

# Mainstreaming Black Women into Managerial Positions in the South African Corporate Sector in the Era of the Fourth Industrial Revolution (4IR)

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## Abstract

The active participation of Black South African women in the corporate sector is essential for the achievement of equity and diversity. Since 1994 the sector has failed to promote black women into managerial positions despite the existence of the *Employment Equity Act* 55 of 1998 that requires the equitable representation of previously disadvantaged groups on all occupational levels. Conversely, the managerial positions in the South African corporate sector continue to be dominated by white males and little effort is being made to achieve equity. The paucity of black women persists in the corporate sector during a period in which South Africa, like many other countries, is preparing itself for the fourth industrial revolution, which has broad implications for the sector. Black women are under-represented in the emerging technological environment in South Africa, and this imbalance is further perpetuating the exclusion of black women from managerial positions. This paper argues that the emerging technological environment presents an opportunity for the corporate sector to reflect on the training needs of Black women and prioritise technology in its quest to achieve equity. An increase in the number of black women with technological skills would enhance their prospects of occupying meaningful managerial roles. The corporate sector in South Africa is expected to comply with progressive statutory interventions and policies to advance women in the emerging technological environment who have the right qualifications, experience, and competency to fill the managerial positions from which they were previously excluded. In this paper we examine and analyse the challenges which are hampering the progression of black women into managerial echelons in post-1994 democratic South Africa. In order to present an objective and balanced view, we also present the strides being taken by some corporates (very few of them) to address the problem of the obstacles to the advancement of Black South African women to managerial positions.

## Keywords

Black women; corporate sector; chief executive; glass ceiling; empowerment; skills; fourth industrial revolution.

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## 1 Introduction

The representation of black women in corporate managerial positions has been in the spotlight in South Africa since the advent of democracy in 1994.<sup>1</sup> This is so because South Africa was divided along the lines of race, gender and class, and this has resulted in black women being disproportionately affected.<sup>2</sup> The South African corporate sector is neglecting to redress the past imbalances and inequalities by perpetuating male dominance, particularly through the appointment of white males at managerial levels, to the disadvantage of black women.<sup>3</sup> The overrepresentation of males in the South African corporate sector continues to persist while South Africa and the world in general is preparing for the fourth industrial revolution (4IR). According to Lee *et al*, the 4IR could be described as the "revolutionary change that [will occur] when IT proliferates in all industries".<sup>4</sup> It is argued that the 4IR

... features the creative connection between technology and the market in all industries based on IT, that is, the creative and open combination of technology and the market through open innovation, or growth based on the open business model.<sup>5</sup>

The features of the 4IR are equated with the second industrial revolution as technical innovation is blended with institutional innovation.<sup>6</sup> According to Adams, the concept "Fourth Industrial Revolution" represents the collapse of boundaries between the physical, digital and biological spheres.<sup>7</sup> Central to the 4IR is artificial intelligence that involves systems and processes that "display intelligent behaviour by analysing their environment and taking actions to achieve specific goals".<sup>8</sup>

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<sup>1</sup> Ndinda and Okeke-Uzodike 2012 *J Int Women's Stud* 127.

<sup>2</sup> *Seekings* 2008 *JCAS* 1.

<sup>3</sup> *CEE Annual Report 2016/2017* 87.

<sup>4</sup> Lee *et al* 2018 *J Open Innov Technol Mark Complex* 3.

<sup>5</sup> Lee *et al* 2018 *J Open Innov Technol Mark Complex* 7.

<sup>6</sup> Lee *et al* 2018 *J Open Innov Technol Mark Complex* 4.

<sup>7</sup> Adams 2018 <https://www.weforum.org/agenda/2019/08/the-fourth-industrial-revolution-risks-leaving-women-behind/>.

<sup>8</sup> Adams 2018 <https://www.weforum.org/agenda/2019/08/the-fourth-industrial-revolution-risks-leaving-women-behind/>.

It is deduced that the 4IR requires employees to have technological skills to adapt to the technological world.<sup>9</sup> Essentially, acquiring new technological skill will lead to job opportunities and the subsequent retention of such technological skills.<sup>10</sup> According to the Commission for Employment Equity (CEE),<sup>11</sup> the workforce in the corporate sector is largely dominated by males on various occupational levels whilst black women are underrepresented. The 4IR has the propensity to exclude black women from economic participation and to further perpetuate male dominance in managerial positions.<sup>12</sup> This view is expressed in the context of the already existing technological gap between black women and males.<sup>13</sup>

According to James *et al*<sup>14</sup> the managerial and supervisory levels in Information and Communication Technology in South Africa are dominated by males and therefore demonstrate the continued imbalance between men and women. Women are underrepresented in technology-related jobs in South Africa, a fact that suggests that the corporate sector may not achieve equitable representation at managerial levels under the 4IR, to the detriment of black women.<sup>15</sup>

This article examines the role of empowerment in the form of skilling black women in the competencies required for them to be able to discharge managerial and executive responsibilities and functions in the era of the 4IR. Transformative strategies and measures in the form of legislation and policy need to be put in place and implemented in order to offer workable and sustainable solutions. The article acknowledges that there are other marginalised groups that also require assistance, such as Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual (LGBTIQ) persons and women from other race groups who also experience some form of exclusion from the corporate sector. However, this article focusses on the

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<sup>9</sup> Venter, Herbst and Iwu 2019 *SAJHRM* 1.

<sup>10</sup> Ranft and Lord 2002 *Organization Science*.

<sup>11</sup> CEE *Annual Report 2019/2020* 74.

<sup>12</sup> Nzukuma and Bussin 2011 *SAJHRM* 1.

<sup>13</sup> Adams 2018 <https://www.weforum.org/agenda/2019/08/the-fourth-industrial-revolution-risks-leaving-women-behind/>.

<sup>14</sup> James *et al* 2006 [https://www.researchgate.net/profile/Nina\\_Evans3/publication/229021703\\_Women\\_in\\_the\\_Information\\_and\\_Communication\\_Technology\\_Sector\\_in\\_South\\_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf](https://www.researchgate.net/profile/Nina_Evans3/publication/229021703_Women_in_the_Information_and_Communication_Technology_Sector_in_South_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf).

<sup>15</sup> James *et al* 2006 [https://www.researchgate.net/profile/Nina\\_Evans3/publication/229021703\\_Women\\_in\\_the\\_Information\\_and\\_Communication\\_Technology\\_Sector\\_in\\_South\\_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf](https://www.researchgate.net/profile/Nina_Evans3/publication/229021703_Women_in_the_Information_and_Communication_Technology_Sector_in_South_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf).

underrepresentation of black women in managerial positions because they are disproportionately discriminated against. Unlike women in other race groups, their exclusion is uniquely based on race, gender and class.

