



# Women in Law & Leadership

## Kenyan Judiciary



**PATTERNS | PROGRESS | PROSPECTS**

# **WOMEN IN LAW AND LEADERSHIP: KENYAN JUDICIARY**

Patterns, Progress, and Prospects



**Institute for African Women in Law**  
**African Women in Law and Leadership Initiative**



**The Institute for African Women in Law (IAWL)** is a nonprofit, nongovernmental organization established in 2015. It is committed to supporting the formidable works of women in law across the continent of Africa and the Diaspora. Our mission is to be a focal point for addressing issues across the legal and judicial professions. The institute is headquartered in Washington, DC, USA.

This report is a part of IAWL's African Women in Law and Leadership Initiative.

This report is based on research funded by the Bill & Melinda Gates Foundation. The findings and conclusions contained within are those of the authors and do not necessarily reflect the positions or policies of the Bill & Melinda Gates Foundation.

**Disclaimer:** Every effort was made to ensure the accuracy of data received from the field research. IAWL has no control over publicly available data on professional, government or institutional websites. All attempts were made to validate the data through multiple rounds of peer review and editing. All data sources received at the time of publication have been duly cited.

**Fair use and global access:** The information and findings in this report are free and publicly accessible. Any part of this publication may be used and reproduced by acknowledging the source.

**The Institute for African Women in Law**

16192 Coastal Hwy  
Lewes, DE, 19958  
USA

**Copyright © 2023**

Institute for African Women in Law  
All Rights Reserved.

# TABLE OF CONTENT

<b>ACKNOWLEDGMENTS</b>	<b>vii</b>
<b>FOREWORD</b>	<b>viii</b>
<b>FOREWORD</b>	<b>x</b>
<b>LIST OF ACRONYMS</b>	<b>xii</b>
<b>LIST OF FIGURES</b>	<b>xiv</b>
<b>LIST OF TABLES</b>	<b>xiii</b>
<b>EXECUTIVE SUMMARY</b>	<b>xv</b>
<hr/>	
<b>1. INTRODUCTION</b>	<b>1</b>
<hr/>	
<b>2. WOMEN IN THE KENYAN JUDICIARY: A REVIEW</b>	<b>3</b>
2.1. Feminization of the bench: a historical perspective	3
2.2. Does women's participation on the bench matter?	5
A. Women's contribution to jurisprudence	5
B. Women on the bench and the legitimacy question	6
C. Women in leadership and the sustainable development goals	7
<hr/>	
<b>3. THEORETICAL FRAMEWORK</b>	<b>10</b>
<hr/>	
<b>4. METHODOLOGY</b>	<b>12</b>
<hr/>	
<b>5 RECRUITMENT, RETENTION, AND PROMOTION OF WOMEN JUDGES</b>	<b>16</b>
5.1. Promoters and facilitators of women's progress on the bench	20
A. Constitutional frameworks advancing women's right to public office	20
B. Changes in the selection criteria	22



C.	Civil society and women's rights organizations	23
D.	Changing stereotypes about competence and merit	24

---

<b>6</b>	<b>BARRIERS TO PROGRESS, RETENTION AND ATTRITION</b>	<b>26</b>
6.1.	The judicial service commission as a barrier	26
6.2.	Gender-neutral work policies and work-family balance	28
6.3.	Gender stereotyping and promotion criteria	30
6.4.	Stereotypes and work allocation	33
6.5.	Stereotypes and sexism in disciplinary and firing processes	34
6.6.	Dismantling judicial hierarchies and impact on mentorship and social networks	35
6.7.	Sexual and gender-based harassment	36
6.8.	Self-imposed barriers	37
6.9.	Possible backlash against women	37
6.10.	Effects of the COVID-19 pandemic	38

---

<b>7</b>	<b>RECOMMENDATIONS ON FACILITATORS OF PROMOTION</b>	<b>40</b>
7.1.	Enforce constitutional and legal instruments on equality	40
7.2.	Adopt intersectional approaches in addressing gender stereotypes	40
7.3.	Targeted skills development, training, and support	41
7.4.	Adopt inclusive sexual harassment and workplace policies	42
7.5.	Unconscious bias training	42
7.6.	Judicial mentoring networks	43

---

<b>8</b>	<b>PROGRESS, PATTERNS AND TRENDS</b>	<b>44</b>
8.1.	More women on the bench and impact on decision-making	44
8.2.	More women in leadership	44
8.3.	Feminist/gender consciousness still not institutionalized	47
8.4.	Institutional challenges in the workplace	48
8.5.	Individual-level intersectional challenges remain for women	49

---

<b>9</b>	<b>CONCLUSION</b>	<b>50</b>
	<b>REFERENCES</b>	<b>51</b>
	Constitutions	<b>56</b>
	Statutes	<b>56</b>
	Cases Cited	<b>56</b>
	<b>APPENDIX</b>	<b>57</b>
	Interview Question Guide	<b>57</b>

# ACKNOWLEDGMENTS

This research output is part of a four-nation study made possible by the generous support from the Bill & Melinda Gates Foundation (BMGF) initiative on women in law and leadership. We are grateful for the support received from the BMGF team throughout the grantmaking and writing stages. The research was designed by the lead investigator, J. Jarpa Dawuni, Ph.D. We would like to acknowledge the tireless contributions of the Institute for African Women in Law (IAWL) research team – Maame Efua Addadzi-Koom, Esq., Stephen Muthoka Mutie, Ph.D., and Nonhlanhla Hlazo, Ph.D.

