

Current Demographics in Large Corporate Law Firms in South Africa

Jonathan Klaaren

School of Law, University of the Witwatersrand, Johannesburg, 1 Jan Smuts Avenue, Braamfontein 2000, Johannesburg, South Africa
jonathan.klaaren@wits.ac.za

Abstract

By contrast with the judges and the advocates, the issue of race and gender representivity in the attorneys segment of the legal profession generally and in large corporate law firms specifically has not received significant attention, in part due to the lack of accurate statistics and a thin research tradition. Addressing the gap, a 2013 survey investigated the demographics of legal professionals in large corporate law firms in South Africa. The chief finding of the survey is that South Africa's major corporate law firms are still dominated by white men, especially in their upper echelons. Further, nearly half of the African women professionally employed in large corporate law firms (48.1%) are candidate attorneys, which is to say non-admitted legal professionals. These findings are consistent with the few earlier studies that have been conducted and indicate the need for further detailed research into the social dynamics of the African legal profession.

Keywords

AU: PLEASE ADD 4–6 KEYWORDS

1 Introduction

In 2013 the South African media carried numerous stories reporting on racial representation within the judiciary and within the ranks of advocates. Many of the stories related to the controversy regarding the operations of the Judicial Service Commission (JSC). The JSC is composed of a mixture of politicians

and lawyers and is charged with vetting and recommending for appointment persons to be appointed as judges.¹ In most cases, the decisions of the JSC are final; thus the JSC is a key institution with respect to the transformation of the judiciary. Indeed, the operations of the JSC have been high-profile since its creation was a major controversy in the drafting the interim Constitution.² The current charge against the JSC is that it is not being frank in its dealings with white males – that it ought simply to tell such persons they need not apply. While resigning his post, one JSC commissioner was said to have stated that “the commission had a bias against appointing white male candidates and that it only did so in ‘exceptional circumstances’”.³ Cooler heads noted that during this period the JSC continued to appoint white males to various positions on the Bench.⁴ Media attention on this issue has been nearly equally directed at the Bar as at the Bench. Noting that the Bar was the traditional launch pad for the judiciary, the Sunday Times deemed it significant enough to convey the current statistics regarding African female senior counsel on page one of one 2013 edition.⁵

By contrast with the judges and the advocates, the issue of race and gender representivity in the attorneys segment of the legal profession generally and in large corporate law firms specifically has avoided the sort of attention outlined above and has instead run somewhat below the media radar screen. A significant part of the reason for this lack of attention may be due to the relative scarcity of accurate information regarding representativity within the attorneys profession. An initial matter is to determine whether one understands the profession to cover both admitted attorneys and non-practising legal advisors

1 H. Klug, *The Constitution of South Africa: A Contextual Analysis* (Oxford: Hart, 2010), pp. 233–237.

2 R. Spitz and M. Chaskalson, *The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement* (Johannesburg: Witwatersrand University Press, 2000), pp. 201–208.

3 ‘JSC’s Izak Smuts Resigns after Transformation Row’, *The M&G Online*, available online at <http://mg.co.za/article/2013-04-12-izak-smuts-resigns-after-transformation-row/> (accessed 7 April 2014).

4 ‘Which White Judges?’, *City Press*, available online at <http://www.citypress.co.za/columnists/which-white-judges/> (accessed 7 April 2014).

5 Women vs the State Shocking Statistics Reveal ‘African Women Make up Less than 1% of Senior Advocates’, *Sunday Times & The Times E-Edition – Sunday Times* (21 Apr 2013), available online at <http://times-e-editions.newspaperdirect.com/epaper/showarticle.aspx?article=366d62cf-10ab-4cf4-8b34-377092e41946&key=G829qW1wWjA%2fo7EZVCqPg%3d%3d&issue=1107201304210000000001001> (accessed 9 April 2014).

