

TRANSFORMATIVE INTERVENTIONS FOSTERING MAINSTREAMING OF BLACK SOUTH AFRICAN WOMEN INTO MANAGERIAL POSITIONS IN THE PRIVATE SECTOR

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Abstract

In South Africa, progressive laws, policies and institutions established since 1996 seek to proliferate the representation of black African women in the private sector. However, the sector remains stagnant in giving opportunities to black African women to attain and occupy managerial and leadership positions. Black African women are not yet accepted as an integral part of decision-making in the private sector contrary to the public sector that has somewhat progressed to place black African women in key decision-making positions in government. Consequently, black African women in the private sector predominately dominate the unskilled labour positions. The underrepresentation of black African women essentially denies them of economic participation and equality in the workplace. It is against the backdrop of this underrepresentation that this article analyses salient transformative legislative interventions that have been put in place to foster ample representation of black African women into managerial positions in the private sector. However, the concern is that the current legislative framework in South Africa does not explicitly make it mandatory for the private sector to achieve a specific target of black African women representation at the top management positions. The article showcases that the glass ceiling in the private sector is real and is nurtured by the organizational culture, policies and strategies which promote exclusion. Therefore, effective implementation and enforcement of laws and policies fostering mainstreaming of black African women into top managerial positions will help in breaking down the glass-ceiling. This will become realizable with the cooperation of all stake holders and role players where there is deliberate effort to empower and enhance the skill and capacity of women through quality training and education that will drive and deliver robust career development.

Keywords: Gender, Underrepresentation, Glass-Ceiling, Inequality, Company Executives

1. INTRODUCTION

The South African private sector is often accused of failing to redress the imbalances of the past by excluding black African women in top managerial positions (Juggernath & Rampersad, 2011). Conversely, the sector perpetuates white male dominance in the top managerial positions (Nagan, 2014). In 2018, the South African High Court in the case of *Chowan v Associated Motor Holdings (Pty) Ltd and Others (Chowan)* delivered a scathing judgement that found that the Chief Executive Officer of Associated Motor Holdings (Pty) Ltd (AMH) had impaired the dignity of one of its female employees by stating that “she is a female, employment equity, technically competent, they would like to keep her but if she wants to go she must go, others have left this management and done better outside the company.” In this case the applicant, a black female-chartered accountant, was promised the position of a Chief Financial officer. after one year of her appointment as a Group Financial manager at AMH. Three years after this promise was made, AMH excluded the applicant, notwithstanding her experience and qualification, for the position of Chief Financial Officer. This position was offered to a white man who had no experience in the motor industry and

little understanding of the accounting and the complexity of the transactions at the company. The Chief Executive Officer of AMH justified their decision and stated that the applicant required three to four years to develop her leadership skills. The Chohan case is a clear example that the culture of gender-based job discrimination and fronting are prevalent in the private sector in South Africa, where women are recruited and trained at lower levels of management but excluded when top and senior management opportunities are available. This practice in the private sector is tantamount to window-dressing where black women are appointed based on tokenism.

The case of Chohan reflects a patriarchal attitude in South Africa private work environment that views black African women as inferior beings compared to their white males, females and few black African men. Patriarchal attitude towards women, particularly black African women, dates to the 20th century. During the early 20th century in South Africa, black African women were predominately caregivers confined to household activities (Richter et al, 2007). During this period, black men worked in the mines as migrant labourers in other provinces outside their own. Their wives stayed behind in their homes by supporting their children and families by engaging in local enterprises and working in the fields to earn additional income to support their family while the husbands-fathers were away. However, women who decided to go to the city to look for job opportunities were able to get jobs as unskilled labourers and workers and those who were qualified to take up jobs at managerial levels were discriminated against on the grounds of being black and female at the same time. This exclusion has resulted in black South African women having mostly access to inferior job opportunities in the informal sector with low wages. For instance, black African women were predominately confined to domestic services and agricultural services in farms during the apartheid regime.