This report would not have been possible without the contributions of dedicated in-country consultants. IAWL is grateful for the contributions of Nancy Baraza, Ph.D. We acknowledge the work done by the anonymous peer reviewers who provided input throughout the multiple rounds of editing and peer review.

We extend our special thanks to the female legal professionals who gave us their time and talent for our survey questionnaires and in-depth interviews. Your willingness to share your time and insights from your lived experience made this report possible.

We are thankful for the support from all the government officials, institutional heads, and statisticians who helped us with our data sourcing.

We are forever indebted to the women in law who keep pushing forward, against all odds, to be heard, seen and acknowledged for their contributions to their institutions, even if they are not rewarded with the leadership roles they deserve.

# FOREWORD

---

The Kenyan judiciary was originally conceived to operate as an exclusively male-staffed institution. The first woman Judge of the High Court of Kenya, Lady Justice Effie Owuor, was not appointed until 1982. She later became the first woman Judge of the Court of Appeal, the then apex court in the country, in 1998.

The physical infrastructures of the courthouses confirm that the judiciary was not originally conceived with women as judges and judicial officers in mind. This male-biased infrastructural design meant that our court buildings did not provide for ladies' bathrooms. The first women judges and judicial officers had to go to hotels across the court building to access bathroom facilities.

This historical background tells us that it has not been an easy journey to get to a position where Kenya now has the rare distinction of having the positions of the chief justice, deputy chief justice and chief registrar of the judiciary all being occupied by women. We crossed that Rubicon in May 2021, and for us, it is not a mean feat. We regard it as a rare opportunity to be used to transform the Judiciary into an inclusive institution. We are working towards eradicating all the barriers that deny women and other vulnerable groups in society an opportunity to realize their potential.

Therefore, this report's findings, conclusions, and recommendations are timely and useful as they will enrich ongoing conversations within the judiciary geared towards the realization of the strategic outcome of an 'inclusive institution' as championed in the 'Social Transformation through Access to Justice (STAJ)' vision for the Judiciary.

The fact that this report identifies the barriers to promotion and retention, points of attrition, facilitators of promotion, progress, patterns and trends will enable us to pursue targeted interventions to ensure that the judiciary attains the goal of being a workplace where women judges and judicial officers thrive and rise to occupy leadership positions. This will also reinforce the effectiveness of other interventions that we are already championing, including putting in place and enforcing a gender mainstreaming policy and a sexual harassment policy.

This extensive report, covering women with varied intersectional identities, brings to light women judges' heterogeneity and the need to be mindful of these diversities in implementing the proposals to meet each woman's needs. I would like to congratulate the research team at the Institute for African Women in Law (IAWL) for doing good work, without which this report would not have seen the light of day. I especially want to thank the IAWL for documenting the pressing issues affecting women judges in and at the threshold of leadership and making recommendations for all stakeholders to advance women judges' promotion.

# FOREWORD

---

Together with my colleague judges, I will digest the evidence-based information in this report and work towards seeing the proposals come to life. Together, we hope to see the leadership of Kenya's judiciary reflect gender equality in all facets of our society.

**Hon. Justice Martha Koome, EGH**  
**Chief Justice and President of the Supreme Court of Kenya**

# FOREWORD

---

When I started researching African women in law in 2015, I was frustrated by what I have consistently characterized as the arid desert of information on the topic. As my research continued, I likened seeking literature to the proverbial search for a needle in a haystack. The challenge was enormous, but rather than give up, I decided to make it my mission to build this field of knowledge. This mission led to my co-edited book, *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2016), the first book to cover the topic of gender and judging in the African context. Its success spurred me on and inspired the second book, *International Courts and the African Woman Judge: Unveiled Narratives* (Routledge, 2018), which used the power of oral narratives to center the experiences, achievements, and challenges of African women who had served on international courts and tribunals. Other books followed, which included the World Bank project *Gender and Judging in Africa: Selected Studies* (Routledge, 2021) and *Intersectionality and Women's Access to Justice in Africa* (Rowman and Littlefield, 2022).

The first two books brought two major findings to my attention –the paucity of research on African women in law and the challenges they face in accessing training and leadership skills, contributing to their underrepresentation in leadership. These two findings led me to merge my scholarship with activism to address these challenges. The Institute for African Women in Law (IAWL) was born from my passion for women's empowerment and research. By concentrating on its four main goals, IAWL has positioned itself as a leader in promoting women's development through research, training, mentoring, and advocacy. Today, IAWL is a leading hub for research on African women in law through an exhaustive digital archive that includes research reports, women's narratives, and a Legacy Project on the subject.

This report forms part of the four-nation priority countries of Nigeria, Kenya, Senegal, and South Africa, a series of reports under the IAWL-commissioned Women's Excellence in Law and Leadership (WELL) Initiative. The overarching goals of these reports are to examine women's access to positions of leadership in the legal professions; review their retention and intersectional challenges and barriers that lead to attrition from the profession; and provide recommendations on interventions that can promote and facilitate their representation in leadership roles, with the goal of meeting UN SDG #5 on gender equality. The initiative provides a blueprint and recommendations for interventions by policymakers, gatekeepers within the profession, civil society organizations, bar associations, judicial authorities, funding agencies, and other bodies interested in promoting women's leadership in law.