## 2 Literature review

South Africa became a democracy in 1994, and with this affirmed the right to equality, including gender equality and the empowerment of women.<sup>16</sup> This commitment is informed by the deep-rooted traces of discrimination in South Africa on the grounds of race and gender which dates back a hundred years.<sup>17</sup> At that time women were most often caregivers and largely responsible for household duties.<sup>18</sup> Many black men worked in the mines as migrant labourers, and this resulted in black women supporting their families on their own by working in the fields to produce food.<sup>19</sup> The depletion of food supplies in rural areas influenced rural women to migrate to the cities in South Africa to seek employment,<sup>20</sup> where they were subjected to exclusion in terms of gender, race and class.<sup>21</sup> In terms of gender, women were predominantly confined to procreation roles and maintaining households.<sup>22</sup> In terms of race, black women were thought of as inferior to others by society due to their lower levels of education and lack of employment opportunities.<sup>23</sup> Those women who did not migrate to the cities were mostly employed in domestic and agricultural services.<sup>24</sup>

The corporate sector during apartheid offered black women lower remuneration and pension benefits than employees of other races.<sup>25</sup> Black women employed in the factories were rarely promoted to higher positions, even if they had slightly higher education levels than white men and white women.<sup>26</sup> Common women's employment rights were often disregarded to the extent that a pregnant employee was not guaranteed re-employment

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<sup>16</sup> Matotoka and Odeku 2018 *ERAS* 36.

<sup>17</sup> Cornwall and Rivas 2015 *TWQ* 396.

<sup>18</sup> Floro and Komatsu 2011 *Feminist Economics* 33.

<sup>19</sup> Matotoka and Odeku 2018 *ERAS* 37.

<sup>20</sup> Matotoka and Odeku 2018 *ERAS* 37.

<sup>21</sup> Matotoka and Odeku 2018 *ERAS* 37.

<sup>22</sup> Nolde 1991 *Third World Legal Stud* 211.

<sup>23</sup> Nolde 1991 *Third World Legal Stud* 211.

<sup>24</sup> Matotoka and Odeku 2018 *ERAS* 37.

<sup>25</sup> Black Sash 1978 <https://www.aluka.org/stable/10.5555/al.sff.document.cnf19780314.026.001.000>.

<sup>26</sup> Black Sash 1978 <https://www.aluka.org/stable/10.5555/al.sff.document.cnf19780314.026.001.000>.

after giving birth to a child.<sup>27</sup> Such prejudices contributed to preventing black women from accessing decision-making positions as they were generally appointed at lower levels and assumed women's traditional roles.<sup>28</sup>

Discrimination against women featured prominently during the apartheid regime in both the public and the corporate sectors. With the end of apartheid, the new South African Constitution affirmed equal rights for everyone, including gender equality. Section 9 of the *Constitution of the Republic of South Africa*, 1996 bars discrimination against any person based on gender. In the workplace, the *Employment Equity Act* 55 of 1998 (EEA) was enacted to realise and foster equity in the workplace. The EEA aims to address unfair discrimination practices in the workplace and to progressively diversify the workforce. This is mandated by section 20 of the EEA, that requires the corporate sector to ensure that women and especially black women as one of the previously disadvantaged groups are represented in various occupational levels in the workplace so that there is an equitable representation of all races and genders. These occupational levels include the managerial levels.

In 2020 there were a total of 1207 males in top managerial positions in the public sector, and only 589 women. Of the 589, 538 were black women. On senior management levels there were 7298 males and 4883 women. Of the 4883 women, 4245 were black. Conversely, in the corporate sector in 2020 there were 39831 people in top management. Of these, 29880 were white males whilst 9951 were black males.<sup>29</sup> There were 12221 women in top management, and of these 5109 were black and 7112 were white.<sup>30</sup> There were 77444 males in senior management positions. Of these, white males constituted 48741 and black males 28703. There were 40256 women in senior management positions, of whom 16901 were black and 23355 were white.<sup>31</sup> It is clear from these statistics that black women were underrepresented in both the public and corporate sector. Notably, the gap in the corporate sector is far wider than that in the public sector.

The EEA was enacted more than 20 years ago to redress systemic historical discrimination in the workplace. This was done in the context of a general understanding that there were disparities in employment, occupation and

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<sup>27</sup> Black Sash 1978 <https://www.aluka.org/stable/10.5555/al.sff.document.cnf/19780314.026.001.000>.

<sup>28</sup> Nolde 1991 *Third World Legal Stud* 211.

<sup>29</sup> CEE *Annual Report 2019/2020* 74.

<sup>30</sup> CEE *Annual Report 2019/2020* 74.

<sup>31</sup> CEE *Annual Report 2019/2020* 74.

income in the national labour force, and that such disparities create pronounced disadvantages for certain groups of people, especially black women. Despite this enactment, black women continue to be underrepresented in managerial positions in the corporate sector. Unlike the private corporate sector, the public sector has improved the representation of black women in managerial positions whilst the private corporate sector perpetuates male domination in these positions and seems largely to disregard the requirement of equitable representation.<sup>32</sup>

The Commission for Gender Equality (CGE) and the CEE investigations were initiated to determine the barriers that hinder the progression of black women in managerial levels in the private sector. These investigations were based on the principle of equality under section 9 of the Constitution, which challenges the private sector to eliminate gender and race inequalities.

Through these investigations the CEE found that for two decades, in comparison to white females and males and black males, black women had been poorly represented in decision-making positions in the private sector, and had been largely appointed on administrative levels.<sup>33</sup> These findings were confirmed by the CGE in 2019, which found that black women are less likely to be appointed to leadership roles in the private sector.<sup>34</sup> It is deduced from this that the EEA has not been successful in addressing gender equity in managerial positions in the private sector since 1998.

Against this backdrop, it is argued that the monitoring and the implementation of the EEA in the private sector is a significant challenge. Thus, designated employers fail to submit employment equity reports to the Director-General of the Department of Labour as per section 21 of the EEA.<sup>35</sup> The submission of equity reports is mandatory and failure to do so may result in a fine of R500 000.00.<sup>36</sup> Without these reports the Director-General of the Department of Labour is unable to track the implementation of affirmative action measures to redress imbalances and the exclusion of

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<sup>32</sup> CEE *Annual Report 2016/2017* 87.

<sup>33</sup> CEE *Annual Report 2016/2017* 87.

<sup>34</sup> CGE 2013 <http://cge.org.za/wp-content/uploads/2021/01/employment-equity-hearings-on-gender-transformation-in-the-workplace-limpopo.pdf> 63.

<sup>35</sup> The *Employment Equity Act 55 of 1998* (EEA) defines a designated employer as an employer who employs 50 or more employees, or an employer who employs fewer than 50 employees, but has a total annual turnover as reflected in Schedule 4 of the Act.

<sup>36</sup> Schedule 1 of the EEA.

previously disadvantaged groups on all occupational levels, especially in the private sector.

It is submitted that the failure to strictly monitor and enforce employment equity in the private sector has resulted in most companies not prioritising employment equity as one of the core values of the company. The EEA permits that fines be issued and imposed on companies that are non-compliant with the equity measures. However, Bezuidenhout *et al*<sup>37</sup> argue that imposing fines for non-compliance with the EEA has not deterred South African companies primarily because such fines are budgeted for in advance. Consequently, imposing a fine does not impact on the company's finances. This view was shared by the CEE at the parliamentary briefing in 2007, where it was asserted that the EEA fines do not have much effect on non-compliant companies. It was affirmed that companies budget for fines regardless of the amount of the fine.<sup>38</sup> It is argued that the EEA has not sufficiently prompted the corporate sector to achieve the equitable representation of black women on all managerial levels in the workplace.