The private sector companies during apartheid perpetuated discriminated practices by paying low wages to black African women compared to black African men and white men and women (Hammond et al, 2009). For example, in the textile and clothing businesses, Black African women who were employed to sew clothes and packaging were not entitled to promotions no matter how brilliant they performed whereas their white counterparts were found eligible to receive all benefits including promotions. The black African women in some companies received lower pension benefits compared to males and white females. During apartheid, an interruption of employment of black African women because of pregnancy did not guarantee re-employment after birth. It is deduced that the lack of good job opportunities for black African women during the apartheid era contributed significantly to their underrepresentation in managerial positions in the employment markets especially in the private sectors. Consequently, women were notably in jobs which were an extension of women's traditional roles and not decision makers (Malinga, 2016).

To remedy this, South Africa's democratic dispensation in 1994 was a commitment to equality including gender equality in the workplace (Morrell et al, 2012). It has been two decades since South Africa adopted the Employment Equity Act 55 of 1998 (EEA) that is aimed at redressing the systemic historical differentiation against black African women in the workplace. When the EEA was enacted in 1998 it was envisaged that the labour force in South Africa would reflect the demographics of the country (Burger & Jafta, 2010). Essentially it was expected that the EEA will help create an inclusive workplace where black African women would be able to enjoy equal benefits compared to their male counter parts in the workplace. However, South Africa has not been successful to proliferating black African women into top managerial positions in the private sector compared to the public sector (Erasmus et al, 2005). It is important to point out that the South African public sector has progressed in terms of increasing black African women in top managerial positions whilst the

private sector dismally lags with a slow progress (CEE, 2016). Till date, the top and senior managerial positions in the South African private sector are predominately dominated by male and white females (CEE, 2016).

The underrepresentation of black African women in top managerial positions in the private sector has prompted some statutory bodies such as the Commission for Gender Equality (CGE) and the Commission for Employment Equity (CEE) to initiate investigations into the South African private sector for the slow pace of women's emancipation into top managerial positions. These investigations are in accordance with section 9 of the Constitution of the Republic of South Africa, 1996 (Constitution) which crafts a basis for employers (both the public and private sectors) to eradicate and remedy gender and race inequalities in the workplace. Section 9(3) stipulates that "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

The CEE unearthed that from the period 2006 to 2017 males and white females were more represented in top managerial positions in the South African private sector than black African females. Similarly, in 2017, the CGE postulated that black African women in the private sector in South Africa generally do not occupy leadership positions. It is deduced that post-1994 gender parity in top managerial positions in the private sector continues to be a challenge notwithstanding the Constitution and the EEA that have been enacted to ensure equality and equity respectively in the workplace (Quanson, 2014).

It is challenging to monitor the implementation of gender legislation such as the EEA in the private sector (SSA, 2015). This is largely because the designated employers in the private sector do not submit their employment equity reports to the Director-General of the Department of Labour as stipulated in terms of section 21 of the EEA (Bezuidenhout et al, 2008). The employment equity reports assist the Director-General of the Department of Labour to monitor the public and private sectors to determine whether these sectors are implementing affirmative measures to redress the disadvantages in employment experienced by designated groups (including black African women).

The lack of monitoring and enforcement of employment equity compliance in the private sector has resulted in many companies not adhering to employment equity (Bezuidenhout et al, 2008). The tool applied to enforce compliance with the EEA is usually a fine issued to the non-complying company (Ndzwayiba, 2012). Essentially, the South African private sector companies are not deterred by the fines imposed by the Department of Labour for non-compliance with the EEA (Mofokeng, 2017). The private sector budgets for the possibility of fines for non-compliance with the EEA as these have minimal impact on the finances. The attitude of the private companies is to contravene the law and pay the fines. They keep doing this because they have the wherewithal and financial means to pay the fines thereby making the law ineffective. In other words, the enforcement of the EEA has not necessitated the private sector to ensure equitable representation of black African women in managerial levels in the workplace.