This report highlights the need for more research on several questions about women in law in Africa. I am hopeful that more investments will be directed toward providing empirically rich and theoretically grounded research, as seen in this report. Beyond research, what is needed is a comprehensive portal of current data on women in the legal professions across Africa—a project that IAWL is already spearheading.

# FOREWORD

---

I hope this report provides some glimpses of hope that the problems women in law face can be addressed by adopting the multipronged approaches provided here. To borrow from popular parlance—*you cannot fix a problem if you cannot measure it*. I invite you to support our continued efforts in amplifying women's voices in law and enhancing their capacity for positive societal change and development. Thank you.

**J. Jarpa Dawuni, Esq., Ph.D.**  
**Executive Director**  
**Institute for African Women in Law**

# LIST OF ACRONYMS

<b>CEDAW</b>	Convention on the elimination of all forms of discrimination against women
<b>CJ</b>	Chief Justice
<b>CUC</b>	Court Users Committees
<b>CEO</b>	Chief Executive Officer
<b>DCJ</b>	Deputy Chief Justice
<b>FIDA</b>	Federacion Internationale De Abogadas
<b>HR</b>	Human Resource
<b>IAWL</b>	Institute for African Women in Law
<b>ICJ</b>	International Commission of Jurists
<b>IDLO</b>	International Development Law Organization
<b>JSC</b>	Judicial Service Commission
<b>JSA</b>	Judicial Service Act
<b>JEP</b>	Jurisprudence of Equality Programme
<b>KWAJA</b>	Kenya Women Judges and Magistrates Association
<b>K.L.R</b>	Kenya Law Reports
<b>KMJA</b>	Kenya Magistrate and Judges Association
<b>LSK</b>	Law Society of Kenya
<b>NGEC</b>	National Gender and Equality Commission
<b>PWD</b>	People with Disabilities
<b>SDG</b>	Sustainable Development Goals
<b>SD</b>	Sustainable Development



# LIST OF TABLES

<b>Table 1:</b> Sample Sizes by Area, Sex, and Disability Status	<b>13</b>
<b>Table 2:</b> Mode of Data Collection	<b>14</b>
<b>Table 3:</b> Selected Cadres in the Judiciary, 2017–2018	<b>18</b>
<b>Table 4:</b> Selected Cadres in the Judiciary 2018 - 2019	<b>18</b>
<b>Table 5:</b> Number of female judges vis-à-vis male judges as of July 2022	<b>19</b>
<b>Table 6:</b> Number of female magistrates vis-à-vis male magistrates as of July 2022	<b>19</b>

# LIST OF FIGURES

<b>Figure 1:</b> Location of Research Sites – Nairobi and Mombasa	<b>13</b>
<b>Figure 2:</b> Percentage of Women in Leadership Positions on the Bench as of July 2022	<b>20</b>
<b>Figure 3:</b> Women Judges' Perceptions of JSC Interviews	<b>27</b>
<b>Figure 4:</b> The Impact of Gender-Neutral Policies on Women	<b>28</b>
<b>Figure 5:</b> Perceptions of Promotion Policies	<b>31</b>

# Executive Summary

---

This study provides a broad overview of women's representation in leadership roles in the Kenyan bench. While there is a focus on the representation of women on the bench in general, this study serves as a foundation to understand better the dynamics of gender inequality and the obstacles that impact the retention and advancement of women to leadership positions in the Kenyan bench.

The legal system plays a unique role in addressing gender-based discrimination. Therefore, women must be well-represented in the legal sector. Based on their unique perspectives, women's participation and leadership in the justice system can play a valuable role in achieving the United Nations Sustainable Development Goals (SDGs), specifically goal number five on gender equality. This goal can be achieved by ensuring women's specific interests and priorities are represented in decision-making processes.

The mere presence of women in a legal decision-making role can counteract both actual and perceptions of gender bias. For this reason, it is critical to document the existing quantitative and qualitative data that identifies women's representation in the legal profession in general and analyze it to assess the points of attrition in the pipeline, barriers to retention, facilitators of promotion, and progress and trends over time. This report adds to the thin literature on women's leadership in the legal sector across the bar, the bench, and the legal academy – in four priority countries, of which Kenya is one.

The theoretical framework for this report is based on intersectionality, which explains the nature of the multiple social categories, identities, and contexts that influence women's ascent to leadership in Kenya's judiciary. Data for this report were collected using quantitative and qualitative methods. Data were drawn from the following sources: the human resources department of the Kenyan judiciary, in-depth interviews, surveys, and focus groups with 45 members of the judiciary across various courts and rankings. Other sources include female and male advocates, the leadership of the Federation of Women Lawyers in Kenya (FIDA-Kenya), and the Kenya National Commission on Gender and Equality (NGEC). Participants were drawn from the Nairobi and Mombasa counties. This diverse group of participants was selected to ensure that the information gathered had a fair balance of insider and outsider perspectives.








By combining the rich qualitative responses from interviews with the quantitative data, the report provides a comprehensive overview of women's underrepresentation in leadership positions in the Kenyan Bar. The findings from this study highlight the impact of intersectional challenges and key barriers to women's rise to leadership. These challenges affect the entire pipeline, leading to low retention in the profession and high attrition from the leadership pipeline.