or only the former.⁶ Even taking the latter definition – which is more precise to operationalize – there remain significant challenges in data collection. While both the judiciary and the advocates segment of the legal profession at least have one central body that serves to collect and distribute statistics regarding those institutions, the same cannot be said for the attorneys. Statistics present a complicated set of issues in the attorneys' profession. To date, there is no centralized database kept, neither by the Law Society of South Africa, nor by the Department of Justice and Constitutional Development. Instead, attorneys register with the relevant provincial law society where their firms are based. And each law society has its own information systems. The information system is however likely to change with the enactment and implementation of the Legal Practice Bill.⁷ Nonetheless, for the time being, the more accurate and up to date statistics are available from the more elite segments of the profession: judges and advocates, not the attorneys.

Of course, just because there is lesser information regarding representivity among the attorneys does not mean that the issue is not important. Indeed, it would be easy to argue that the attorneys sub-sector of the profession and within that sub-sector the corporate legal sector in particular is and has been influential in driving change or the lack thereof in both the judiciary and the Bar as well as in important institutional developments like the rise to prominence of pro bono legal representation and public interest law. Comparatively and among emerging economies, there is much attention to the corporate sector of the legal profession and its participation in the shaping of global governance.⁸

Stepping into at least one part of this informational breach, a set of institutions developed a collaborative research project on admitted attorneys in the corporate legal sector in South Africa and secured funding from a local division of a global firm concerned to support the rule of law.⁹ The Cyrus R. Vance Center for International Justice, the Law Society of South Africa, the Mail & Guardian, the South African Legal Fellowship Network and the Wits School of Law determined that developing strategies for increasing the representation

6 S. Godfrey, 'The Legal Profession: Transformation and Skills', 126 *South African Law Journal* (2009), 93–123.

7 'Parliament Passes Legal Practice Bill', *Polity.org.za*, available online at <http://www.polity.org.za/article/parliament-passes-legal-practice-bill-2013-11-13> (accessed 14 November 2013).

8 D.B. Wilkins and M. Papa, 'The Rise of the Corporate Legal Elite in the BRICS: Implications for Global Governance', 54 *Boston College Law Review* (2013), 1149–1185.

9 'Law's Upper Echelons Still White Men', *The M&G Online*, available online at <http://mg.co.za/article/2013-05-17-00-laws-upper-echelons-still-white-men/> (accessed 17 May 2013).

of lawyers of colour in the South African corporate legal profession required more detailed demographic data regarding corporate law firms than has been available in the past. The Vance Center is affiliated with the New York City Bar Association and has conducted a similar study aimed at assessing the diversity within corporate law firms in New York City for the past several years.¹⁰ The South African Legal Fellows Network (SALFN) is comprised of South African attorneys who have spent a year interning in New York City law firms through a programme implemented by the Vance Center. The collaborative project aimed to begin to create the sort of accurate and regular data that can be used both to assess and to drive change in the corporate legal sector in South Africa.

The purpose of this research note is to disseminate and reflect upon the findings of this survey, "Demographic Survey of Large Corporate Law Firms, South Africa, May 2013 (the SALFN report). The first section presents the results of the survey. The second section places those results in context, noting earlier similar qualitative research and comparing representivity and firm size in the corporate sector with the attorneys segment of the legal profession generally.

2 The Survey

The survey canvassed 12 out of 51 identified law firms in the country that employed 20 or more legal professionals. The 12 firms employed, in total, 1815 legal professionals. Disabled employees made up just 0.6% of all legal professionals at firms participating in the survey.¹¹

The chief finding of the survey is that South Africa's major corporate law firms are still dominated by white men, especially in their upper echelons. 80% of the chief executives of the 12 firms canvassed in the survey were white men as were 72% of all managing partners. Further, the picture at the CEO/managing partner level was replicated in the ownership and remuneration structures of the firms: 53% of all equity partners were also white and male. In a number

10 New York City Bar Association, '2011 Diversity Benchmarking Study: A Report to Signatory Law Firms' (2011), available online at http://www.nycbar.org/images/stories/pdfs/diversity/2011_law_firm_diversity_benchmarking_report.pdf (accessed 23 April 2013).

