitted to a law faculty in France in 1887. It took another ten years until the first woman graduated with a law degree in 1897. The first female lawyer was admitted to the French bar in 1900.<sup>13</sup>

Three women changed the course of history in France at the end of the 19<sup>th</sup> century.<sup>14</sup> ‘Sarmiza Bilecescu was the first woman to obtain a license to practice law. She studied law and was the first woman to apply for law at the University. She was initially refused due to the concern that her presence among the other male students would create disorder. She obtained

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<sup>8</sup> Kaye JS ‘Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality’ (1988) 57(1) *Fordham Law Review* 119.

<sup>9</sup> The Global Legal Post ‘Female lawyers hit French glass ceiling’ available at <https://www.globallegalpost.com/news/female-lawyers-hit-french-glass-ceiling-88740210> (accessed 20 October 2022).

<sup>10</sup> Statista Research Department ‘Gender breakdown of legal workforce in France 2020, by profession’ available at <https://www.statista.com/statistics/1304021/france-gender-ratio-of-legal-professions/> (accessed 1 November 2022).

<sup>11</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 18.

<sup>12</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 18.

<sup>13</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 20.

<sup>14</sup> First Hundred Years ‘Women in French Legal History’ <https://first100years.org.uk/women-in-french-legal-history/> (accessed 19 October 2022).



her licence in Law in 1887, however, she decided against applying to the French Bar because it was difficult for women to become lawyers in France at the time. She therefore tried and was successfully admitted with full honours to the Bar association in 1891, although she never entered practice.’<sup>15</sup>

### 4.3 Equality in France

All member states of the European Union have enacted legislation to protect women and provide compensation for the disadvantages they face because of family responsibilities.<sup>16</sup> Over the past three decades, France has implemented several legislative and other measures to encourage the employment of women and promote gender equality in the workforce. One of these measures is the implementation of parity policies.<sup>17</sup> Furthermore, these additional gender representation policies in France are designed to advance and represent female attorneys in the profession and promote gender equality in all spheres.

When it comes to promoting gender equality in law firms in Europe, the situation of women in the profession, particularly at the top levels, appears to be quite diverse.<sup>18</sup> France relies on numerous legislative texts and policy instruments to implement its gender equality policies in various domains.<sup>19</sup> Because of these parity policies, the number of female attorneys in France has increased. However, in the area of employment, voluntary schemes for gender equality were previously hindered by a lack of awareness and willingness to implement them in the private sector.<sup>20</sup> Because of the challenges faced by female attorneys in the profession, there has been a gradual increase in the legal requirements for gender equality. In 2010, a sanction mechanism was established for the first time to penalize firms that fail to adopt a gender equality plan. This step was taken to ensure that companies are held accountable for their commitment to promoting gender equality in the workplace, and to encourage them to

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<sup>15</sup> First Hundred Years ‘Women in French Legal History’ <https://first100years.org.uk/women-in-french-legal-history/> (accessed 19 October 2022).

<sup>16</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 27.

<sup>17</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 27.

<sup>18</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 43.

<sup>19</sup> European Parliament *The policy on Gender equality in France In Depth Analysis* (2015) 6.

<sup>20</sup> European Parliament *The policy on Gender equality in France In Depth Analysis* (2015) 6.

take concrete actions to address the gender gap in the profession.<sup>21</sup> To this extent, ‘today, women are playing an increasingly prominent role in the legal profession in France.’<sup>22</sup>

#### **4.4 Laws that promoted gender representation in France.**

##### *4.4.1 The Constitution of the Republic of France of 1958 (Fifth Republic)*

The principle of equality of all citizens is enshrined in Article 1 of the Constitution of France, which provides that,

‘France shall be an indivisible, secular, democratic, and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race, or religion. It shall respect all beliefs. It shall be organised on a decentralised basis. Statutes shall promote equal access by women and men to elective offices and posts as well as top positions of professional and social responsibility.’<sup>23</sup>

Grzybowski argues that ‘the Constitution of France born out of World War II was the result of compromise. The circumstances in which the Constitution of September 28, 1958, came into being were such that it has been hailed as initiating a new era in French constitutional history.’<sup>24</sup> The Constitution of France states, ‘everyone shall have the duty to work and the right to obtain employment’.<sup>25</sup> In addition, it has laid down that equality of rights shall be granted to women, on the same terms as men. Houet-Weil is of the view that ‘equality, a sacrosanct principle in the French legal system, has always occupied a prominent place in France.’<sup>26</sup>

The Constitution of France provides that, ‘the French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed, and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004. Under these principles and that of the self-determination of peoples, the Republic offers to the

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<sup>21</sup> European Parliament *The policy on Gender equality in France In Depth Analysis* (2015) 6.