### The major challenges and barriers identified include;

	Non-transparent aspects of the recruitment and appointment processes
	Gender roles and stereotypes that operate against women
	The impact of culture and religion
	Work-family conflicts
	Covert discrimination against women
	Sexual harassment
	Lack of support networks
	Women's self-imposed barriers.

The COVID-19 pandemic also posed a significant challenge for some women's judicial work, especially those who were the primary caregivers at home and were locked down with their families while working from home. Conversely, the pandemic also brought positive changes, pushing judges to embrace technology in their justice delivery. Using action-oriented and solution-driven approaches, the study draws on suggestions from the participants and the research analysis to provide robust suggestions and recommendations on interventions that can lead to positive outcomes for women.

### The facilitators of women's promotion to leadership and recommendations for supporting women in leadership include:

	Elimination of institutional and structural discrimination and harassment
	Stricter enforcement of the constitutional and legal instruments on gender equality
	Greater institutional will and commitment to promoting substantive gender equality
	Adopting intersectional approaches to addressing gender stereotypes
	Targeted skills development and training on gender sensitivity and unconscious bias sensitization and awareness creation
	Reviewing employment and promotion policies to make them gender sensitive; and
	Training all judges to be gender sensitive.

Despite the challenges and barriers, women in Kenya's judiciary are forging ahead. The general trends and patterns show that more women are being represented on the bench and, more essentially, its leadership. The increased symbolic representation appears to correlate with an increased substantive representation of gender-related issues in the court's jurisprudence. However, feminist and gender consciousness are still not institutionalized in the judiciary.

The findings from this study further indicate the need to use multi-pronged approaches to address the intersectional challenges women face in the judiciary. These solutions will require key actors and actions from the government, legal professional organizations, civil society actors, women's groups, and male allies in the profession. The role of philanthropic organizations and governmental funding agencies is vital to pushing the UN SDG goal #5 forward to provide women equal and complete access to participating in decision-making.

The report's findings also indicate the need for further research and data collection on women in the judiciary. The findings further show that considering the judiciary's role in upending discriminatory practices, there is a need for more investment in relevant leadership-boosting initiatives and programs.



# 1 | INTRODUCTION



Women judges and magistrates' effective participation in the judiciary is integral to women's participation in public and political life and a valuable component of governance (Dawuni, 2021a). Women's participation in public and political life through the judiciary is a matter of fairness and equal opportunity and a human right inscribed in human rights instruments—a right that all states must respect and promote (IDLO, 2018). However, for a long time, women have had either limited or no access to judicial positions for several reasons that may be generalized as discrimination against women (Uzebu-Imarhiagbe, 2020). In Kenya, women's underrepresentation on the bench has been a historical reality since the colonial period and for most of the post-colonial period. In much of the pre-colonial and colonial periods, women could only participate minimally in formal social and political spheres, and representation on the bench was no exception. The Kenyan legal structure and the profession were inherited from Kenya's colonial masters, who alienated women from the system (IDLO, 2018).

Women's participation has important implications for efficient justice delivery because the judiciary is critical to consolidating the rule of law, fairly administering justice, and enforcing human rights. To discharge this mandate, the judiciary must enjoy legitimacy in the eyes of consumers of justice. The public understands the institution's legitimacy better if it upholds the principles of fairness and equality in its operations, functions, and composition. Dawuni (2021a) rightly argues that since the judiciary's decisions and the administration of justice diversely influence people's everyday lives, the judiciary's composition has implications for access to justice for all, especially women. Therefore, the membership of judiciaries must represent the societies they serve, and appointments to the bench must not be discriminatory on any grounds, including sex and gender.

Although women have been underrepresented in the judiciary for years, in many countries worldwide since the 1970s, there has been what Carrie Menkel-Meadow (1989) decades ago termed a “radical change.” In the United States, these radical changes have culminated in expanding university education to include women and simultaneously developing an increased role for universities in training legal professionals. The gradual elimination of gender-based barriers to women's participation in legal education and the legal profession consequently led to the “feminization of the judiciary” in the United States (Menkel-Meadow, 1989). In Kenya today, the marginalization of women has been challenged by a vibrant human rights ethos that mandates gender equality in all government systems, including the judiciary.

This human rights advocacy has resulted in significant numbers of women joining the bench and assuming high leadership positions.

While the increased participation of women in the judiciary is laudable, barriers persist. These barriers that women face include entrenched gender stereotypes and biases, challenges with balancing family and professional obligations, ineffective mentorship, inadequate support networks, and obscure appointment and promotion processes (Andrews, 2021; Bauer & Dawuni, 2016; Hunter, 2008; Masengu, 2021). Nevertheless, ensuring the responsiveness and effectiveness of judiciaries has never been more urgent. Today, the world is grappling with over 2.5 billion women and girls adversely impacted by discriminatory laws and having no legal protection. This section of society—and poorer women in particular—is affected most by personal status disputes such as divorce, alimony, and child support and by a lack of access to resources in places where legal services are less developed (UN Women, 2018). Structural impediments and lack of legitimacy for most judiciaries deter such women from accessing justice in the courts.