Nienaber argues that most companies do not appreciate the value of employment equity and therefore fail to adopt equity as a principle in the companies' culture, practices and environment.<sup>39</sup> The failure to appreciate the significance of employment equity is arguably one of the reasons that companies do not prioritise recruiting and appointing black women with the objective of redressing their underrepresentation on managerial levels.<sup>40</sup>

According to Booysen<sup>41</sup> there are barriers that contribute to the non-retention of black women in managerial positions, and these include a lack of growth and development opportunities, inadequate training, a failure to provide career pathing and succession plans, and ineffective mentorship programmes. Additional barriers include a poor communication and understanding of employment equity, a lack of commitment on the part of the senior management of the company to achieve equity, inconsistent implementation of the employment equity policy, a persistent male-dominated organisational culture, and the inadequate co-ordination and integration of the existing implementation processes.<sup>42</sup> Mello and Phago<sup>43</sup>

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<sup>37</sup> Bezuidenhout *et al* 2008 <https://evaluations.dpme.gov.za/evaluations/13> 25.

<sup>38</sup> Labour Portfolio Committee 2007 <https://pmg.org.za/committee-meeting/8068/>.

<sup>39</sup> Nienaber 2007 *Eur Bus Rev* 72.

<sup>40</sup> Nienaber 2007 *Eur Bus Rev* 72.

<sup>41</sup> Booysen 2007 *SAJLR* 68.

<sup>42</sup> Booysen 2007 *SAJLR* 68.

<sup>43</sup> Mello and Phago 2007 *Politeia* 145.

observe that the private sector has been unable to manage diversity in the workplace and as such the sector is unable to implement the EEA effectively. However, Oosthuizen and Naidoo<sup>44</sup> argue that the EEA has had a positive impact on the workforce and has consequently improved the diversity of the private sector. The EEA has resulted in black women being employed in significant numbers in lower-level positions in the private sector, but their representation in management is inadequate.

The CGE highlights that the corporate sector has seemed to transform the workplace in terms of race but lags behind in terms of gender equity.<sup>45</sup> This is so because the *Broad-Based Black Economic Empowerment Act 53 of 2003* requires the private sector to foster economic transformation to realise the meaningful participation of black people. The focus is laid more on race than on gender. This demonstrates that transformation in the workplace does not take into consideration the historical segregation of women and the culture of patriarchy that hinders the progression of women in the workplace.<sup>46</sup>

In the case of *Barnard v South African Police Services*, the court observed that:<sup>47</sup>

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 on 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.

The above remarks indicate that the private sector is challenged to transform its workplace based on the principles of social justice, democratic values and human rights. As such, the slow transformation of the private sector has constitutional implications that affect the right to equality, dignity and economic participation. According to Currie and De Waal,<sup>48</sup> equality is a complex social ideal which requires that persons who are in the same circumstances should be treated the same. This is critical, following the CEE's findings that white males and females enjoy and are afforded preferential treatment in terms of recruitment, promotion and training

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<sup>44</sup> Oosthuizen and Naidoo 2010 *SAJIP* 9.

<sup>45</sup> CEE *Annual Report 2016/2017* 87.

<sup>46</sup> Oosthuizen and Naidoo 2010 *SAJIP* 9.

<sup>47</sup> *Barnard v South African Police Services* 2014 6 SA 123 (CC) para 30.

<sup>48</sup> Currie and De Waal *Bill of Rights Handbook* 210.

opportunities for managerial levels in the corporate sector.<sup>49</sup> The EEA requires the corporate sector to adopt affirmative action measures and implement appropriate training for people from designated groups. Essentially, the corporate sector is expected to identify the training needs of its employees and to pay for such training as part of its skills development requirement in the workplace. Consequently, the preferential treatment of white employees in terms of training opportunities creates an added advantage for them, as they become eligible for higher positions in the workplace. On the other hand, black males and females do not enjoy such preferential treatment in terms of training opportunities in the workplace. It is argued from this premise that the same training and promotion opportunities that are afforded to white males and females should be afforded to black women.

In the case of *Chowan v Associated Motor Holdings (Pty) Ltd*<sup>50</sup> (*Chowan case*) the Southern Gauteng High Court delivered a landmark judgement that demonstrated the prejudice that black women experience in the workplace despite their educational backgrounds. The respondent (the chief executive officer of the company) was found to have infringed the right to dignity of the applicant (a female employee) during 2018 by referencing the employee in question as

... 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 ...<sup>51</sup>

In the *Chowan* case, the applicant was assured of the position of Chief Financial Officer (CFO) twelve months after being employed as a Group Financial Manager of the company. Several years later the applicant was overlooked for the CFO position despite her academic qualifications and work experience. The company offered the CFO position to a white male who lacked experience in the industry and further did not possess the accounting and transaction knowledge required for the position of CFO.<sup>52</sup> The Chief Executive Officer (CEO) of the company argued that the applicant required more experience (ie three to four years) to enhance her skills in leadership. The *Chowan* case demonstrates that fronting exists in the private sector, where female candidates are hired and trained but overlooked for the available management opportunities. It is submitted that

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<sup>49</sup> CEE *Annual Report 2016/2017* 87.

<sup>50</sup> *Chowan v Associated Motor Holdings (Pty) Ltd* 2018 4 SA 145 (GJ) (*Chowan case*).

<sup>51</sup> *Chowan case* para 22.

<sup>52</sup> *Chowan case* para 48.

this practice amounts to window dressing, where the appointment of women arguably amounts to tokenism.

The Constitutional Court in *Fraser v Children's Court, Pretoria North*<sup>53</sup> held 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.<sup>54</sup>

The corporate sector is therefore required to ensure the advancement of black women into management positions while still making a profit and thus contributing to the South African economy. It cannot neglect its obligations to achieve equity and prioritise profit only. There must be a careful balance in the corporate sector between achieving equity and making profit. The achievement of equity is not a "nice to have" for the corporate sector but finds expression in the EEA and therefore should be taken seriously by employers.

In the case of *Solidarity v Department of Correctional Services*<sup>55</sup> (*Solidarity case*) the court averred that<sup>56</sup>

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 'previously disadvantaged' should 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 a black male, or Coloured person or Indian person appointment to a certain occupational level on the basis that black males, Coloured people or Indian people, as the case may be, are already overrepresented or adequately represented on that level, and make space for black women.

It can be gathered from these remarks that the private sector is permitted to decline the appointment of a man or woman to a position on the basis that such a position is already overrepresented by either black males or white, coloured or Indian females. Moreover, the private sector in South Africa is justified if they decide to refuse the appointment of white males to managerial positions due to the existing demographic ratio. It is not a legally persuasive argument that the adequate representation of other previously

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<sup>53</sup> *Fraser v Children's Court, Pretoria North* 1997 2 SA 261 (CC).

<sup>54</sup> *Fraser v Children's Court, Pretoria North* 1997 2 SA 261 (CC) para 20.

<sup>55</sup> *Solidarity v Department of Correctional Services* 2014 1 BLLR 76 (LC) (*Solidarity case*).

