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Where are the women of justice?

Staff Reporter 29 Aug 2014



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There was a time when admitting a woman into law was not only “a departure from the order of nature, but even treason against it if their actions were voluntary”. In 1914, Justice RPB Davies uttered these words when he referred to an appellate division judgment that refused to register Madeline Wookey for articles in the Cape Province. He saw

in women's destiny "only" the bearing and nurturing of children and the custody of the world.

A century later, with merit and gender transformation presumed to be mutually exclusive by some, one could be forgiven for thinking that in at least some parts of the legal practice this view still prevails.

A diverse bench not only strengthens the legitimacy of the courts but makes it richer by giving it a plurality of perspectives. One should also not forget the importance of symbolism, as 20 years into the democratic era our courts reflect immense progress in relation to race, but tarry on gender.

Only 32% of the country's judges are women, and there are only two women out of the 22-strong leadership of the superior courts. South Africa is not unique in its low representation of women on the Bench, but it is the only country in the world that has this specific obligation in its Constitution. Thus, the country is uniquely aided in its transformation agenda by Section 174(2) of the Constitution, which supports gender parity – even in the judiciary.

In Women's Month, the spotlight has been shone on the judiciary's failure to reflect gender parity. The annual conference of the South African Chapter of the International Association of Women Judges earlier this month provided an opportunity for reflection. The theme, "Reshaping women's participation for gender equality in the South African judiciary", prompted a deeper inquiry into the reasons why so few of the judges in the country are women.



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In the past four years the Judicial Service Commission has interviewed 262 candidates, yet only 82 of them were women. Of the successful 155 candidates appointed to the Bench during the same period, only 40 of them have been women. The blame cannot be laid at the door of the commission alone, as they work with what they are given. One important question has to be answered: Where are the women who would be eligible for appointment to the Bench?

The advocates and attorneys professions and the magistracy are the specific legal pools from which candidates for judicial appointment have been mostly drawn from. Academia, which has provided great jurisprudential minds such as justices Kate O'Regan and Yvonne Mokgoro, among others, has regrettably been untapped for the past 10 years, and the Bench is poorer for it.

A closer examination of the three chosen pools is even more shocking than that of the overall figure for women judges. The advocates profession has 22 571 registered members, of whom only 645 are women. Of these 645, only 35% are black women.

Of the 450 senior counsel in the country, only 27 are women, a startling 6%. The underrepresentation of women in this profession is damaging women's hopes of judicial appointment.

The attorneys profession has better numbers: of 22 473 attorneys, 8 301 are women. But black female attorneys comprise only 35% of the female representation.

Interestingly, the majority of candidate attorneys aspiring to become admitted attorneys are women — 56%, with black women being the majority. So it would appear that the profession is unable to create the right environment to retain women and black attorneys.

In the magistracy 39% of the magistrates are women (673 of 1711) and, of these, more than half are black women. Magistrate's courts deal with the bulk of legal matters, but magistrates' skills and hard work are often underrated. A multidimensional approach is required to close the judicial gender gap.

The department of justice and correctional services needs to place more emphasis on briefing women in practice, especially in complex matters. Female magistrates must be given an opportunity to hear varied matters, not just the cases before family and criminal courts.

Further, the General Council of the Bar, the Law Society and the bodies affiliated to the magistracy should nominate women for interviews and provide support structures that boldly tell women lawyers that they too are worthy of sitting on the Bench and are more than equal to the task.

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