<sup>22</sup> The Global Legal Post ‘Female lawyers hit French glass ceiling’ available at <https://www.globallegalpost.com/news/female-lawyers-hit-french-glass-ceiling-88740210> (accessed 20 October 2022).

<sup>23</sup> Article 1, the Constitution of the Fifth Republic of 1958.

<sup>24</sup> Grzybowski K ‘The American Journal of Comparative Law’ (1958) 8(2) *Oxford University Press* 214.

<sup>25</sup> Weaver AT ‘France – A Women’s View’ (1971) 57(3) *Women Lawyers Journal* 96.

<sup>26</sup> Houet-Weil M ‘France: Women and the Glass Ceiling in France’ <https://www.mondaq.com/france/discrimination-disability-sexual-harassment/880838/women-and-the-glass-ceiling-in-france> <https://www.mondaq.com/france/discrimination-disability-sexual-harassment/880838/women-and-the-glass-ceiling-in-france> (accessed 20 October 2022).

overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality, and fraternity and conceived for their democratic development.’<sup>27</sup>

My perspective aligns with that of Houet-Weil, who believes that the fundamental tenet of the French legal system is equality and that all other principles are built upon this foundation of equality between men and women, as enshrined in the Constitution. I agree with Houet-Weil's assertion because it is consistent with the fundamental principle of equality enshrined in every country's Constitution, such as France and SA, which aims to redress historical divisions and injustices. This is particularly relevant in the context of past instances of discriminatory treatment against women in the profession.

#### 4.4.2 *The Declaration of the Rights of Man and the Citizen of 1789 (Declaration)*

The Fifth Republic explicitly states its attachment to the Declaration, citing it in the preamble of its Constitution and it recognizes equality before the law.<sup>28</sup> Houet-Weil is of the view that ‘equality was first embraced in the 1789 Declaration of the Rights of Man and the Citizen, according to which “*Men are born and remain free and equal in rights,*” it is solemnly affirmed in the Republican motto “*Freedom, Equality, Brotherhood.*”<sup>29</sup> The Declaration came into force in France in 1789.

According to Article 2 of the Declaration, ‘all citizens, being equal before the law, shall be equally eligible to all high offices, public positions, and employments, according to their ability, and without other distinction than that of their virtues and talents.’<sup>30</sup> The Declaration guarantees that all citizens are equal before the law and must be provided with equal opportunities in employment, including equality in the profession for both male and female attorneys. However, while this principle of equality has been enshrined in law since 1789, the reality has been quite different. Women were not given equal opportunities in the profession until much later. It was only in 1900 that the first female attorney was admitted. This highlights the fact that while equality may be a fundamental principle, it is not always easy to achieve in

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<sup>27</sup> The Preamble, the Constitution of the Fifth Republic of 1958.

<sup>28</sup> French Presidency ‘The Declaration of the Rights of Man and of the Citizen’ available at <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen> (accessed on 27 October 2022).

<sup>29</sup> Houet-Weil M ‘France: Women and the Glass Ceiling in France’ <https://www.mondaq.com/france/discrimination-disability-sexual-harassment/880838/women-and-the-glass-ceiling-in-france><https://www.mondaq.com/france/discrimination-disability-sexual-harassment/880838/women-and-the-glass-ceiling-in-france> (accessed 20 October 2022).

<sup>30</sup> Article 6, the Declaration of the Rights of Man and the Citizen of 1789.

practice, and there may be significant historical and cultural barriers that must be overcome to ensure that equality is truly realized.<sup>31</sup> The first female attorney was only admitted 111 years later after the promulgation of the Declaration.