<sup>56</sup> *Solidarity case* para 49.

disadvantaged groups such as black men in management positions makes up for the absence of black women.<sup>57</sup>

According to Kuroda,<sup>58</sup> the digital gender divide hinders the achievement of gender equality for females, especially as the 4IR gains momentum and information and communication technologies (ICTs) develop. It is possible to argue that (a) the ease of access and utilisation of digital technologies and the internet; (b) the increasing skills required to use digital technologies and to enhance one's participation in their design and production; and (c) the progression of women to meaningful leadership roles in the digital sector are the three factors that make up the digital gender divide.<sup>59</sup> It is submitted that easy access to technologies and the internet is the basis of realising digital inclusion in South Africa. As such, the development of capacity building programmes that focus on digital technologies in the corporate sector would go a long way towards paving the way for black women to acquire digital skills and the experience that would make them eligible for managerial roles in the digital sector. The development of such capacity building programmes would accord with the EEA, which requires employers to implement appropriate training measures for people from designated groups. The persistent preferential treatment of white males and females in the corporate sector in terms of training has the propensity to disadvantage black women in the digital sector. Moletsane and Reddy<sup>60</sup> note that careers in science, technology, engineering and mathematics are male dominated, are perceived to be "masculine", and that women are viewed as novices in these sectors. In achieving equity, the corporate sector must be proactive and create an inclusive environment that persuades or encourages the digital participation of black female employees.

PwC South Africa asserts that females are not sufficiently represented in emerging technology and that this results in both equality and equity not being achieved in the workplace.<sup>61</sup> Contextually, it is apparent that women are largely underrepresented in the top 10 global techno companies, compared to males. Women hold 28% of the managerial and leadership positions at these global tech corporates, whilst males occupy 72%.<sup>62</sup>

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<sup>57</sup> *Solidarity* case para 49.

<sup>58</sup> Kuroda *et al* 2019 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Digital-Equity-Policy-Brief-W20-Japan.pdf>.

<sup>59</sup> Kuroda *et al* 2019 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Digital-Equity-Policy-Brief-W20-Japan.pdf>.

<sup>60</sup> Moletsane and Reddy 2008 <http://hdl.handle.net/20.500.11910/5187>.

<sup>61</sup> PwC 2018 <https://www.pwc.co.za/en/assets/pdf/women-in-tech.pdf>.

<sup>62</sup> PwC 2018 <https://www.pwc.co.za/en/assets/pdf/women-in-tech.pdf>.

It is accepted that to increase the representation of women in leadership in the 4IR in the corporate sector, black women should to take up careers in science, technology, engineering and mathematics (the STEM subjects).<sup>63</sup> It is found that females In South Africa do not generally select STEM subjects in their study programmes and that there is therefore only a small pool of female talent in STEM subjects in South Africa.<sup>64</sup> Because of the limited pool of qualified females in IT/technology fields, only a few may be eligible to assume managerial roles in the IT corporate sector.

Most technology fields require a background or qualification in STEM subjects. Charlene Africa<sup>65</sup> postulates that the persistent gender gaps in STEMS negatively affect the presence of females in most professional careers, especially in technology fields. According to Charlene Africa,<sup>66</sup> this continual gender gap poses a concern in that the scarcity of female scientists and the real intersectional thinking behind the development of algorithms intensifies the risk of artificial intelligence becoming the ultimate expression of masculinity. The obstacles found to be barriers to the participation of females in the ICT sector include insufficient access to education and training, insufficient support for female employees who work in the formal sector, and inadequate awareness of the benefits of ICT. Mishra and Aneja<sup>67</sup> point out that, despite the progressive steps taken by the South African government to ensure digital inclusion in school curriculums, black women are often left behind in higher education and advanced skills indicators. It is highlighted that poverty is the main impediment to digital inclusion and participation in South Africa. Mishra and Aneja<sup>68</sup> observe that while race has historically been a driver of economic disparities, traditional socio-cultural prejudice has been a barrier to women's labour market, financial, and digital inclusion. Liu and Wilson<sup>69</sup> identify gender stereotyping and societal attitudes, family responsibilities, working time constraints and a lack of confidence in

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<sup>63</sup> Kuroda *et al* 2019 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Digital-Equity-Policy-Brief-W20-Japan.pdf>.

<sup>64</sup> Kuroda *et al* 2019 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Digital-Equity-Policy-Brief-W20-Japan.pdf>.

<sup>65</sup> Africa 2019 <https://www.uwc.ac.za/News/Pages/Making-the-Fourth-Industrial-Revolution-Work-for-Women.aspx>.

<sup>66</sup> Africa 2019 <https://www.uwc.ac.za/News/Pages/Making-the-Fourth-Industrial-Revolution-Work-for-Women.aspx>.

<sup>67</sup> Mishra and Aneja 2017 <https://www.orfonline.org/research/digital-age-south-africa-empowerment-women>.

<sup>68</sup> Mishra and Aneja 2017 <https://www.orfonline.org/research/digital-age-south-africa-empowerment-women>.

<sup>69</sup> Liu and Wilson 2001 *Women Manag Rev*.

completing tasks as four main barriers restricting women's digital access and inclusion in STEM.

To this end, it is submitted that the exposure of black women to STEM by corporates and training them in those fields is critical to their overall economic growth and development and would increase the number of qualified women in technology.

### **3 Black women in the corporate sector in the era of the fourth industrial revolution (4IR)**

The insufficient promotion of black women to the corporate sector's managerial levels is based on the assumption that black women are incompetent for higher leadership roles.<sup>70</sup>

It is submitted that exposure through training and development plays a fundamental role in increasing the prospect of any employee to be promoted in the workplace. The premise is that the advancement of black women in managerial positions in the corporate sector is dependent on whether they have qualifications and have received training and exposure to managerial duties. It may be argued that it is the responsibility of black women as employees to ensure that they receive the necessary training and development to be eligible for the promotion.

In *Marra v Telkom SA Ltd*<sup>71</sup> (*Marra case*) the employee (a male) argued that the employer had committed an unfair labour practice because it had degraded him unfairly, and sought an order that the employer upgrade him with retrospective effect. The employee argued that he had been unfairly barred from acquiring the skills necessary for promotion through being denied learning opportunities in different technologies and kinds of equipment. In essence, the employee contended that the failure by the employer to expose him to different skills barred his progress to develop as an employee. The court held as follows:<sup>72</sup>

There is no evidence that Telkom was contractually or otherwise obliged to transfer him beyond its own operational requirements. Telkom may have lacked innovation and creativity in the way it developed or even deployed its workforce or employees. It may also be that an enterprise which does not develop its staff will not succeed. It does not however follow that an enterprise

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<sup>70</sup> CIPD 2016 [https://www.cipd.co.uk/Images/why-are-there-so-few-women-at-the-top-2016-april\\_tcm18-14006\\_tcm18-14006.pdf](https://www.cipd.co.uk/Images/why-are-there-so-few-women-at-the-top-2016-april_tcm18-14006_tcm18-14006.pdf).

<sup>71</sup> *Marra v Telkom SA Ltd* 1999 20 ILJ 1964 (CCMA) (*Marra case*).

<sup>72</sup> *Marra case* 1968D, 1968I-1970I.

which does not use its human resources wisely, commits an unfair labour practice, within the meaning of the Act.

The decision in the *Marra* case suggests that without a contractual obligation an employer does not commit an unfair labour practice if it does not develop or deploy staff to gain more knowledge and experience. Moreover, there is no obligation to expose an employee beyond the employer's operational requirements. It is accepted that the employees' interests need to be consistent with the needs of the company, not as objectively determined in a perfect company, but as determined by those who have the legitimate power to manage the company. Whilst the decision in the *Marra* case suggests that employers need to be contractually bound to provide training and development to employees, it is argued that the achievement of equity in the workplace requires employers to innovatively put in place measures as envisaged by section 15 of the EEA to create a pool of qualified black women eligible to assume managerial positions.

