

**THE SOUTH AFRICAN CHAPTER OF INTERNATIONAL
ASSOCIATION OF WOMEN JUDGES (SAC-IAWJ)**

&

THE SOUTH AFRICAN WOMEN IN LAW (SAWLA)

**THEME: CELEBRATE PHENOMENAL WOMEN IN
JUDICIARY**

**KEYNOTE SPEECH BY DEPUTY CHIEF JUSTICE MAYA
4 FEBRUARY 2023**

Programme Director

The Deputy Minister of Justice, Mr. John Jeffrey

Honourable Justice Mbatha

Honourable Justice Jappie

Honourable Judge President Poyo Dlwati

Esteemed Colleagues from the Judiciary, the Academia and the professions

SAC-IAWJ Executive and Members

SAWLA Executive and Members

Distinguished guests

Ladies and gentlemen

Good evening

It is with great honour that I address this august gathering in celebration of the vast accomplishments of women in the legal field, especially those who have broken the proverbial glass ceiling by rightfully occupying top leadership positions in the Judiciary. It is such a humbling yet affirming experience to be part of this cohort of phenomenal

women who have achieved this feat in the long fight for gender equality and continue to show unwavering determination to win the battle.

Gender-disparity in the South African Judiciary

When the South African Chapter of International Association of Women Judges (SAC-IAWJ) was formed in 2004, the objective was clear – to contribute to the creation of an inclusive Judiciary meaningfully representative of women jurists whose rights and interests are afforded equal importance and which enables the elevation of women to leadership roles within the institution. Two years later, the South African Women Lawyers Association (SAWLA) was also established in recognition of the gap in women's participation in decision making and policy dialogues in the legal sector.

We know that before its constitutional order, South Africa's judicial system was administered by a parliament sovereignty which required judicial officers to interpret and enforce discriminatory laws without questioning their violation of the basic principles of justice and human rights and courts of law were used to legitimize the atrocities meted out against the majority of South Africans. Black people and women simply had no role to play in policy and law making processes. Unsurprisingly, the composition of the bench represented the systemic inequalities that were perpetrated by the apartheid regime.

Despite the introduction of the Judiciary in the new dispensation as an independent institution, subject only to the Constitution and the laws of the Republic, the new era inherited a Judiciary with a damaged reputation. In order to gain the confidence of many scarred victims of oppression and become the key agent of change, as intended, the Judiciary needed a complete transformation in terms of gender and race. This paradigm shift was essential to ensure that the Judiciary competently fulfils its constitutional obligations while upholding the foundational values of non-racialism and non-sexism upon which our democracy is based.

The achievement of a gender diverse Judiciary however proved a mammoth task. This was so because a majority of the old order white male judges were retained on the bench. Racial equality was accorded more priority than gender equality. The legal profession itself was (and still is) largely male dominated with only a small pool of women in practice

from which to select judges; this largely as a result of the gender stereotypes that discourage women from entering the profession and the lack of support they generally suffer in the profession.

The slow progression of women's representation in the South African Judiciary, despite the country's society comprising more women than men and more women entering the legal professions since democracy has been most unsatisfactory. The Constitution expressly stipulates that the country's demographics should be reflected in the courts and that this obligation should be given attention during the appointment of Judges. Sadly, the manifestation of varying barriers has hindered the appointment and progression of women in the Judiciary.

As I said during my address at the twin launches of works of women jurists hosted by the SAC-IAWJ and the Institute of African Women in Law (IAWL) last week, I have encountered my own daunting barriers to get where I am. And although these barriers play out differently for different women, most are common for all of us. Notwithstanding our sophisticated policies and laws designed to curb gender-bias practices, the discrimination of women in the legal field continues to thrive.

The IAWL, an international non-profit organization committed to supporting the works of women in law, launched its *Reports on Women in law and leadership in South Africa*. This valuable study is based on extensive research they have conducted in the South African legal fraternity to understand women's representation in law and leadership. It identifies several stumbling blocks that impede the advancement of women to senior positions in the Judiciary.

One barrier that is prevalent and familiar to most working women is the work-life balance challenge. While we strive to meet the onerous demands of our careers, we are simultaneously inundated with family and life responsibilities. This is the 'double burden' that affects the professional and mental well-being of women and which our male counterparts do not usually experience. Furthermore, institutionalized gender biases have created the expectation that women have to go through hoops to prove their capabilities while it is absurdly presumed that leadership is an inherent skill for men. The patriarchal attitudes and sexist practices have also facilitated the sexual abuses to which women are

often subjected. It is no wonder that women continue to struggle to achieve optimal professional growth and become stagnant when these unsafe working environments are allowed and preserved.

The judiciary is no exception. Even the women who have defied the odds and entered this male dominated space have, unfortunately, not always had a welcoming experience. And so, for example, we have heard anecdotes about women judges being excluded by their male colleagues and being deprived of opportunities to adjudicate matters of substance or heard in the discussion of court cases.

The goal therefore is not only the achievement of gender parity in the judiciary. It is also to eradicate the prejudices and the culture of non-collegiality that may exist in the institution to ensure an environment in which women's views and inputs are equally acknowledged and respected.

The need for women in the bench

The presence of women in the Judiciary, as elsewhere, profoundly impacts the transformation imperatives of a diverse society. Their participation creates a public decision-making entity that is aware of and sensitive to the different positions, experiences and needs of many individuals representing varying socio-economic backgrounds in our communities. The contribution women jurists make to the country's jurisprudence is distinctive and unquestionably exceptional.