#### 4.4.3 *The Preamble to the Constitution of 1946*

The Preamble to the Constitution also attached to the current Constitution of 1958 addresses gender equality and provides that, ‘the law guarantees women equal rights to those of men in all spheres.’<sup>32</sup> The equality principle is a human right entrenched in the Preamble,<sup>33</sup> the Declaration,<sup>34</sup> and the current Constitution.<sup>35</sup>

### **4.5 Gender representation in law firms: Taj Law Firm (Taj)**

I will examine a case study from Taj that presents seven key principles for promoting gender diversity and how leadership based on values can enhance the progress of women. Taj is a member of Deloitte Touche Tohmatsu Limited's (DTTL) international network of member firms (Deloitte). Moreover, Taj is one of the leading French law firms, specializing in international tax and legal strategies, and employs over 430 professional staff, including 49 partners, across its seven offices spread across France.<sup>36</sup>

In 2012, DTTL Global Tax & Legal Talent conducted a review of gender representation at all levels within the Tax & Legal groups in member firms. Taj, stood out with 50 per cent female partners in 2011. The DTTL Global Tax & Legal Talent team conducted a further review of Taj to understand how they achieved full gender balance across all levels in the firm. The DTTL Global Diversity team and DTTL Global Tax & Legal Talent conducted interviews with the CEO of Taj and women from the firm, including the Chair of the Board and junior staff.<sup>37</sup>

Based on the findings, the initial takeaway is that Gianmarco Monsellato (Gianmarco), the CEO of Taj Law Firm, fostered a more inclusive environment by being a vocal advocate

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<sup>31</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 20.

<sup>32</sup> Article 3, the Preamble to the Constitution of 1946.

<sup>33</sup> Article 3, the Preamble to the Constitution of 1946.

<sup>34</sup> Article 6, the Declaration of the Rights of Man and the Citizen of 1789.

<sup>35</sup> Article 1, the Constitution of the Fifth Republic of 1958.

<sup>36</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 4.

<sup>37</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 5.

for gender diversity and inclusivity. He achieved this by highlighting individuals' strengths rather than weaknesses, and showcasing how diversity can aid in business growth. He promoted and advocated for partners who were not part of the old boys' network to be assigned to projects with significant clients. This proved easier than expected as the market seemed to welcome the increase in women partners; by staying away from political correctness and being transparent. He further, encouraged women with children to work from home if they are interested, providing the needed technology, and advising them not to be uncomfortable about a child crying during a conference call. He encouraged men to take paternity leave and to improve their work-life balance.<sup>38</sup>

The second lesson is the importance of having a diverse group of individuals present when making critical decisions. At Taj, they make sure to have an equal representation of males and females present in the room during important discussions regarding promotions, hiring, and strategy. This approach allows for a variety of perspectives to be shared, resulting in solutions that are more comprehensive and increased innovation.<sup>39</sup>

The third lesson is that leaders need to possess the skills and competencies necessary for inclusive leadership. This can be achieved by implementing changes, such as appointing women over men with the same level of competence, to promote diversity and inclusion. Gianmarco emphasized that any behaviour, language, or attitude that does not support diversity is not tolerated, even in private settings. Men must examine themselves critically and make necessary changes. Women should not try to replicate or imitate men but rather bring their unique strengths to the business. It is also important to take women out of their comfort zones of technical competence and place them in leadership positions.<sup>40</sup>

The fourth lesson is to effectively manage change, challenges, and setbacks; and to treat everyone equally but as individuals.<sup>41</sup>

Lesson number five emphasizes the importance of treating people equally and investing in their growth and development, regardless of gender. At Taj, everyone is given the same opportunities to work with clients, learn new skills, and work on important projects. The best

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<sup>38</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 8.

<sup>39</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 7.

<sup>40</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 8 – 9.