Commissioned by IAWL, this report is a scoping study and review of the existing quantitative and qualitative data that identifies women's representation and participation in leadership in the Kenyan judiciary. Specifically, the report examines women's pathways to leadership, points of attrition in the pipeline, barriers to retention, facilitators of promotion, and progress and trends over time.

In addition to this introduction, this report is structured in nine parts. Part two engages with existing literature on women judges, focusing on women judges in Africa. Part three outlines the theoretical framework around which the study is built. Part four lays out the methodology used for the study. Part five discusses the recruitment and promotion of women in the judiciary. Part six discusses the barriers, challenges and points of attrition. Part seven provides recommendations and facilitators of promotion. Part eight paints a general overview of the progress, patterns and trends, and part nine concludes the study.



# 2

## WOMEN IN THE KENYAN JUDICIARY: A REVIEW



The literature reviewed here addresses three themes:

1. Historical perspectives of the feminization of the bench
2. Why women's participation on the bench matters, and
3. The implications of women on the bench for achieving Sustainable Development

### 2.1. Feminization of the bench: a historical perspective

---

Globally, the entry of women into the judiciary as adjudicators of cases has been a long and arduous journey, closely linked to the broader issues of recognition, equality, and non-discrimination. In Africa, the causal variables associated with women's entry to the bench include colonialism's inimical education legacy on the continent, the diverse legal traditions, the judiciary's ranking structures, varied modes of judicial appointment and selection, and the judicial profession's esteem (Andrews, 2021; Dawuni, 2016a; Masengu, 2021). In Kenya, the entry of women into the judiciary was influenced by religious, traditional, and customary values and practices, as well as by the colonial and post-colonial realities of inequality (Aura-Odhiambo, 2018; IDLO, 2018; Kamau, 2013).

The appointment of women to serve as judges has also been attributed to the concerted workings of multiple structural and institutional factors. Dawuni (2021a) cited the prevailing gender stereotypes, norms, and roles in most African countries that often significantly prevent women's entry into and full and equal participation in the judiciary. Consequently, across Africa, women have had to negotiate the multiple and intersecting identities of gender, race, ethnicity, class, socio-cultural norms, religion, and judicial cultures to become judges (Dawuni, 2021a).

Kamau (2013) and Aura-Odhiambo (2018), writing on women in the judiciary in Kenya, noted that the colonial education system was traditionally designed for men and locked women out of the legal profession. This male-centric education system delayed the entry of women into the profession and subsequently into the judiciary. Another obstacle was the opaque appointment and promotion procedures coordinated by men who appointed and promoted their fellow men.



Consequently, women who joined the judiciary as magistrates stagnated in those positions for years without rising to the higher bench as judges. In a 2013 report on women in the judiciary by the International Commission of Jurists (ICJ), participants noted that in many jurisdictions, societal and religious perceptions of women's roles continued to exclude women from the judiciary or particular courts. Although women's entry to the judiciary was marked by exclusionary tendencies in most jurisdictions due to patriarchal factors, that has not been the case in all countries. For instance, Uzebu-Imarhiagbe (2020) stated that in Nigeria, the need for qualified lawyers, regardless of gender, to take up judicial positions influenced women's rise to the High Court. This need led to receptiveness and advancement for Nigerian women candidates. This progression of women judges seems also to be true of Ghana, where the numbers have been similar for women and men, not only in the legal profession but also on the bench (Dawuni, 2016b).

In recent years, the number of women gaining access to the bench and positions of power in Africa has grown. Scholars have attributed the increased representation of women in the judiciary to various factors, including democratization, transparent appointment, and promotion processes. These promotion processes included mechanisms such as judicial service commissions (JSCs)—constitutional guarantees for the principles of gender equality and non-discrimination in governance structures, including judiciaries (Aura-Odhiambo, 2018; Baraza, 2018; Bauer & Dawuni, 2016; Masengu, 2016). In some cases, the adoption of new, progressive constitutions and protective women's rights laws that result from evolving constitutional democracies in Africa has given women a chance to rise through the judiciary ranks (Bauer & Dawuni, 2016; Kamau, 2013).

Schultz and Shaw (2013) also highlight the significance of judicial appointment procedures in feminizing the bench. They note that women are more likely to rise where there are reasonable and transparent appointment criteria like competitive examinations. Nevertheless, discrimination against women persists in cases where judicial appointments are not based on professional achievements and qualifications but rather on cronyism. According to Dawuni (2016a, 2021a), Masengu (2021) and Kamau (2013), judicial appointment processes and the appointers impact the outcomes since countries use different approaches largely depending on their legal tradition.

Dawuni (2021a), however, notes that judicial service commissions (JSCs), now the preferred modes of appointment of judges, have had varying outcomes on the gender composition of benches. The Canadian JSC, for example, has been lauded for its role in the increasing number of women judges appointed. On the contrary, there are low numbers of women judges in the UK High Courts. It was only in 2009 that the first woman, Brenda Hale, was appointed to the highest court in the UK - the Supreme Court (Dawuni, 2016a). In Africa, there is evidence of diligent JSCs that have followed strict appointment rules, leading to increased chances of women's appointment to the higher courts in Nigeria and Zambia (Dawuni & Masengu, 2019).

While the critical role of JSCs is acknowledged, participants in the 2013 ICJ report cautioned that while it is welcoming to have diverse judicial recruitment and appointment systems which must always champion judicial independence and impartiality in their composition, criteria and processes. In addition, the participants warned that JSCs must prioritize diversity and gender equality and watch for inappropriate influences, especially political ones (ICJ, 2013).