The underrepresentation of black African women in the managerial positions in the private sector has a bearing on South Africa's international commitment to address discrimination in the workplace (Dupper, 2006). In 1995, South Africa signed and ratified Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW). In terms of article 11 of CEDAW, South Africa is obliged to take appropriate measures to eliminate discrimination against women in the field of employment. Specific benchmarks set out in CEDAW include the right of men and women to: -

- choose their profession freely

- promotion
- job security
- equal benefits and conditions of service
- receive vocational training
- equal remuneration for equal work
- equal access to social security in cases of retirement, unemployment, sickness, old age and paid leave.

In 1997, South Africa endorsed International Labour Organisation (ILO) Convention 100 which requires member states to pursue policies that promote equal access for all to opportunities including vocational training and fair treatment in employment (with a view to eliminating discrimination in employment). In 2000, South Africa ratified the ILO Convention 111 concerning “equal remuneration for men and women workers for work of equal value.” Article 2 of this Convention requires member states to “promote and apply to all workers the principle of equal remuneration for work of equal value by means of national laws, recognised machinery for wage determination, and collective agreements.”

As signatory to CEDAW, ILO Convention 100 and ILO Convention 111, South Africa is obligated to implement the appropriate programmes and interventions in the workplace that will eliminate all barriers that hinder gender equality. Pursuant to this, South Africa has responsibility to address the barriers that exist in the private sector that contributes to the paucity of black African women in top managerial positions (Mathur-Helm, (2006).

2. METHODOLOGY

The Law is a very strong mechanism that can be used to drive and bring about positive social changes in the society (Toonnies, 2012). It can be used to achieve and deliver equality and inclusiveness by ensuring that everyone is given equal opportunity to attain the peak in any organization (Savitz, 2013). Discrimination and segregation of all types are capable of being eliminated if the laws prohibiting them are properly implemented and enforced (Fineman, 2010). In the same vein, policies introduced to ensure proper implementation are equally imperative. It is against the backdrop of this that this article examines how laws and policies can be utilized to bring about transformation in the private companies in order to mainstream eligible and qualified black African women into the top management echelons in the private sectors.

3. INCLUSIVE INTERVENTIONS RESULTING IN PARADIGM SHIFT THAT MAINSTREAMS BLACK AFRICAN WOMEN

The history of South Africa has left deep-rooted traces of gender and race discrimination. The pre-apartheid lacks of legislation supporting black South African women with regard to their rights was an example of gender and race discrimination (Lues, 2005). Against this backdrop, in post 1994, at the beginning of the post-apartheid era, South Africa enacted domestic legislation in the workplace in accordance with its commitment to CEDAW, ILO Convention 100 and ILO Convention 111. The enactment of these pieces of legislation seeks to eliminate all barriers that hinder gender equality in the workplace. In 1995, the Labour Relations Act 66 of 1995 (LRA) was enacted and section 187 of the LRA states that a dismissal is automatically unfair if a female employee is dismissed because of her pregnancy, intended pregnancy or any reason related to pregnancy. It is important to point out that during apartheid era a female black African woman would be automatically dismissed for her

pregnancy. In terms of section 193(4) of the LRA, a dismissal that is found to be automatically unfair can attract an order of reinstatement, re-employment or compensation. Section 187 is critical for women emancipation in the workplace in that it reassures that female employees will be able to retain their jobs notwithstanding pregnancy. Section 187 may therefore serve as a protective shield against employers who react unfavourably towards pregnant female employees.

In 1997, South African enacted the Basic Conditions of Employment Act 75 of 1997 (BCEA) which seeks to advance economic development and social justice by establishing and enforcing basic conditions of employment. This includes the provision in terms of section 25 which provides for maternity leave for four consecutive months. Section 26 of the BCEA prohibits employers from mandating a pregnant or nursing employee from performing any task that is hazardous to her health or health of her child. Non-compliance with the BCEA could lead to penalties for the employer. Similar to the LRA, the BCEA reaffirms the protection of pregnant females in the workplace by providing equal rights to men, and further protection in terms of vulnerable female employees who are pregnant.