<sup>41</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 10.

assignments are not reserved for a select few, and both men and women are invited to work on them equally. Informal mentoring and coaching are provided regularly to ensure that everyone has the chance to learn and develop. Furthermore, performance evaluations for women returning from maternity or sick leave are based on the time they spent working, rather than the full year so that they are fairly evaluated for the contributions they made during that time.<sup>42</sup>

The sixth lesson is that there are no diversity programs. There is no difference between the work that men and women do at the firm, and everyone is treated as a professional. The only aspect that could resemble a diversity program is that recruiters ensure they have a selection of diverse candidates for all positions they are looking to fill.<sup>43</sup>

The final lesson is the importance of having women representatives in senior and leadership positions by measuring the number of female promotions at all levels and evaluating partners in their efforts to promote women. When women occupy leadership roles, it creates a level playing field where both men and women are equally represented. This is because having diverse perspectives at decision-making levels results in a fair and just environment. To this extent, women in leadership roles can advocate for other women and help create a more inclusive workplace. In contrast, when only men occupy leadership positions, there is a single point of view, which can disadvantage women.<sup>44</sup>

‘Taj Law Firm’s seven diversity practices outlined in this case study have helped them not only achieve greater gender diversity and drive innovation but have also resulted in 50 per cent of women as partners; 50 per cent of women in executive roles; equality of pay for equal level and performance, with women representing 50 per cent of the top 10 earners by compensation level; the success of the firm: in eight years, Taj Law Firm has seen the most sensational rise in the French market both in reputation and organic growth rising from a second-tier firm to a market leader and growing 70 per cent in a difficult economy and shrinking market and Taj Law Firm won in the “Best in France” category at Euromoney-Legal Media Group-European Women in Business Law Awards.’<sup>45</sup>

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<sup>42</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 11.

<sup>43</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 12.

<sup>44</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 13.

<sup>45</sup> Deloitte *Seven lessons in gender diversity. How values-driven leadership leads to the advancement of women* (2013) 14.

## 4.6 Comparison between South Africa and France's legal systems on female attorneys' representation

### 4.6.1 Similarities

The right of female attorneys' representation originates from states' duty to realising equality right between men and women in employment more in specific, in the profession. In SA and France, the principle of equality is the core of the constitutions of each country and everything else is built on the foundation of equality. SA is a democratic Republic state<sup>46</sup> and is governed by the Constitution of the Republic of SA as the supreme law of the country. Similarly, France is a democratic republic state and is governed by the Constitution of the Fifth Republic.<sup>47</sup> As a result, both countries' constitutions enshrine the right to equality between men and women<sup>48</sup> in all spheres<sup>49</sup> including employment. Therefore, female attorneys' right to equality is a constitutional right in both countries.

On the one hand, Article 1 of the French Constitution provides for national legislations to be enacted to promote equal access by women and men to elective offices and posts as well as to position of professional and social responsibility.<sup>50</sup> On the other hand, section 9(4) of the South African Constitution provides for enactment of national legislation to prevent unfair discrimination.<sup>51</sup> There are national legislations enacted in each country promoting female attorneys' rights in the male-dominated profession. Consequently, in both countries, there is an increase in the number of practising female attorneys due to the constitutions, international instruments, national legislation, and policy initiatives enacted for female attorneys' advancement in the profession.

Schultz argues that 'parity in terms of numbers of male and female law students has been achieved in France.'<sup>52</sup> The statistics indicates that in SA, there are more female law students than male law students. Parity has been achieved in terms of the number of law students in both SA and France.

In respect of each country's population, in SA females make up 51,1 per cent of the population. SA has 1,3 million more females than males.<sup>53</sup> Comparably, as of 2021 the

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<sup>46</sup> Section 1, the Constitution of the Republic of South Africa of 1996.

<sup>47</sup> Article 1, the Constitution of the Fifth Republic of 1958.

<sup>48</sup> Section 9(1), the Constitution of the Republic of South Africa of 1996.

<sup>49</sup> Article 1, the Constitution of the Fifth Republic of 1958.

<sup>50</sup> Article 1, the Constitution of the Fifth Republic of 1958.

<sup>51</sup> Section 9(4), the Constitution of the Republic of South Africa of 1996.

<sup>52</sup> Schultz U 'Introduction: Women in the World's Legal Professions: Overview and Synthesis' in Schultz U (ed) and Shaw G (ed) *Women in the World's Legal Professions* (2003) xxxviii.

<sup>53</sup> Stats SA Mid-year population estimates (2022) viii.

population of France was projected at 65,43 million. There were 31,66 million (48,39 per cent) males and 33,76 million (51,61 per cent) females. France has 2,10 million more females than males.<sup>54</sup> This one of the similarities between both countries that they both have more females than males in their population.