## **2.2. Does women's participation on the bench matter?**

---

The difference women judges make on the bench has raised several questions: Are women judges' perspectives different, and are women judges more committed to an *ethic of care* espoused by Gilligan (1982)? Is there a feminist judicial methodology? According to Andrews (2021), these are hackneyed questions that form part of the wider conversation regarding the feminization of the legal profession and the increasing numbers of women in law schools and the legal profession. These questions are part of an ongoing discussion among scholars, legal practitioners, and feminist activists and have generated substantial research questions and analyses (Andrews, 2021, p. 190). Dawuni and Kang (2015, p. 46) argue that the debate is ignited by the importance and centrality of judicial decision-making due to its far-reaching implications for society, attracting much scholarly interest. The arguments are contentious; there is no universal consensus. Notwithstanding, common themes run through the multiple and controversial arguments as to why gender equality in the legal profession is critical, particularly in the judiciary. The arguments discussed below include the contributions of women judges to substantive justice and jurisprudence, the role of equal participation of men and women judges in democratic legitimacy, and women's contribution to the UN SDGs.

### **A. Women's contribution to jurisprudence**

---

Women's participation on the bench contributes to jurisprudence, especially in matters that most affect women litigants. Dawuni (2016a) argues that women's representation in the judiciary has given them significant leverage in confronting issues affecting marginalized women. According to her, women judges draw on their lived experiences to understand the intricate experiences of female victims who appear before them. Studies have revealed that most women judges agree on the added advantage that their gender presents to understanding women's issues better, although they emphasize that their gender does not affect their impartiality (Dawuni, 2016a; 2016b). Drawing on Gilligan's (1977; 1982) legal theory, cultural feminists have argued that women judges bring a unique perspective to judging and that women reason differently from men because women engage in an ethic of care and concern for the community (Ruiz, 2019).

Hunter (2008) weighs in on this argument, stating that women bring a gender perspective in decision-making that enhances women's rights. Hale and Hunter (2008) argue that women judges generally adopt a gender-sensitive approach to the law and judging. Gayoye (2021) observes that some women judges in Kenya have consistently taken into account the experiences of women in their judgments, interpreting the law in a manner that enhances women's access to justice. Dawuni (2016a; 2016b) notes that women judges make valuable contributions to the bench through jurisprudence, the socialization of male colleagues on gender-related matters, and challenges to entrenched male institutional structures. In this sense, gender diversity on the bench signals progress toward gender equity in representation.

Although many scholars point to the need to have women appointed to the bench for various reasons, several scholars caution against essentializing women judges. These scholars argue that women judges may be influenced by intersecting factors other than their gender in their decision-making (Baraza, 2021; Dawuni, 2021a; Gayoye, 2021; Masengu, 2021; Rukuba-Ngaiza, 2021). Justice Sandra Day O'Connor (1991) added that essentializing women is rooted in stereotypes that mirror the “Victorian myth of the ‘True Woman’” that long excluded women from the legal profession.

Dawuni (2021a) advocates for women and men to have equal access and opportunity to be judges and to adjudicate cases because when they do, the process of using gender as an ordering principle in judicial appointments becomes more understood, and the prospects for gender-responsive judging increase. Bauer and Ellet (2016), citing the case of Botswana, found that through the collective efforts of men and women judges, women's customary rights have been radically expanded. However, the burden of advancing women's rights should not be placed on only women judges; it should be the responsibility of all judges – women and men. Baraza (2021) observes that the presence of a female judge may not necessarily guarantee a better outcome for women and that male judges in Kenya have, in some instances, made judgments that are favorable to women, whereas women judges in similar cases have not. She encourages the empowerment of both male and female judges through training in interpreting human rights and gender-sensitive judging (Baraza, 2021).

According to Dawuni and Masengu (2019), whether women are appointed to the bench, both men and women can positively impact decision-making. Gayoye (2021) calls for training both men and women in human rights and feminist approaches to judging because this can result in judges of either sex delivering judgments sensitive to women's needs. Supporting this view, Rukuba-Ngaiza (2021) added that a key strategy for sensitizing the bench on gender issues entails intentionality in adhering to gender-focused judicial training to deconstruct inequitable gender norms through lawmaking. Schultz (2014) stated that regardless of the number of women represented in the judiciary, it is vital to train women and men to be gender sensitive to offer gender-responsive justice and lay the foundations for eliminating discrimination.

## **B. Women on the bench and the legitimacy question**

---

The legitimacy argument for diversity in the courts has become increasingly important as the role of the courts changes over time, bringing into focus the crucial role of judges. Masengu (2021) observes that while judges were previously limited (mostly to criminal, civil, and labor law adjudication), the role of judges has expanded since the 1990s. Masengu further states that today's judges adjudicate core human rights cases, public policy questions, and political controversies involving questions of mega politics that define the boundaries of the collective or cut through the heart of entire nations (Masengu, 2021, p. 210). The diversity of the court is one of the many factors that can determine the legitimacy of the courts and the public's confidence in their ability to address controversies.

Significantly, gender-diverse courts are more likely to make better decisions because they incorporate the perspectives of different judges from different backgrounds (Masengu, 2021, p. 210).