In 1998, South Africa enacted the Employment Equity Act 55 of 1998 (EEA) which seeks to realise the “constitutional right of equality; eliminate unfair discrimination in employment; ensure implementation of employment equity; and achieve a diverse workforce that represents all citizens of the Republic of South Africa.” Section 20 of the EEA mandates “designated employers to prepare and implement an employment equity plan for reasonable progress towards employment equity in the workplace.” Essentially section 20 of the EEA challenges designated employers to establish innovative measures that will address the underrepresentation of people from designated groups. Essentially the EEA recognises that black African women are at a disadvantage in the workplace due to the intersection of race, social status and gender and therefore mandates employers to realise equity in terms of their representation (Farmer, 2013).

In the year 2000, South Africa enacted the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). Its objectives are, “to promote equality, values of non-racialism and non-sexism, prevention of unfair discrimination and protection of human dignity, the prohibition of advocacy of hatred speech, based on race, ethnic, gender and religion, to promote measures for the eradication of unfair discrimination, hate speech and to provide remedies for victims of unfair discrimination.” Essentially PEPUDA is a critical piece of legislation in South Africa that should be used to address systemic inequalities in workplaces that deprive black women access to opportunities because of their gender and race (Tafirenyika & Edward, 2016).

In 2003, South Africa enacted the Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act). Its objectives are inter alia to “facilitate the broad-based economic empowerment by promoting economic transformation in order to enable meaningful participation of black people, increase the extent to which black women own and manage existing and new enterprises and increasing their access to economics activities, infrastructure and skills training.” Essentially, the BBBEE Act recognises the exclusion of black people, particularly black women, in the effective economic participation of South Africa (Khanyile et al, 2018).

South Africa established significant policies to further provide a framework that seeks to guide employers to achieve equity in the workplace (Ngcobo & Tikly, 2010). The Affirmative Action policy is one of the progressive policies used to address equity and equality in the workplace as it addresses past racial discrimination with specific emphasis on black women (Slater, 2014). This policy recognises black women as equally deserving opportunities for their advancement, both in education and employment.

In the quest to address women economic participation in South Africa, the African National Congress (ANC) Government developed a National Development Plan (NDP) in 2012 which seeks to achieve inter alia an inclusive economy, poverty alleviation and reduction of inequality of women. The NDP seeks to achieve this by 2030. Notably the NDP accentuates that a partnership between the public and private sector is key to achieving an inclusive economy, poverty alleviation and reduction of inequality of women, especially black African women (Rosa, 2017).

4. STATUS OF BLACK AFRICAN WOMEN IN THE SOUTH AFRICAN WORKPLACE POST 1994

The South African workplace predominately comprises of the public and the private sectors. The public sector comprises of the national, provincial and the local government. The private sector comprises of companies that are regulated by articles of association. The South African economy demands qualified and skilled persons to compliment the increase skilled employment in the public and private sector (Bhorat et al 2016).

According to the Statistics South Africa (SSA, 2011), a large proportion of black African women that are 25 years old and above have no formal schooling compared to coloured, Indian and white women. To this end, a large proportion of black African women are likely to be excluded from participating effectively in the South African economy due to lack of formal schooling. The lack of formal education consequently confines black women to continue to be employed in unskilled jobs such as domestic workers.

According to SSA, “black African women are less likely to be employed than not only black African men, but also than women and men of other population groups. In 2011, about a third (30,8%) of black African women were employed compared to over 56,1% of white women, 43,2% of coloured women and 40,2% of Indian/Asian women.” It is deduced that even post 1994, the status of black African women in the workplace has not changed significantly. In the premise black African women continue to be discriminated in terms of the race, gender and class when compared to white, coloured and Indian women.

5. LITERATURE REVIEW

The International Labour Organization (ILO, 2017) defines gender mainstreaming “as the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels.” The essence is to downgrade inequality and upgrade equality in a workplace (Padayanchie, 2011). Managerial positions are referred to middle, senior and top management levels in the workplace (Nonaka, 2008). The contention is that this top management position is dominated by white males and females and few black African men while black South African women are often excluded. As such, there is need for radical and immediate transformation in the top management positions in the private sector by mainstreaming black South African women. Transformation in this context refers to a process that involves the adoption of gender policies, mechanism, measures that seeks to improve the representation of previously disadvantaged persons, particularly black South African women at top managerial positions.