#### 4.6.2 Differences

On the one hand, SA is still a developing country<sup>55</sup> and uses an uncodified<sup>56</sup> hybrid legal system that consists of English common law, Roman-Dutch law, and indigenous law.<sup>57</sup> On the other hand, France is a developed country<sup>58</sup> with a Roman law tradition belonging to the civil law sphere.<sup>59</sup> Both countries have Roman law traditions in their legal systems, even though in SA it is Roman-Dutch law. In France, the first female lawyer was admitted in 1900.<sup>60</sup> As opposed, in SA women were allowed to join the legal profession from March 1923 following the passage of the WLPA.<sup>61</sup> Furthermore, in 1926, the first woman was admitted as an attorney in SA and this was 26 years later after France admitted their first female attorneys.<sup>62</sup>

In terms of achieving gender balance in the number of admitted attorneys, SA has not yet achieved a full gender balance of 50 per cent – 50 per cent (50/50) split between male and female attorneys.<sup>63</sup> In contrast, ‘the French lawyer workforce - public as well as corporate was

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<sup>54</sup> UN (World Population Prospects 2019) ‘Demographics of France’

<https://statisticstimes.com/demographics/country/france-demographics.php#:~:text=There%20are%2031.66%20million%20males,of%20female%20to%20male%20ratio> (accessed 1 November 2022).

<sup>55</sup> Sayef B ‘Why is South Africa still a Developing Country’ 2017 *University Library of Munich* 1.

<sup>56</sup> Meintjies L, Singh P and du Preez M *et al Introduction to South African Law Fresh Perspective* 2 Ed (2008) 19.

<sup>57</sup> Meintjies L, Singh P and du Preez M *et al Introduction to South African Law Fresh Perspective* 2 Ed (2008) 19.

<sup>58</sup> Civic Nation Unity in Diversity ‘France’ <https://civic-nation.org/?country=110#:~:text=France%20is%20a%20developed%20country.life%20expectancy%2C%20and%20human%20development> (accessed 1 November 2022).

<sup>59</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 19.

<sup>60</sup> European Parliament *Mapping the Representation of Women and Men in the Legal Profession Across the EU* (Research Paper, Policy Department for Citizen's Rights and Constitutional Affairs, 2017) 19.

<sup>61</sup> Goitom H ‘Women in History: Lawyers and Judges’ available at <https://blogs.loc.gov/law/2015/03/women-in-history-lawyers-and-judges/> (accessed 11 September 2022).

<sup>62</sup> Ngcukaitobi T ‘Let the world know that women were once not “persons” in the eyes of the law’ available at <https://mg.co.za/article/2018-08-09-let-the-world-know-that-women-were-once-not-persons-in-the-eyes-of-the-law/> (accessed 01 September 2022).

<sup>63</sup> Law Society of South Africa ‘Statistics for the attorneys’ profession’ available at <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 01 September 2022).



57 per cent female in 2020.<sup>64</sup> One of the reasons for the increase in the representation of female attorneys in France is due to gender equality policies. These policies have been developed since the 1970s and today represent a consistent and comprehensive legal framework covering almost all domains of social, political, and economic life.<sup>65</sup> France has a long-standing tradition of legislating in favour of gender equality in the domain of employment and professional life with the first legislation dating from 1972 and the establishment of no less than 12 laws between 1972 and 2014.<sup>66</sup>

The Taj Law Firm in France has achieved a full gender balance with an equal representation of 50 per cent men and 50 per cent women. This law firm has taken steps to advance women's rights and promote gender diversity in the workplace, resulting in women holding senior positions and reaching the upper levels of the firm. Some law firms in SA can learn from the example set by Taj and its CEO, Gianmarco, who, despite being a man, has been able to create an inclusive workplace culture that has made his firm one of the leading firms in France.