It is submitted that the training and exposure of employees to managerial experiences is not entirely at the discretion of the employers but an obligation in terms of section 15 of the EEA. This view is shared by Mokabane, Odeku and Nevondwe,<sup>73</sup> who assert that a duty is placed on employers to train and develop employees in the context of affirmative action.<sup>74</sup> It is argued that the denial of promotion due to a lack of attributes which could have been cured by training may well constitute unfair conduct relating to the promotion. Mokabane, Odeku and Nevondwe<sup>75</sup> suggest that unfair conduct related to training could constitute an unfair labour practice. It is submitted that the appointment of well-trained and developed black women at managerial levels would enhance the performance of a company in the same way that the appointment of a white female, white male or black male would have. As such, it is argued that the advancement of black women in the workplace into managerial positions is dependent on whether the corporate sector provides training and development to the previously disadvantaged groups. It is submitted that any company that is committed to addressing the injustices of the past, achieving equity in the workplace and promoting digital inclusion needs to set aside adequate budgets for the training and development of black women. Mokabane, Odeku and Nevondwe<sup>76</sup> observe that the rotation of employees to different sections of the company as part of the job-training measure or tool would enable them

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<sup>73</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM*.

<sup>74</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM* 11443.

<sup>75</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM* 11443.

<sup>76</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM* 11443.

to acquire more skills, knowledge and experience to do a variety of tasks at a given time.

The benefit of the training and development of employees is the agile functioning of a company and increasing the eligibility of its employees for promotion. Mokabane, Odeku and Nevondwe<sup>77</sup> postulate that the managerial prerogative in promotion is a stumbling block to applicants for posts in any situation. Mokabane, Odeku and Nevondwe<sup>78</sup> suggest that managerial prerogative empowers employers to appoint even a less qualified person to an advertised and vacant post at the expense of highly qualified and experienced applicants, sometimes on the basis of affirmative action. This submission fails to appreciate the rationale and importance of affirmative action measures in South Africa. It is submitted that the objective of affirmative action is not to require the appointment of less qualified persons, but rather the appointment of suitably qualified persons to ensure the equitable representation of black women at all levels in the workplace.

It is submitted that there are black women who are highly qualified for managerial positions in the corporate sector but are not appointed to these positions because of a lack of commitment by company owners to ensure the equitable representation of previously disadvantaged persons in all levels of the workplace. In support of this view Martin and Durrheim<sup>79</sup> point out that when the corporate sector engages the services of recruitment companies, they do specifically instruct the companies to recruit candidates that are white notwithstanding the existence of other competent candidates of other race groups. It is suggested that most recruitment companies are unable to decline such racially discriminatory requests from the corporate sector because this would result in the recruitment company's not receiving business from those corporates.<sup>80</sup> It is submitted that recruitment companies overlook competent candidates on their database and proceed to appoint white persons because of the requests from the corporate sector.<sup>81</sup> This assertion finds support from Camejo,<sup>82</sup> who argues that preference has been given to persons belonging to certain racial groups by the corporate sector in their selection of persons to fill certain occupational

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<sup>77</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM* 11443.

<sup>78</sup> Mokabane, Odeku and Nevondwe 2012 *AJBM* 11443.

<sup>79</sup> Martin and Durrheim 2006 *PINS* 12.

<sup>80</sup> Martin and Durrheim 2006 *PINS* 12.

<sup>81</sup> Martin and Durrheim 2006 *PINS* 12.

<sup>82</sup> Camejo 1971 *Soc Econ Stud* 294.

roles, while persons of the other racial groups with equal or better qualifications are denied the opportunity of occupying these positions.

Martin and Durrheim<sup>83</sup> point out that the perception that black people are deficient in terms of skills, experience and personality perpetuates racial hierarchy and racial privilege for white males and females in post-apartheid South Africa. Martin and Durrheim<sup>84</sup> assert that the recruitment of white male and female candidates is therefore accepted as reasonable and understandable, while the failure of blacks, largely influenced by stereotyping that sees blacks as less competent, is used to justify why blacks have not attained positions in the corporate sector.

Training and development in digital technologies should be supported by allowing black women to act in managerial positions when such opportunities arise. It is conceivable that the corporate sector in South Africa is hesitant to provide a "legitimate expectation" to employees who temporarily act in managerial positions. It is accepted in South Africa that when an employee acts in a senior position, that does not essentially confer a right to promotion to that position.<sup>85</sup> In the case of *Swanepoel v Western Region District Council*, the court passed the following remarks when an employee argued that an employer committed an unfair labour practice about her promotion:<sup>86</sup>

It matters not that the applicant's immediate supervisors may have been impressed with her diligence, trustworthiness and all-round abilities. Indeed, the applicant's qualification and the appropriateness thereof in relation to the job for which she applied as well as her competence, were not an issue... What the applicant refers to as legitimate expectation is, in fact, no more than an expression of her expectations based, *inter alia* on the support and encouragement she received from within the workplace from union members and her immediate supervisors alike... In the race for employment there must, indeed be few seekers who do not in their own minds, either with or without encouragement of others, form expectations as to their suitability. These expectations are however not 'legitimate expectations' upon which the applicant could conceivably rely.

It is deduced from the above remarks that acting in a senior position does not in itself create a legitimate expectation to be appointed permanently to that position. Similarly, the remarks address any potential argument that suggests that the appointment of black women to act in managerial positions would automatically create legitimate expectations and ultimately

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<sup>83</sup> Martin and Durrheim 2006 *PINS* 12.

<sup>84</sup> Martin and Durrheim 2006 *PINS* 12.

<sup>85</sup> *Swanepoel v Western Region District Council* 1998 19 ILJ 1418 (SE).

<sup>86</sup> *Swanepoel v Western Region District Council* 1998 19 ILJ 1418 (SE).

lead to expensive litigation. To avoid unnecessary litigation between employers and employees, it is prudent that the terms of acting in a managerial position be reduced to writing and be supported by company policy.

To determine the reasons for the scarcity of black South African women in managerial position in the corporate sector, the CGE initiated investigations into the state of employment equity in the South African private sector in November 2017. During these investigations it was found that Sasol (one of the largest companies in South Africa) had white men, black men and white women dominating its top, senior and middle management positions, whilst there was an inadequate representation of black women at these levels.<sup>87</sup> To remedy this imbalance the company resolved to consistently implement a "women in operations framework" to increase the pool of suitably qualified black women for succession purposes. The company planned to increase the representation of blacks in managerial levels by 2022 and consequently to reduce white male representation.<sup>88</sup>

Similarly, the CGE's investigations revealed that Hall and Sons Pty Ltd had only white women represented at senior management levels and did not have any representation of black women at senior management positions.<sup>89</sup>

At the CGE's investigations in 2017, Rhodes Food Group submitted that their senior managerial levels were white male dominated (85.7 per cent) whilst black males comprised only 14.3 per cent.<sup>90</sup> The company did not have any black women at senior levels.<sup>91</sup> The investigation concluded that there was an overall under-representation of black females at senior, middle and junior management levels in the Rhodes Food Group.<sup>92</sup>

The representation of black South African women in managerial positions at the above four private companies was poor, despite the existence of the EEA, which requires equitable representation on all occupational levels. The CGE found that the glass ceiling persists in the private sector, and black women are unable to enjoy upward mobility to occupy positions of seniority.<sup>93</sup>

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<sup>87</sup> CGE *Employment Equity Report* 25.