11 'SALFN Report: Demographic Survey of Large Corporate Law Firms, South Africa, May 2013', at 6, 8, 26, available online at file:///C:/Users/09300606/Dropbox/Klaaren%20Write%202014/Corporate%20Legal%20Demographics/Project%20Law_Report_20130520_Final_Revised.pdf (accessed 24 April 2014).

of firms, equity partners continue to play a significant strategic management role.¹²

Correspondingly, the survey found that there “are far fewer black males employed in senior positions compared with white males” and that the total number of black male lawyers made up less than half of the total white male count: 9.7% compared with 29.1%.¹³

With the addition of white women to the analysis, the dominance by white persons becomes more pronounced. There were more white lawyers in senior positions than any other race group: 89% of managing partners and 80% of the chief executives. This was carried through at the level of equity partners, where 79% were white women or men.¹⁴

The survey found that though 53.4% of employees at firms are female, the number of white women is more than double that of black African women: 28.1% versus 11.9% of the total.¹⁵

The survey may also be viewed from the perspective of African women. As one looks higher and higher up the corporate ladder within these large law firms, there is an overall decline in the percentage of African women. Indeed, the decline could well be termed precipitous with respect to the drop-off between the representation of African women at the candidate attorney stage and at the subsequent career stage of employment as an admitted attorney. First-year and second-year articulated clerks account for 23.6% and 24.5% of the total of black African women, respectively, in the survey. If replicated across the non-participating firms in the corporate legal sector, this means that nearly half of the African women professionally employed in large corporate law firms (48.1%) are candidate attorneys, which is to say non-admitted legal professionals. By comparison, of the total of white female legal professionals, 13.1% are first-year articulated clerks and 10.4% are second-year article clerks – less than a quarter of the white women employed as legal professionals in these firms.¹⁶

The junior profile of the African women employed in the corporate legal sector is further replicated within the structure of the admitted attorneys. In the 12 participating law firms, the percentage of African female legal professionals employed at the first and second years of associate level is 20.8%. 17.1% of employees are black female associates with three or more years' experience.

12 *Ibid.*, at 22.

13 *Ibid.*, at 21.

14 *Ibid.*, at 28.

15 *Ibid.*, at 14, 28.

16 *Ibid.*, at 16, 17.

13.8% of the African women are employed at equity partner or director level, with no black female lawyers at managing partner or chief executive level.¹⁷

Media comment on the survey echoed the survey's findings and explored some of the consequences of the state of affairs it portrayed. National Association of Democratic Lawyers (NADEL) spokesperson Nokukhanya Jele concurred with the survey, noting that an "old boys club" within law firms and at the Bar still clung to unreconstructed notions of race, gender and ability: "I've been told on more than one occasion: 'Don't bother reading the Public Finance Management Act, my girlie, you wouldn't understand it.' It's these sorts of mind-sets that become institutionalised by those at the top and require changing," said Jele. Bonita Meyersfeld, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, said this scenario further entrenched racism, patriarchy and misogynistic behaviour and thinking at law firms from the top down, as these positions were "where the power plays happen".¹⁸

3 The Context

How do these research results fit with earlier research on representativity in the corporate legal sector in South Africa? Lisa Pruitt's work remains the most comprehensive contemporary investigation into the question of black representation in the commercial law segment of the attorneys' profession.¹⁹ Pruitt conducted interviews as well as secondary research into questions of remuneration, firm structure, and candidate attorney training in her research period of 1999–2000. Pruitt drew on earlier work of Wilkins and Gulati and came to a fairly pessimistic conclusion regarding the then-current place of black commercial lawyers as well as the potential for improvement.²⁰

A few years after Pruitt wrote up her research, the Mandela Institute at the Wits Law School collaborated with the Black Lawyers Association and other groups to commission a study on black commercial lawyers, with the research carried out by the Community Agency for Social Enquiry (CASE). Again employing a qualitative interview methodology, the CASE study was not as

¹⁷ *Ibid.*, at 16.