#### 4.7 Chapter conclusion

The traditional view was that women were suited for the roles of motherhood and taking care of the home, while men were naturally inclined towards competition and intellectual pursuits in the wider world.<sup>67</sup> Goff, Lepinard and Feuvre *et al* argue that 'women were likely to relate experiences of being discriminated against in their workplace.'<sup>68</sup> Consequently, Schultz argues that at first glance, the dramatic rise in female participation in the legal practice creates the impression of a success story as if the 'woman question' had been resolved and women lawyers had made significant inroads into a previously inaccessible elitist profession. However, upon closer inspection, discrimination against women is still prevalent, and women lawyers tend to remain on the margins of power and privilege.<sup>69</sup>

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<sup>64</sup> Statista Research Department 'Gender breakdown of legal workforce in France 2020, by profession' available at <https://www.statista.com/statistics/1304021/france-gender-ratio-of-legal-professions/> (accessed 1 November 2022).

<sup>65</sup> European Parliament *The policy on Gender equality in France In Depth Analysis* (2015) 7.

<sup>66</sup> European Parliament *The policy on Gender equality in France In Depth Analysis* (2015) 7.

<sup>67</sup> O'Connor SD 'The Challenge of a Woman in Law' in Shetreet S (ed) *Women in Law* (1998) 6.

<sup>68</sup> Goff IB, Lepinard E, Faure NL and Mallard G 'A case of Love and Hate: Four Faces of Alienation Among Young Lawyers in France and Switzerland' (2020) 45(2) *Law & Social Enquiry* 296.

<sup>69</sup> Schultz U 'Introduction: Women in the World's Legal Professions: Overview and Synthesis' in Schultz U (ed) and Shaw G (ed) *Women in the World's Legal Professions* (2003) xli.

The underrepresentation of female attorneys is a problem that is not limited in SA alone but is a global issue. Even in countries such as France, where gender diversity is relatively better in the profession, there are still challenges and barriers that need to be addressed. However, SA can learn from the positive aspects of France's legal system and strive to strengthen its legal system to promote greater representation of female attorneys in all spheres in the male-dominated legal system.

In both SA and France, the constitutions provide for the equal treatment of male and female attorneys. However, in SA the underrepresentation of female attorneys can be traced back to past injustices that have led to a legal system that still favours male attorneys. The legal profession in France has historically had a larger number of female attorneys and has made strides in promoting gender diversity, with many female attorneys holding senior positions in law firms and courts. 'Women's rising representation in the legal profession across countries, women are even larger proportions of many civil law professions, e.g. 54 per cent in France of notaries.'<sup>70</sup> Consequently, today, women are playing an increasingly prominent role in the legal profession in France.<sup>71</sup> SA needs to take measures to increase the representation of female attorneys in the profession. This can include implementing programs to mentor and support female attorneys in their careers, providing equal opportunities for promotions and leadership positions, and addressing any gender biases or discrimination that may exist within law firms and the legal system. By learning from countries such as France that have made progress in increasing the representation of female attorneys, SA can work towards achieving a more balanced and equitable legal profession.

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<sup>70</sup> Choroszewicz M and Kay F 'Understanding Gender Inequality in the Legal Profession' (2022) *Bloomsbury Publishing* 9.

<sup>71</sup> The Global Legal Post 'Female lawyers hit French glass ceiling' available at <https://www.globallegalpost.com/news/female-lawyers-hit-french-glass-ceiling-88740210> (accessed 20 October 2022).

## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Summary**

This research paper aimed to examine the extent to which female attorneys in SA are represented in a primarily male-dominated profession. The study identified and addressed the challenges faced by female attorneys in the profession and explored ways to address these challenges to promote gender diversity and equal representation. Based on the findings of the study, recommendations were provided on measures to improve gender representation in the profession and how SA can strengthen its policies and regulations to advance women's recognition in the profession as mandated by the Constitution. Finally, this chapter will conclude the study by summarising its key findings and recommendations.

Within the country, there are legislative structures in place to promote gender equality and unbiased treatment. The existing legislative framework, which includes the South African Constitution, PEPUDA, EEA, and several international human rights instruments such as the UDHR and CEDAW, all share the goal of fostering gender equality between men and women. One strategy for attaining this goal is to promote gender diversity and representation in the workplace. Nonetheless, despite attempts to achieve gender balance, female attorneys continue to confront challenges such as gender prejudice, discrimination, uneven treatment, and underrepresentation in leadership roles. Such gender imbalance not only impacts female attorneys but also has a detrimental impact on the profession as a whole, resulting in unjust treatment and discrimination that can inhibit female attorneys' career progress and productivity. In terms of gender representation in the profession, a comparison was made between France and SA. France has effectively reached a gender-equity balance between male and female attorneys in the profession. Whereas in SA male attorneys continue to dominate, with 42 per cent female attorneys and 58 per cent male attorneys, respectively.