As we know, there are certain gender-based social ills with effects that are experienced and understood peculiarly by women. Leading the pack is the overwhelming scourge of Gender Based Violence which has rendered South Africa a truly terrifying place for women. According to the latest crime statistics released by the South African Police Service in November 2022 for the period between July and August 2022,¹ over 15 000 women were victims of common assault and assault with intent to do grievous bodily harm and over 10 000 women were raped. And these staggering numbers only show the

¹ <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000>

reported cases; a tiny fraction of our harsh reality. And most heart wrenching are of course the brutalities to which our children, the most vulnerable in our society, are daily subjected as evidenced by statistics covering roughly the same period which tell that in just six months, 558 children were killed.

Other challenges that have tremendous effects on women and the wider community include poverty, lack of adequate education and career guidance, limited access to basic and reproductive health care services, lack of basic resources, insecure land tenure, harmful cultural and religious practices, and a high number of unemployment. The list goes on.

Women's unique insights and perspective on the challenges uniquely affecting them, on a daily basis, make their participation in leadership and decision-making processes imperative. In our sphere, the judiciary, they enable courts to help develop laws, through judgment writing that is sensitive to the plight of women and affirms the principle of gender equality.

Catalysts for Gender Equity in the Judiciary

The global recognition of legal education and training as an important tool to help elevate women jurists to leading positions is encouraging. More heartening in this regard is the resuscitation by the Judiciary through the auspices of the South African Judicial Education Institute of the aspirant women judges' programme started by the first woman Minister of Justice in democratic South Africa, Ms Brigitte Mabandla, in partnership with the SAC-IAWJ, which was launched last week. The importance and success of this programme which aims to educate, train and prepare women lawyers to occupy the judicial bench and deepen the pool from which women leaders in the Judiciary will be drawn eventually and has alumni all the way up the judicial rungs to the Supreme Court of Appeal, cannot be overstated.

Also of utmost importance are collaborations between organizations such as the SAC-IAWJ and the SAWLA, which spearhead women empowering initiatives and create platforms where women in the profession gather to engage meaningfully on critical issues, combine strategies that seek to facilitate the progression of women lawyers and

eliminate all unjust treatment towards women. These combined efforts have resulted in the marked improvement we have begun to see in the judiciary's leadership.

The past two years have seen a significant rise of the number of women judges that have been appointed to the higher courts and in leadership positions. In 2022, out of the 21 judicial appointments made by the President on the recommendations of the JSC, 11 were women. These include my own appointment as the country's first female Deputy Chief Justice and the appointment of Judge Poyo-Dlwati as the first woman Judge-President of the Kwa-Zulu Natal High Court Division. The Constitutional Court has four women judges out of a complement of 10 judges. The Supreme Court of Appeal, despite continuously losing its women judges to the Constitutional Court, has 12 women judges out of a complement of 23 judges. The North West Division of the High Court recently got its first woman Deputy Judge President with the appointment of Judge Djaje, who joined a growing cohort of women Deputy Judges President comprising Judges Goliath, Phatshoane, Semanya and Mbhele in the Western Cape, Northern Cape, Limpopo and Free State Divisions of the High Court, respectively.

Significantly, out of the six judges in the Land Claims Court, five are women. As I keep saying, this is a critical development because the issue of land ownership and rights of occupation in South Africa remains a deeply gendered problem. Land ownership disputes following a divorce or death, for example, negatively affect women the most. The likeliest victims of the consequences of insecure land tenure are poor women who are left most vulnerable to eviction and homelessness. It is very encouraging therefore that the Land Claims Court is staffed by a majority of women judges and this attests to women's dedication to progress and the realization of dignity for women across South Africa.

There is then the exciting news we received two days ago of President Ramaphosa's nomination of Justice Mahube Molemela as the next President of the Supreme Court of Appeal. This trajectory clearly signifies the country's real commitment to transform the Judiciary and is an unequivocal acknowledgment of the existence of capable women judges who ascribe to values of our Constitution and possess the skills necessary to lead the judiciary and enhance its independence and efficiency.

Closing remarks

The attainment of gender equality in our lifetime is a vital transformation objective, not just for the Judiciary but for society in its entirety. Gender inequality nestles at the root of most forms of human rights violations. It is worth always repeating the wise words that no society with over half of its members downtrodden can ever be truly free. And no society with over half of its members excluded from contributing to its running and decision making can prosper. The positive benefits that redound from women leadership where women have been given a chance to lead are well documented. It is hoped that the appointments of Judges Poyo-Dlwathi, Maya, and soon, all things being equal, Molemela to the leadership of the South African Judiciary will open a strong flow of similar appointments until our Judiciary is as our Constitution imagined it.

We are deeply grateful to the SAC-IAWJ, SAWLA and the various women's organizations who tirelessly advocate for change and push our government institutions and other relevant stakeholders to commit to overcome gender inequality. May we not lose the momentum.

I extend my gratitude to our hosts for arranging this special event that shines the light on the important developments in our institution and will hopefully encourage our girls and young women to reach for the stars.

And warmest congratulations to my Sister, Judge President Thoba Poyo-Dlwathi on an historic appointment. We wish you success and fulfilment in your new office. We know that you are up to the challenge but always remember that you have a whole community of sisters and brothers rooting for you and ready to give you support should you need it.

Thank you.