The Chartered Institute of Personnel and Development observed that it seems that there are perceptions that women do not have potential, unlike their male counterparts, to fulfil management positions (CIPD, 2016). These perceptions are influenced by both conscious and unconscious biases. Despite these perceptions, in recent times, the private sector in South Africa has integrated few black women into top management positions. For instance, in 2017,

BP Southern Africa (BPSA) appointed the first black woman-chartered accountant Priscillah Mabelane as its new Chief Executive Officer. Priscillah Mabelane consequently became the first black African woman in the history of South Africa's oil industry to head a multi-national company. The key lessons from her appointment is that prior to her appointment as the chief executive officer, BPSA nurtured her development by providing her with opportunities to be in management positions such as Chief Financial officer and Operations Director in the United Kingdom (DoE, 2017). These management positions positively contributed to her management skills and consequently prepared her to assume the role of a Chief Executive Officer. It is evident that for any private company to improve its representation of black African women, a concerted effort is needed to expose black African women into top managerial positions.

Similarly, in 2017, KPMG South Africa also appointed Nhlamu Dlomu, a black African woman as the chief executive officer amid widely reported scandals over audit reports that affected the reputation and credibility of the company. The astute handling of the KPMG scandals by Nhlamu Dlomu displayed competence of a black African woman in a leadership position. The appointment of Nhlamu Dlomu in a key managerial position marks a significant milestone in the private sector to have a company that is diverse, which in turn reflects the demographics of South Africa.

However, whilst this upliftment at KPMG is good, it is axiomatic that had KPMG not experienced the scandals over audits reports, the company would not have appointed a black African woman as its Chief executive officer. In other words, the appointment of Nhlamu Dlomu was not the commitment and intention of the company to improve the representation of black African women in management positions but rather the controversies at KPMG compelled the company to appoint a black African woman. This raises a concern as to whether black African women will be promoted to managerial positions in instances where the companies are not compelled by circumstances to appoint black African women.

During the employment equity hearings conducted by the CGE in November 2017 Sasol submitted an Employment Equity Plan with targets for the period July 2017-June 2022. As at September 2016 Sasol's top, Senior and middle management positions were widely dominated by white males (CGE, 2017). The company identified in its Employment Equity Plan 2018- 2022 that it had inadequate female representation in particular African and coloured women in key and senior management positions. To address this shortcoming, the company committed to drive a consistent implementation of women in operations framework to increase the number of females in succession pools. The company espoused in its consolidated forecasts targets that it will be able to reduce white male representation and improve black African women representation at top, senior and junior management by the 2022. It was highlighted during the employment equity hearings conducted by the CGE in 2017 that a company known as Hall and Sons Pty Ltd had no black African women represented at top and senior management positions. Only white women were represented in senior management positions at the company. Rhodes Food Group's submission to the CGE in 2017 showed that the top management level comprises of all males (85.7% white males and 14.3 % black males). In addition, the company did not have any black African women in its senior management positions. The CGE espoused that there is a high under-representation of black African females at all management levels at Rhodes Food Group.

It is deduced from the three companies that the representation of black African women in senior and top managerial positions in the private sector in South Africa remains a critical challenge notwithstanding clear and defined laws that seek to eliminate unfair discrimination of women in the workplace (Mparadzi, 2014). The CGE observed that in terms of the employment pyramid in the private sector, there is generally an inverse relationship between

positions of seniority and the numbers of people from designated groups, especially black African women.

In order to determine the extent of the paucity of black African women in the private sector, it becomes necessary to compare the progress (if any) in the public sector as well. The CEE annual reports from the period 2006-2017 accentuate that the private sector in South Africa has been predominately dominated by white males in top and senior management and professionally qualified positions. The CEE highlights that white women also featured significantly in these positions while black African women are highly underrepresented.