#### **5.2 Recommendations**

Based on the findings of the study, the following recommendations are made to address the underrepresentation of female attorneys in SA in the profession:

### *5.2.1 Recommendation 1: Affirmative action to get female attorneys to senior positions.*

Section 15 of the EEA provides for affirmative action measures and states that, ‘affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce of a designated employer.’ Designated groups include women. Affirmative action measures implemented by a designated employer includes measures to identify and eliminate employment barriers such as unfair discrimination.

It is recommended that to promote gender equity in the profession, firms should prioritize the professional growth and development of female attorneys while providing them with equal chances as their male colleagues. Secondly, it is recommended to enforce reforms in law firms and prefers their recruitment over males when they demonstrate the same degree of skill until gender parity is reached. This might need new regulations requiring every registered legal practice in SA to implement affirmative action procedures. Finally, it is recommended that all registered law firms should have diversity policies in place to guarantee that recruiters evaluate a broad pool of candidates for all available jobs.

### *5.2.2 Recommendation 2: 50/50 male-female split in the room during important decisions and representation balance.*

The recommendation is to promote and ensure a diverse group of individuals are present during crucial decision-making processes, such as promotions, hiring, and strategic planning, with an emphasis on maintaining a 50/50 male-female split balance of representation in the room. This guarantees that both men's and women's ideas and opinions are treated in a fair and equal manner, allowing organizations to benefit from the many perspectives and experiences that people from all backgrounds and identities bring to the table. As a result, improved decision-making, more inventive ideas, and a more inclusive workplace culture are achieved.

### *5.2.3 Recommendation 3: Equality of client opportunities, regardless of gender*

It is recommended that policies and laws must be established to ensure that male and female attorneys are assigned cases based on their competencies and qualifications, without discrimination based on gender. Law firms and legal organizations may advance gender equality in the field and gain from the variety of viewpoints and experiences that women bring to the table by promoting the growth and promotion of female attorneys.

#### *5.2.4 Recommendation 4: Mentoring and coaching*

A recommendation is to set up regular, mentoring and coaching programs to foster ongoing learning and professional development in the profession. Female attorneys are often underrepresented and sometimes face difficulties in advancing their careers, therefore law firms and other legal organizations may provide female attorneys with the direction and encouragement they require to overcome these obstacles and be successful in their professions by implementing frequent mentorship and coaching programs. Subsequently, female attorneys can expand their networks, learn new skills, become more assured, and be able to advance their careers.

#### *5.2.5 Recommendation 5: 50/50 female attorneys balance and in favour of females*

The recommendation is for government to provide law students, particularly female law graduates, with resources equivalent to those offered to students in other fields such as in medicine. Where they are allocated to do their articles at particular law firms and when they are admitted they continue to practice there if they wish. This is to narrow the gap in gender representation and promote diversity in the profession as a whole.

### **5.3 Conclusion**

The study concludes that there is a notable gender gap in the South African legal profession, with females underrepresented especially in positions of power and leadership. Discrimination in the workplace, cultural expectations, and lack of support and mentoring are some of the reasons for this gap. Legal professionals must take proactive steps to address these issues to create a more inclusive and equitable community. In this way, the profession can benefit from the unique perspectives and talents of female attorneys, creating a more diverse legal profession. Due to limitations on time and scope of this research, one potential idea for future research in this area would be a qualitative study to gain a more in-depth understanding of the experiences and viewpoints of female attorneys in South Africa. This study might involve interviewing or hosting focus groups with female attorneys to learn about the challenges women face in the legal profession and the different solutions they believe would be most effective in addressing these problems. Furthermore, future research might examine the effectiveness of legislation and initiatives targeted at promoting gender equity and diversity in South Africa's legal profession and identifying areas for improvement.

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