<sup>88</sup> CGE *Employment Equity Report* 25.

<sup>89</sup> CGE *Employment Equity Report* 25.

<sup>90</sup> CGE *Employment Equity Report* 19-20.

<sup>91</sup> CGE *Employment Equity Report* 19-20.

<sup>92</sup> CGE *Employment Equity Report* 19.

<sup>93</sup> CGE *Employment Equity Report* 19-20.

The CGE found that two decades after the enactment of the EEA white males are still overrepresented in senior management positions in the private sector in comparison with the public sector, but that the overrepresentation might be due to the requirement of professional qualifications in certain areas where black women may not have such qualifications.<sup>94</sup> The CGE concluded that white women were generally adequately represented in managerial positions in the private sector, while black women are still poorly represented. In contrast, due to the operation of affirmative action, the public sector is now dominated by black males in management positions, and there is an adequate representation of black women as well.<sup>95</sup> According to the CGE, the paucity of black women in private sector management positions demonstrates that equitable representation will not be achieved in the near future. This is due, they say, to the limited pool of professionally qualified black women in key sectors.<sup>96</sup>

The 2006-2017 CEE reports<sup>97</sup> and 2013 CGE investigations<sup>98</sup> recommend a faster pace of diversification in the management positions of the private sector. The private sector seems to have a preference for the white population in regard to recruitment, promotion and training opportunities for senior positions.<sup>99</sup> As such, it is argued that the EEA has not sufficiently influenced the private sector to eliminate the underrepresentation of black women in management positions and this to achieve equity and diversity.

In 2020 the CGE found that the senior management levels at Vodacom Group Limited and Woolworths Holding Limited were dominated by white males.<sup>100</sup> As such, the CGE observed that there is still a slow pace transformation in the corporate sector, and this is said to be worsened by the failure to implement the EEA.<sup>101</sup> Moreover, the CGE observed that in 2020 previously disadvantaged groups such as black women continued to be under-represented at managerial levels despite the numerous policies and measures explored by the corporate sector.<sup>102</sup> This assertion indicates that without a commitment and intention to achieve transformation, the development of policies and measures is ineffective. The CGE asserts that

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<sup>94</sup> CGE *Employment Equity Report 19-20*.

<sup>95</sup> CGE *Employment Equity Report 19-20*.

<sup>96</sup> CGE *Employment Equity Report 19-20*.

<sup>97</sup> CEE *Annual Report 2016/2017* 87.

<sup>98</sup> CGE 2013 <http://cge.org.za/wp-content/uploads/2021/01/employment-equity-hearings-on-gender-transformation-in-the-workplace-limpopo.pdf> 8.

<sup>99</sup> CGE *Employment Equity Report 19-20*.

<sup>100</sup> CGE *Report on Gender Transformation* 22.

<sup>101</sup> CGE *Report on Gender Transformation* 83.

<sup>102</sup> CGE *Report on Gender Transformation* 83.

robust mechanisms such as sectorial targets<sup>103</sup> need to be introduced to transform the private sector.<sup>104</sup> Sectorial targets are considered a key response to the lack of transformation in the corporate sector.<sup>105</sup> The CGE is unable to enforce quotas to expedite the representation of black women in managerial positions as the EEA renders quotas impermissible.

Against this backdrop and in view of the upcoming 4IR, it is imperative that corporates provide in-house training and/or allocate bursaries with their primary focus being the acquisition of technical skills that will enable black women to occupy senior managerial positions in private sector companies,<sup>106</sup> so that equitable employment can be achieved.

#### **4 Challenges faced by black women in obtaining technology qualifications for advancement in the era of 4IR**

According to Stats SA<sup>107</sup> black women are more prejudiced in terms of employment opportunities than women and men in other population groups.<sup>108</sup> It is recorded that only a third of South African black women (30,8 per cent) were employed in the public and private sectors in 2011, whilst 56,1 per cent of white females, coloured women (43,2 per cent) and Indian/Asian women (40.2 per cent) were employed. In 2011 black women continued to be less involved in the workforce than other women.

It was demonstrated in the *Chowan* case that a patriarchal attitude exists in the workplace, where women are viewed as less worthy to assume leadership and strategic roles. Ms Chowan was repeatedly overlooked for a chief financial officer position despite her wealth of experience and academic qualifications. It became evident that Ms Chowan had been appointed because she was an "employment equity employee". Arguably, Ms Chowan was overlooked for the managerial position repeatedly largely

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103 The *Employment Equity Amendment Draft Bill, 2018* seeks to empower the Minister of Employment and Labour to determine sectoral numerical targets. These are national economic sectors and may differ across occupational levels, sub-sectors, regions or other relevant factors. The Minister is empowered to set targets in various sectors and employers will be expected to meet these targets.

104 CGE *Report on Gender Transformation* 83.

105 CGE *Report on Gender Transformation* 83.

106 UN Women 2017 <http://www.unwomen.org/en/news/stories/2017/9/news-private-sector-potential-to-advance-womens-economic-empowerment>.

107 Stats SA *Gender Statistics 2011* 23.

108 Stats SA *Gender Statistics 2011* 23.

on the grounds of race and gender. Mishra and Aneja<sup>109</sup> observe that patriarchal attitudes towards women are a barrier to employment opportunities in the digital sector. Similarly, it is recognised that poverty in South Africa is one of the main factors preventing black women from enrolling in STEM subjects, and may bar them from employment and participation in managerial positions.

Technical skills accelerate women's advancement in the workplace.<sup>110</sup> Thus, the lack of technical skills by South African black women is a further barrier against their advancement in managerial positions in the corporate sector.<sup>111</sup> Prioritising the offering of training in technical skills in any company's skills development programme would go a long way towards fostering black women's representation on managerial levels.

## **5 What are the statutory interventions that are available for black women to progress in the corporate environment in the era of the fourth industrial revolution?**

Black women are underrepresented on managerial levels in the corporate sector, and with the emergence of the 4IR, statutory interventions are required to address this imbalance.<sup>112</sup> The EEA was enacted to ensure that previously disadvantaged persons are represented on all levels in the workplace. It is common cause that since the enactment of the EEA, the corporate sector has not progressed in ensuring that previously disadvantaged groups are represented adequately on all levels in the workplace. According to Oosthuizen and Naidoo<sup>113</sup> the rationale for introducing the EEA in South Africa was to enforce transformation on the basis that organisations would not empower sufficient numbers of black employers of their free will. Moreover, black women are underrepresented in managerial positions in the corporate sector, whilst other groups are overrepresented. In terms of the EEA, designated employers (including those in the corporate sector) are tasked to develop and implement an EE

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<sup>109</sup> Mishra and Aneja 2017 <https://www.orfonline.org/research/digital-age-south-africa-empowerment-women>.

<sup>110</sup> Dy, Marlow and Martin 2017 *Human Relations* 286.

<sup>111</sup> Meela *Towards a Theoretical Framework for Female IT Professionals' Advancement*.

<sup>112</sup> James et al 2006 [https://www.researchgate.net/profile/Nina\\_Evans3/publication/229021703\\_Women\\_in\\_the\\_Information\\_and\\_Communication\\_Technology\\_Sector\\_in\\_South\\_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf](https://www.researchgate.net/profile/Nina_Evans3/publication/229021703_Women_in_the_Information_and_Communication_Technology_Sector_in_South_Africa/links/0f31752e8f66cb96e9000000/Women-in-the-Information-and-Communication-Technology-Sector-in-South-Africa.pdf).