The CEE reports 2006-2017 highlights that when compared with the private sector, the public sector has managed to improve representation of black women in top and senior management positions. The public sector continues to perpetuate racial representation at these key positions. According to the CEE reports 2006-2017, the poor representation of black women in the private sector renders it highly unlikely to achieve equitable representation at top management levels soon. This can be attributed to the slow pace of improvement of representation of black women for the period 2006-2017.

It is evident from the CEE reports for 2006-2017 that the private sector is fraught with challenges of transforming top management positions to reflect the demographics of the country both in terms of race and gender. This is because the white South African population appear to be afforded preferential treatment in the private sector for recruitment, promotion and training opportunities at top management levels. This necessitates a stout question as to whether the EEA is achieving its objective to eradicate discrimination and entrench equity in the private sector? It is submitted that the EEA has not eliminated the unfair discrimination of black African women and equity in the private sector. The private sector in South Africa continues to lag in terms of black African women representation in the top management positions when compared with the public sector (Ponte, 2007). This view is also attested to by the findings of the CGE during its public investigative hearings into the public and private sectors in 2014. The purpose of these public investigative hearings was inter alia to assess the extent of compliance with the EEA by the public and private sectors. The CGE findings reveal a more progressive picture in the public sector than in the private sector. They however noted that there are challenges with both. In the public sector, the Department of Public Service and Administration (DPSA) observed that the public-sector departments fail to report adequately on Employment Equity as a result of lack of accountability within departments, and a lack of consequences with no punitive measures. The DPSA concludes that the public sector has failed to ensure that adequate conceptualisation, implementation and reporting of gender mainstreaming and this indicates that gender equality is not prioritised in the public sector. The CGE asserts that there are signs of resistance to transformation in the private sector and this included inter alia, racial favouritism in employment, gender wage gap, insufficient measures taken to recruit qualified black African women and promote back African women.

The underrepresentation of black women in the private sector arguably denies them of full economic participation. According to UN Women, the private sector employs a substantial proportion of the labour force globally. Consequently, it has a critical role to play in proliferating women's economic empowerment through inclusive hiring and promotion policies, women's workforce development, and allocating procurement spending to women-owned businesses (UN Women is an organization established during July 2010 by UN General Assembly resolution 64/289). UN women is dedicated to gender equality and empowerment of women. At the international level, the United Nations General Assembly had espoused the 2030 Agenda (the Agenda) for Sustainable Development, which forms the new global development framework anchored around 17 Sustainable Development Goals

(SDGs) with a total of 169 targets covering economic, social development, and environmental protection (AFSD, 2015). According to Dhlamini (2017), the Agenda Goal 5 of the SDGs seeks to achieve gender equality and the empowerment of all women and girls. It has been observed that the “world has achieved significant progress towards gender equality and women’s empowerment under the Millennium Development Goals (including equal access to primary education between girls and boys)” (Mlambo-Ngcuka, 2017). However, it has also been observed that there is global pay gap, at an average of 23 per cent, resulting in women clearly earning consistently less than men (Mlambo-Ngcuka, 2017). The unfair discrimination of women in the workplace has robbed generations of women of income, future security and just reward.

Mlambo-Ngcuka (2017) highlighted at the 61st Session of the Commission on the Status of Women that generally there continues to be a slow progress in equality between women and men. This observation shows that inequality and underrepresentation are also happening in many countries of the world notwithstanding progressive legislation that have been introduced to mainstream women. It is therefore deduced from this assertion that the black women representation in the workplace is not peculiar to South Africa but globally as well. Mlambo-Ngcuka postulates that there is still a myriad of discriminatory laws against women in more than 150 countries. This is because women globally are still regarded as inferior beings to men and therefore face gender-based job restrictions which often confine them to low paying informal jobs (Gonzalez, 2015). It is evident that there is a need to globally address the stereotypes, norms and practices that unfairly discriminate against women which have for generations undoubtedly denied women career paths to be at par with men (Barak, 2016). However, unfair discrimination based on gender is more critical in South Africa because women represent about half (51%) of the total population (SSA, 2017). Essentially South Africa has more women than men and it is therefore expected that a large portion of women, more in particular black women, should be employed and occupy top management positions (Acker, 2016).