¹⁸ *Supra* note 9.

¹⁹ L.R. Pruitt, 'No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession', 23 *Michigan Journal of International Law* (2002), 545–676.

²⁰ *Ibid.*, at 597–602; D. Wilkins and G. Gulati, 'Why Are There So Few Black Lawyers in Corporate Law Firms – An Institutional Analysis', 84 *California Law Review* (1996), 493–625.

comprehensive as Pruitt's. The aim of this 2008 study was to describe perceptions and experiences of black commercial lawyers regarding progression in small, medium-sized and larger firms as well as black commercial attorneys practicing as in-house corporate legal advisors.²¹ The CASE study identified a prevailing perception among black commercial law professionals that could only be considered a slight improvement on Pruitt's pessimistic view:

Black commercial attorneys currently perceive improved ease of access to commercial law firms as a result of transformation legislation such as BEE and Affirmative Action. The perception is, however, that larger, established firms only recruit candidate attorneys to improve their procurement profile and often neglect to transfer skills, an important defining characteristic of an empowered individual. This sentiment is shared by black firms partnering with larger firms.²²

4 Conclusion

As noted, the primary impetus for this research was the felt need for accurate and regular data regarding representativity in a significant and influential segment of the legal profession, attorneys working in large law firms in the corporate legal sector. The data covered in this survey and in this research note extends essentially to the characteristics of race and gender. As a note of conclusion, it is appropriate to note that the research could be extended in a number of different directions. To do so would pick back up on a long tradition of research on the legal profession in Africa.²³

Indeed, the feasibility of such further research directions is demonstrated by an annual study conducted by the New York City Bar, the 2011 Diversity Benchmarking Study: A Report to Signatory Law Firms.²⁴ The genesis of that study is also instructive. In 2003, more than 100 New York City law firms signed

21 'Perceptions of Career Progression of Black Commercial Lawyers in South Africa', available online at file:///C:/Users/09300606/Dropbox/Klaaren%20Events%202014/Klaaren%20Events%202013/17%20May%20Vance%20Ctr%20Event%202013/Black%20Lawyers%20Summit%2008/Research%20Materials%2008/FINAL%20Report%2014-04-2008.pdf (accessed 24 April 2014).

22 *Ibid.*, at 22.

23 L.C.B. Gower, *Independent Africa: The Challenge to the Legal Profession* (Cambridge, MA: Harvard University Press).

24 New York City Bar Association, *supra* note 10.

the New York City Bar's Statement of Diversity Principles. This statement committed those firms to work toward several goals focused on improving the diversity of the lawyers working at the firms. The statement aimed to look at the "pipeline from the entry level all the way through to firm leadership".²⁵ The annual study then monitors progress towards meeting the goals of this 2003 statement.

The New York City survey has at least three significant additional features as compared with the 2013 survey. First, it extends the demographic focus of its research beyond race – in the terminology of the NYCB report 'minorities' which includes blacks, Hispanics, and Asians – to include in addition gay and lesbian attorneys.²⁶ Second, it surveys and presents statistics that allow for a focus on recruitment and retention of minorities at large corporate law firms. This allows for a more accurate picture than a static snapshot, including an exploration of the dynamic between recruitment and retention.²⁷ Third, it surfaced additional information regarding diversity within the leadership layers of the law firms as well as information and views relating to the partnership structure of the law firm itself.²⁸ By including such information on the very organisation of the law firms, the 2011 NYC survey thus delves deeper into the processes and institutions that make up the corporate legal sector.

Of course, one has to start somewhere. And the 2013 SALFN corporate legal sector demographic survey is a good start.

25 *Ibid.*, at 5.

26 *Ibid.*, at 7.

27 *Ibid.*, at 12–14.

28 *Ibid.*, at 8–12.