A related argument for diversity is the equality argument, which states that there should be equal opportunities for those who apply the law. This diversity is absent when one group (men) dominates the adjudication of law (Masengu, 2021). Gender diversity enhances the judiciary's legitimacy and improves public trust in the courts. According to Masengu (2021), citizens are more likely to have a favorable experience with the justice system if they believe that the court officers represent them. The duty of judges to interpret and defend constitutional values is symbolically and substantively powerful. In adjudication, women judges' presence indicates an equal opportunity for women not just as subjects of the law but as actors in the critical task of breathing life into constitutional values.

Mlambo and Kapingura (2019) add that the full and equal participation of both men and women in political and public decision-making reflects society's gender composition and potentially legitimizes the political process. This is so because full and equal participation of both genders makes decision-makers equally responsive and may enhance the legitimacy of political processes by making them more responsive to all persons in society equally. Hence, for a judiciary to appreciate and respond appropriately to a diverse society's needs, it must be diverse. Justice must not only be done but must also be seen to be done. A judiciary not reflective of its society is justice not being seen to be done, and its processes and decisions will lack legitimacy. Consequently, to deliver justice, the judiciary's composition must mirror a reasonable cross-section of the society it is situated (Mlambo & Kapingura, 2019).

The legitimacy question has also been advanced by feminist theorists worldwide, who have maintained that the justice systems around the world reflect the power imbalances inherent in society and, in so doing, underpin male dominance over women. Masabo (2021), Aura-Odhiambo (2018), and Baraza (2008) argue that underlying the gender equality discourse on the bench is the proposition that the law adjudicated in these courts is not necessarily a neutral arbiter of disputes or a positive instrument of social change, as it has been deemed to be. Instead, it has historically been a powerful conduit for transmitting and reproducing the dominant ideology, male power structures, and gender inequality. Therefore, the absence of women on the bench has been the main contributor to the courts' transmission of the male ideology.

Ruiz (2019), in a document written for the UN, supports diversity on the bench, especially today when there is a lot of fear and uncertainty worldwide due to violent conflicts, economic displacement, and climate change. She argues that in these circumstances, the judiciary will lose public trust if it is seen to be out of touch with societal trends and changes, especially concerning vulnerable groups. She further argues that should judiciaries perpetuate discrimination, the public will lose confidence in it as citizens will find it hard to accept the judiciary as the custodian of law and human rights.

### **C. Women in leadership and the sustainable development goals**

---

Women's participation on the bench has also been supported for utilitarian reasons. Viewing women's participation on the bench from a utilitarian perspective, Hunter (2008) and Cowan (2006) argue that excluding women is equivalent to setting aside half of society's intellectual power and energy.

Additionally, women judges' presence in higher courts primarily serves as an encouragement and remote mentorship for other women seeking judicial appointments or promotions. This representation creates a virtuous circle that enhances gender balance in the judiciary. Cowan (2006) specifically cites the example of South Africa, where women judges have made a difference in decision-making in the judiciary by inspiring other women to aim for judicial appointments. Women judges' presence has also made the courtroom congenial for women litigants. Through their volunteer activities in the community, women judges have also contributed to facilitating access to justice.

The relationship between gender equality and development arises from the basic principle that all members of the global community should have equitable and equal opportunities to contribute to development. Gender equality as an SDG to be achieved by states by 2030 was triggered by widespread violence and discrimination against women (Odeyinde, 2021). Importantly, Goal 16 is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels. In order to realize the broader objectives, governments are encouraged to promote the rule of law, ensure equal access to justice for all, and ensure responsive, inclusive, participatory, and representative decision-making at all levels.

The judiciary has a role to play in realizing the SDGs. Still, such equality must begin with the composition of the judiciary and the gender diversity of those who make decisions within the judiciary (Mutua, 2019). Alapini-Gansou (2021) noted that the experiences women have brought to international judging could reflect other national courts. Gender diversity on the bench directly impacts justice outcomes and contributes to access to justice and the rule of law. Dawuni and Kuenyehia (2016) assert that judges significantly impact the development and content of international law, that judiciary's identity and diversity influence trial outcomes and that the different experiences and approaches judges bring to the bench impact the legal content of their decisions.

Although a gender-balanced judiciary is a blanket solution, it offers some benefits, including increased judicial legitimacy, representation, public trust and confidence, access to justice, fairness, good governance, equality, the rule of law and sustainable development (Dawuni, 2017). Citing the example of the African Commission on Human and Peoples' Rights, Alapini-Gansou (2021), rooted for gender diversity in decision-making, notes that men's views, experiences, and ideas have existed for decades and dominated the legal-judicial work and led to systems designed by and for men. The participation of women in the decision-making processes of human rights systems provides an opportunity for fresh perspectives and innovative problem-solving methods. Without such inputs, it would be impossible to establish human rights for all.

The involvement of female judges provides avenues for women victims of sexual crimes and other serious human rights violations to have their voices heard (Alapini-Gansou, 2021). Escobar-Lemmon et al. (2020) argue that women's representation on the bench establishes women's agency in reviewing and interpreting laws that affect them and society daily.