<sup>113</sup> Oosthuizen and Naidoo 2010 *SAJIP* 1.

plan to achieve equity in the workplace. The EE plan often requires designated employers to set specific employment equity targets that will result in the achievement of equity in the workplace. The setting of employment equity targets in the EE Plan is often informed by the underrepresentation of previously disadvantaged groups on certain occupational levels. Oosthuizen and Naidoo<sup>114</sup> assert that employment equity is applied in the workplace to redress the injustices committed under the apartheid rule, but fails to achieve the desired results because it is applied inconsistently in the workplace and is often not aligned with specific skills development programmes.

In the *Solidarity* case the court asserted that employers need to take into consideration both the regional and the national demographics when preparing an EE Plan. The court reasoned that when an employer takes into consideration the national demographics of society it recognises past injustices suffered by the majority of the population in South Africa.<sup>115</sup> Similarly, consideration of regional demographics asserts the right to substantive equality for blacks.<sup>116</sup> Essentially, an EE Plan that does not take into consideration both regional and national demographics renders such an EE plan to be defective. It is argued that if the corporate sector fails to take into consideration both the national and the regional demographics when preparing EE plans. This provides legitimate grounds for black women to challenge unfair discrimination and exclusion if denied job opportunities during the implementation of such a plan.

Louw<sup>117</sup> rejects the application of numerical goals based on demographics and reasons that affirmative action may be applied in instances where persons are not equitably represented in the workplace.<sup>118</sup> Louw expresses the opinion that the determination should be reasonable and have a basis that demonstrates that a particular group is not equitably represented on all occupational levels.<sup>119</sup> It is submitted that measures may be implemented once it is established that a particular group is inequitably represented.<sup>120</sup> Louw argues that the goal must be transformative and equitable to deal with

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<sup>114</sup> Oosthuizen and Naidoo 2010 *SAJIP* 8.

<sup>115</sup> *Solidarity v Department of Correctional Services* 2014 1 BLLR 76 (LC).

<sup>116</sup> *Solidarity v Department of Correctional Services* 2014 1 BLLR 76 (LC).

<sup>117</sup> Louw 2015 *PELJ* 635.

<sup>118</sup> Louw 2015 *PELJ* 635.

<sup>119</sup> Louw 2015 *PELJ* 637.

<sup>120</sup> Louw 2015 *PELJ* 637.

the established inequality, and that the setting of numerical goals must be both rational and reasonable.<sup>121</sup>

It is observed that the EEA does not set specific targets for the private sector to achieve in terms of equitable representation. Moreover, the EEA has left it to the employers to establish what "equitable representation" should be in the workplace. However, the court in *Solidarity* has laid down a guide to the determination of equitable representation. That is, the setting of targets by the employers must take into consideration the regional and national demographics of the economically active population when preparing an EE plan. It is submitted that the court in *Solidarity* gave guidance to employers. However, black women are not equitably represented in managerial position in the corporate sector due to the limited supply of professionally qualified women in various professional fields.

It is argued that the failure of the corporate sector to develop and recruit black women into managerial positions is indicative of the fact that the EEA has not been effective in addressing the slow pace of transformation in the private sector. Moreover, the enforcement of penalties by the Department of Labour seems to have had little effect on ensuring that the objectives of the EEA are met, particularly in ensuring that black women are represented in managerial positions. The view might be expressed that the corporate sector cannot recruit "women who do not exist in the workplace". It is upon the basis of this premise that this paper argues that apart from advertising and recruiting external black women candidates, the corporate sector must proactively have skills development programmes that will capacitate black women in terms of the variety of skills that are required to equip them for managerial positions. Such skills development programmes might offer the necessary training and bursaries for black women employees to acquire the necessary skills and qualifications desired in the digital sector.

A critical analysis of the EEA reveals that this legislation does not necessarily compel the private sector to set targets that will result in black women being targeted, recruited, developed and appointed into managerial positions. It is unsurprising therefore that the CGE hearings did not result in companies that failed to employ black women being compelled to employ them in managerial positions.

It is trite that the failure to establish a quota system in South Africa has its genesis in section 15(3) of the EEA, which specifically bars the application

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<sup>121</sup> Louw 2015 *PELJ* 638.

of quotas to achieve equity. The argument against the quota system is that it is deemed to be inflexible and rigid, which is why preferential treatment and numerical goals are preferred to quotas in South Africa.<sup>122</sup> In the case of *South African Police Service v Solidarity obo Barnard*, the courts succinctly stated that the distinction between numerical goals and quotas lies in the flexibility of the standard. To this end, the court stated that quotas amount to job reservations that are prohibited in terms of section 15(3) of the EEA, whilst numerical goals serve as flexible employment guidelines.

In *South African Police Service v Solidarity OBO Barnard*,<sup>123</sup> Moseneke ACJ observed that the rationale for affirmative action measures in South Africa is to progressively assist previously disadvantaged groups to access opportunities in the workplace, but these measures must not violate in an unjustifiable manner the right to dignity of those who were previously advantaged. To this end, it is argued that quotas are arbitrary, capricious and display naked preference in nature and have the effect of establishing an absolute barrier against previously advantaged persons. This is why the EEA disallows the application of quotas to achieve equity.<sup>124</sup>

The majority judgement in *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* emphasised that<sup>125</sup>

Affirmative action measures are designed to ensure that suitably qualified people, who were previously disadvantaged, have access to equal opportunities and are equitably represented in all occupation categories and levels.

The majority judgement further emphasised that<sup>126</sup>

Due to our country's history and the constitutional obligation, post democracy, to redress the past injustices, measures directed at affirmative action may in some instances embody preferential treatment and numerical goals but cannot amount to quotas. In advancing employment equity and transformation, flexibility and inclusiveness is required.

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<sup>122</sup> *Solidarity v Department of Correctional Services* 2016 5 SA 594 (CC).

<sup>123</sup> *South African Police Service v Solidarity OBO Barnard* 2014 6 SA 123 (CC).

<sup>124</sup> *South African Police Service v Solidarity OBO Barnard* 2014 6 SA 123 (CC) para 32.

<sup>125</sup> *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2017 3 SA 95 (SCA) para 29.

<sup>126</sup> *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2017 3 SA 95 (SCA) para 29.

In a dissenting judgement, Madlanga J said that<sup>127</sup>

... before invalidating a measure meant to achieve substantive equality for being rigid, it must be looked at in context or in a "situation-sensitive" manner. It can never be a one-size-fits-all.

Madlanga J viewed rigidity and its purported prejudice against white people as a "perceived disadvantage ... compensated for by their undeniable continued dominance at the final stage". Madlanga J emphasised that there can never be any justification for white people, a small minority, to disproportionately dominate most professions and industries, including insolvency practice, as they do.<sup>128</sup> This view aligns with the argument of this paper to the effect that it is inconceivable that in a democratic State white males and females continue to dominate the managerial levels in the corporate sector, while black women are poorly represented on these levels.

The minority judgement in *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* further observed the matter of *Thibaudeau v Canada*, where there the Canadian Supreme Court stated that<sup>129</sup>

... the fact that a measure may create a disadvantage in certain exceptional cases while benefiting a legitimate group as a whole does not justify the conclusion that it is prejudicial.