Queisser (2016) indicates that “advanced countries such as Nordics where women are well integrated in the labour markets, are faced with stubbornly high gaps and a continued lack of women in senior management positions.” This observation accentuates the historically biased attitudes about women and their role in the workplace. These historical attitudes propel women to play a subservient role to dominant males in society and unfortunately these attitudes have been incorporated in the workplace.

Nienaber (2007) postulates that employment equity is one of the most difficult processes experienced by South African managers of companies in the private sector. It is postulated that many companies undervalue the course of inaugurating employment equity on different organisational procedures, practices and roles, as well as on organisations’ climate and culture. This suggestion accords with a view that those tasked with implementing the Employment Equity in the workplace do not regard women emancipation as the company’s constitutional priority. Thus, the need to redress the legacy of discriminating against women in the workplace is overlooked (Okun, 2015).

Booyesen (2007) asserts that a “lack of training, development and growth opportunities, lack of career path and succession planning and a lack of or ineffective mentoring and coaching are specific barriers to retaining black employees.” Booyesen postulates that the lack of “communication and shared understanding of employment equity, white male dominated organisational culture, low leadership commitment to and inconsistency in employment equity implementation and insufficient focused co-ordination and integration of existing implementation processes are major barriers to effective employment equity implementation and retention of black employees.” Similarly, Mello &

Phago (2007) argue that government and organizations' attempt to implement the EEA has been ineffective owing to lack of engagement and an inability to manage diversity within organizations, especially those in the private sector.

The CGE observed that it is easier for the private sector to transform in terms of race, but often very difficult to transform in terms of gender. This is influenced by the realisation that the Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act) tasks companies to promote economic transformation to enable meaningful participation of black people. The emphasis is thus more on race than gender participation. This shows the narrative that lack of gender transformation in the workplace has its roots in the historical segregation of women in the workplace and patriarchy is a reason that hinders gender transformation in the workplace (Oosthuizen & Naidoo, 2010).

In the case of *Barnard v South African Police Services* at paragraph 30 the court observed that:

“Our quest to achieve equality must occur within the discipline of our constitution. Measures that are directed at remedying past discrimination must be formulated with due care not to invade unduly the dignity of all concerned. We must remain vigilant that remedial measures under the Constitution are not an end in themselves. They are not meant to be punitive nor retaliatory. Their goal is to urge us on towards a more equal and fair society that hopefully is non-racial, non-sexist and socially inclusive.”

This remark reaffirms that the South African Constitution challenges all sectors (including the private sector) to strive for a transformed society based on democratic values, social justice and human rights. It follows from this premise that the issues of transformation in the private sector raise serious constitutional issues regarding the rights of women in the workplace. Central to transformation in the private sector is the right to equality, dignity and economic participation. According to Currie & De Waal (2013), “equality is a difficult and deeply controversial social ideal. At its most basic and abstract, the formal idea of equality is that people who are similarly situated in relevant ways should be treated similarly. Its logical correlative is the idea that people who are not similarly situated should not be treated alike.” Similarly, the principle of equality denotes that black African women in the South African private sector should be afforded the same recruitment, training and promotion opportunities like white males, white females and black African males (Naidoo, 2007). Furthermore, the same recruitment, training and promotion opportunities that are afforded to black African women in the public sector should be afforded to black African women in the private sector.

Equality is a fundamental value of the Constitution and this was confirmed by the court in *Fraser v Children's Court, Pretoria North* where the Constitutional Court observed that “there can be no doubt that the guarantee of equality lies at the heart of the Constitution. It permeates and defines the very ethos upon which the Constitution is premised.” It is therefore evident that a careful balancing of interests in the private sector is required to ensure the advancement of women into management positions, attainment of profit and contribution to the South African economy.