Sharing Madlanga J's dissent, it is argued that the flexibility in the targets set has led to the undue preference of white males and female and has led to disadvantaging black women. Unsurprisingly, the flexibility in the setting of targets and numerical goals in the EEA has not resulted in black women being adequately represented in managerial positions in the South African private sector. Moreover, the application of flexibility in setting targets does not result in there being consequences for the private sector if such targets are not achieved. Sanctions are not imposed due to the flexibility of the targets. Instead, companies revisit their numerical goals to reset the targets. To this end, it is submitted that the achievement of equity for black women in the private sector should not merely be an aspiration that the private sector must attempt to comply with but must be an objective that must be

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<sup>127</sup> *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2017 3 SA 95 (SCA) para 80.

<sup>128</sup> *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2017 3 SA 95 (SCA) para 81.

<sup>129</sup> *Thibaudeau v Canada* 1995 2 SCR 627 para 696.

complied with and strictly enforced by applying quotas and excluding flexibility.

The application of a quota system was also explored in other jurisdictions. For example the Norwegian government introduced the *Companies Act*, 2003, that regulates the gender composition of a wide spectrum of Norwegian company boards, public limited companies, state and municipality-owned companies, as well as cooperative companies. Section 6-11(a) of the *Companies Act* makes it mandatory for both men and women to be represented on corporate boards in all public limited companies in the private sector. Sections 6-11 state that both genders should be represented in the boards of publicly listed companies as follows:

- a) Where there are two or three board members, both genders should be represented.
- b) Where there are four or five board members, both genders should be represented with at least two members each.
- c) Where there are six to eight board members, both genders should be represented with at least three members each.
- d) Where there are nine or more members of the board, each gender should be represented with at least 40 per cent.

According to Sweigart,<sup>130</sup> without the noncompliance penalties of the Norway quota legislation, the companies would not act to include more women in managerial positions. Consequently, a failure to comply with Norway's *Companies Act*, including the gender quotas, is punishable by the dissolution of the corporation. The effect of quota provisions in the *Companies Act* is to increase the fraction of women directors on the corporate boards. Bolso<sup>131</sup> asserts that Norwegian women's representation on the boards of listed companies was 3 per cent in 1993 and 7 per cent in 2003, and that since the adoption of the quota provision it has increased to 42 per cent. According to Pande and Ford<sup>132</sup> 77 out of an estimated 450 public limited companies in Norway failed to meet the gender quota requirements by January 2008, after the grace period for compliance had elapsed. Consequently, the non-complying companies were provided with four

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<sup>130</sup> Sweigart 2012 *Nw J Int'l L & Bus.*

<sup>131</sup> Bolso 2011 <https://www.theguardian.com/commentisfree/2011/jul/18/diversity-boardroom-corporate-decisions>.

<sup>132</sup> Pande and Ford 2011 <http://hdl.handle.net/10986/9120> 15.

weeks to comply with the gender quotas. According to Pande and Ford<sup>133</sup> the companies were threatened with dissolution in terms of the *Companies Act* for non-compliance.<sup>134</sup> Strikingly, all of the companies had complied by mid-2008.

It may be argued that the Norway application is too rigid and may not be suitable for other jurisdictions like South Africa. The fundamental lesson to be drawn is that a voluntary process by the corporate sector to increase the representation of black women in managerial positions may not be achieved without sanctions. Equally, unless stringent measures such as sectoral targets are taken, black women will be left behind in the 4IR, especially at managerial levels.

Alstott<sup>135</sup> argues that the successful application of gender quotas must result in both the creation of positions and also the creation of career paths for competent women to assume managerial positions. It must be emphasised that gender quota laws do not aim to promote the appointment of untrained and inexperienced women in managerial positions. On the contrary, suitably qualified women are the targeted candidates to be appointed to managerial positions. It is argued that employers need to be proactive in offering paid training and developing talent from within, and creating pipeline measures such as prioritising qualified black women when acting positions are available to enable them to get exposure to and experience in managerial roles. In the absence of sufficient black women in the company, it is suggested that headhunting processes informed by the company's policies should be explored.

Persuasion to achieve targets is dependent on whether the company's management shares a desire to achieve the targets. Without such a desire and commitment, the company is unlikely to adopt strategies to advance women into managerial positions. This is the position in South Africa, in that the EEA provides for the setting of targets and prohibits quotas. If quotas were applied to both gender and race, whichever category was underrepresented would have to be considered. The corporate sector in South Africa is lagging behind in increasing the number of black women in managerial positions. This arguably is occurring because the EEA does not provide sanctions for a failure to achieve equitable representation. Plainly,

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<sup>133</sup> Pande and Ford 2011 <http://hdl.handle.net/10986/9120> 15.

<sup>134</sup> Pande and Ford 2011 <http://hdl.handle.net/10986/9120> 15.

<sup>135</sup> Alstott 2014 *Pace Int'l L Rev* 39.

the corporate sector in South Africa is not compelled to achieve equity in its managerial positions.

## 6 Conclusion

The representation of black women on managerial levels in the corporate sector is outweighed by that of males, particularly white males. This is worrying, especially as South Africa prepares for the 4IR that will perpetuate male dominance in view of the low advanced digital skills of black women. Black women in the corporate sector are to be found chiefly in administrative positions which do not require advanced digital skills. The 4IR is likely to result in black women being left behind if their technical skills are not prioritised in the skills development programmes of the companies.

The corporate sector should prioritise digital and management skills in their skills development programmes. Where possible, budgets should also be set aside to offer bursaries to enable black female employees to enhance their digital skills through registering with universities or technical vocational education and training institutions. This is key to preparing women for the 4IR. It is recommended that the Department of Basic Education should encourage more young black girls to enrol in STEM subjects at secondary school, including Matric level, and to pursue such fields at universities and colleges.

In the workplace, it is recommended that promotional policies ought to be adopted and must be context specific to promote underrepresented qualified persons to managerial positions. Moreover, mentorship programmes need to be adopted in the corporate sector and put in place to provide support to black women. To ensure that equity is achieved during the 4IR, the EEA needs to be amended to provide sectorial targets.

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## List of Abbreviations

4IR	fourth industrial revolution
AJBM	African Journal of Business Management
CEE	Commission for Employment Equity
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CGE	Commission for Gender Equality
CIPD	Chartered Institute of Personnel and Development
Eur Bus Rev	European Business Review
EE	Employment Equity
EEA	Employment Equity Act 55 of 1998
ERAS	European Review of Applied Sociology
ICTs	information and communication technologies
IT	information technology
J Int Women's Stud	Journal of International Women's Studies
J Open Innov Technol Mark Complex	Journal of Open Innovation: Technology, Market, and Complexity
JCAS	Journal of Contemporary African Studies
Nw J Int'l L & Bus	Northwestern Journal of International Law and Business
Pace Int'l L Rev	Pace International Law Review
PELJ	Potchefstroom Electronic Law Journal
PINS	Psychology in Society
PwC	PricewaterhouseCoopers
SAJHRM	SA Journal of Human Resource Management
SAJIP	SA Journal of Industrial Psychology
SAJLR	South African Journal of Labour Relations
Soc Econ Stud	Social and Economic Studies

Stats SA

STEM

Third World Legal Stud

TWQ

UN

Women Manag Rev

Statistics South Africa

Science, Technology, Engineering and  
Mathematics

Third World Legal Studies

Third World Quarterly

United Nations

Women in Management Review