In the case of *Solidarity and others v Department of Correctional Services and Others*, the court espoused that:

“The EE Act seeks to achieve a constitutional objective that every workforce or workplace should be broadly representative of the people of South Africa. The result is that all the groups that fall under “Black” must be equitably represented within all occupational levels of the workforce of a designated employer...Therefore, a designated employer is entitled, as a matter of law, to deny an African or Coloured person or Indian person appointment to a certain occupational level on the basis that African people, Coloured people or Indian people, as the case may be, are already overrepresented or adequately represented in

that level.”

Based on the above remarks, any employer is entitled to refuse to appoint a man or woman to a post at a particular level on the basis that men or women, as the case may be, are already overrepresented or adequately represented at that occupational level. This principle suggests that the private sector companies can refuse the appointment of white males and females and black males at managerial positions if they are already adequately represented. Consequently, it will not be enough for the private sector in South Africa to argue that the overrepresentation of white males in managerial positions in the private sector makes up for the absence or insignificant presence of black African women.

6. SYNTHESIS

It is disheartening that after 24 years of constitutional democracy in South Africa, the country is yet to give black South African women opportunities to attain top managerial positions in most private companies. There are many competent black African women who have the skills and capability to take leadership positions at the topmost level in the private companies, but they are being denied not because they are not competent but because they are black and worse still women. This discriminating tendency promotes segregation and inequality and as such a deliberate gender exclusion. Undoubtedly, the private sector is predominately dominated by males and white females and this provides enjoyment of more benefits emanating from high levels of recruitment to promotion opportunities as compared to black African women. The National Development Plan (NDP), is a government policy that seeks to achieve inter alia an inclusive economy, poverty alleviation and reduction of inequality of women by 2030. 2030 is only 12 years away, yet the private sector lags significantly in terms of representation of black African women in management positions. Therefore, since there is deliberate stance of the owners of private companies to exclude black African women from attaining top management positions, it is time for the government to take a deliberate stance to implement all transformative legislative interventions that have been put in place in order to achieve their set objectives of mainstreaming black African women who are qualified to occupy such positions (Jain et al, 2015). If implementation is being frustrated by the private companies, existing legal provisions that promote the mainstreaming of black African women into managerial positions in the private sector should be enforced in order to achieve the desired results.

While there could be resistant in implementation and enforcement, concerted efforts must be made to identify the barriers and strategies to address and overcome them should be put in place accordingly. Most importantly, the pace of representation of black African women in the private sector should be accelerated. The government has all the legal avenues needed to make this possible and realizable. The government needs to act by taking deliberate legal steps to radically mainstream black African women. The private sector should work together with the government. They should be proactive in this transformative outlook considering that they are in most cases the beneficiary of the interventions as demonstrated in the KPMG and BP cases where black African women were called upon to take the mantle of leadership of the companies when they were in dire crisis.

7. CONCLUSION

The South African legislative framework seeks to ensure that black African women are afforded the same opportunities in the workplace like their white female and male counterparts. However, notwithstanding these transformative legislative frameworks, the

black African women continue to be underrepresented in most managerial positions in the South African private sector. The South African private sector experiences challenges of recruiting and retaining competent black African women and as a result fail to create a South African working environment that is truly reflective of the demographics of the country. It follows that laws such as the EEA and BCEA and LRA, that prohibits discrimination on the grounds of sex and gender somewhat failed to be translated in the private sector to effectively advance black African women into managerial positions. There is a clear non-commitment by the private sector to comply with the EEA. This is evident in the Chowan's case, where it was demonstrated that women in general are appointed as tokens and not fully integrated into companies because of little delegation of real responsibility or decision-making authority, owing to the persistence of stereotypes.

There is need to address prevalent and persistent unfair discrimination and exclusion of black African women in top managerial positions in the private sector. To address this, it is recommended that the transformative legislative framework in South Africa must include a quota system that will make it mandatory for the private sector to appoint black African women. The current legislative framework in South Africa does not explicitly make it mandatory for the private sector to achieve a specific target of black African women representation at management. It is further recommended that the Companies Act 71 of 2008 be amended to include a provision that disqualifies a director of a company for any contravention of the salient provisions of the EEA, BBBEE Act and PEPUDA that seek to foster the mainstreaming of black African women into managerial positions in private sector.

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