In addition to women's equal opportunity in interpreting laws and participating in government, women's representation on the bench benefits judicial and societal outcomes. For instance, gender equality on the bench can enhance representation, public confidence in the judiciary, and access to judicial processes, especially by vulnerable sections of society, including women. In a study on gender equality as a prerequisite for sustainable development, Odeyinde (2021) identified the need to view gender equality in governance as a pathway to sustainable development. Women's access to justice is critical to this endeavor because when justice institutions are gender-responsive, they support women to assert and claim their rights. Sustainable development relies on promoting gender equality and eliminating gender-based discrimination against women. Women form part of the building blocks; without them, society is not balanced, and development cannot be fully achieved. Therefore, pushing the gender equality agenda in leadership is essential for achieving development.





# 3 | THEORETICAL FRAMEWORK



This study adopts intersectionality as its theoretical framework. Intersectionality, as conceived initially, sought to explain the complexities of oppression in legal spaces from a race and gender perspective for African American women (Crenshaw, 1989; 1991). However, it has now assumed a global application and expanded beyond race and gender to include other identities such as class, ethnicity, religion, sexual orientation, and disability.

Women are not a homogeneous group but are characterized by other identities such as disability, sexual orientation, and social and economic statuses, which interact to produce their individual or group experiences. Exploring the role of intersectionality in explaining the rights of sexual minorities in Nigeria, Obani (2021) observed that the relationships between inequality and social identities, such as gender and sexual orientation, are interactive rather than additive. Oyewùmí (2002) argued that the staple identities of race, class and gender popularized in most Western literature might vary with the social categories in Africa. Hence, more radical theories that are more suitable to the local context, such as intersectionality, must be adopted. In drawing an African-specific understanding of intersectionality, Mohammed (2022) emphasizes and challenges scholars to examine the complexities and multiplicities of oppression, their relationship with systems, and their impact on individuals' lived experiences.

A broad human rights analysis that applies to all women is merely a preliminary stage in comprehending the distinct experiences that arise from their various identities. This analysis fails to capture the combined impacts of the interplay between inequality and social identity. Negative attitudes toward women often converge with other social identities, including age and economic status, to occasion human rights violations (Obani, 2021, p. 59; Mohammed, 2022).

According to May (2015), intersectionality:

asks that we imagine future possibilities and reconsider omissions, past and present, from a “matrix” mindset: it also helps to expose historical silences and to understand oppression and privilege as lived experiences and processes situated in and shaped by material, political, and social conditions (p.6).

Intersectionality theory, therefore, expands our understanding of the location of multiple identities and how they intersect while opening up possibilities for exploring the links between the identities and individual or group experiences (Crenshaw, 1991; May, 2015; Dawuni, 2021a; Obani, 2021).

Placing this report within the intersectionality framework allows for an expansive view of the factors that affect women's pathways to leadership on the Kenyan bench. To avoid an essentialist generalization of women's experiences, we adopt a personal narrative technique that centers the experiences of each woman interviewed. The study then ties all the themes together to create a common narrative that highlights the inter-group dynamics and experiences of intersectional identity factors at the individual/personal level. It also shows how they intertwine with the institutional and structural level factors to explain women's experiences on the Kenyan bench. The findings are presented in part five.





# 4 | METHODOLOGY



The study used a mixed-methods approach, integrating an interdisciplinary review of existing scholarship on women in the judiciary and the scant research on women in law in Kenya. The study also collected quantitative data from the human resources department of the judiciary to map the representation of women in the judiciary and magistracy. To further isolate representation in leadership positions, the quantitative data were disaggregated according to the different courts and the representation of women vis-à-vis men. Additionally, qualitative data were gathered through in-depth interviews, surveys, and focus groups with 45 members of the judiciary drawn from different courts and at different ranks. The demographics of the judges and magistrates ranged from those who had been on the bench for as little as five years to those who had served for over 40 years. Other categories of interviewees included female and male advocates, the leadership of the Federation of Women Lawyers in Kenya (FIDA-Kenya), and the leadership of the Kenya National Commission on Gender and Equality (NGEC). This range allowed for an analysis of the changing patterns and trends within the judiciary. The aim was to gather various perspectives on women's representation in leadership and its impact on access to justice.

The interviews were conducted in Nairobi and Mombasa counties (see Figure 1). The choice of the target zones was informed by, among other factors, the high number of courts in the two counties and the high concentration of judges and magistrates, as well as court users and lawyers who interact with judges and magistrates on a range of legal matters covered by the interview instrument. Both locations, being the largest and second largest cities in Kenya, provided access to all the different courts in Kenya: the Supreme Court, Court of Appeal, High Courts, specialized courts, and magistrate's courts.



**Figure 1 | Location of research sites – Nairobi and Mombasa**



Source: Google maps.

Several factors affected the small sample size in this report. Limited time and resources for conducting the study constrained the researchers' ability to recruit a larger sample size. The voluntary nature of the research also posed a challenge in gathering sufficient respondents, as participants had no obligation to participate. Due to the COVID-19 health restrictions for working during the field research, most interviews were conducted virtually by telephone or using Zoom. Furthermore, access to the study was limited due to the lack of consistent internet access, a common issue in many African countries such as Kenya. Some respondents provided written responses by filling out and returning the questionnaires. One focus group discussion was held in Nairobi. Table 1 shows the sample areas and numbers by sex and disability status. Table 2 shows the mode of data collection.

**Table 1 | Sample sizes by area, sex, and disability status**

Location of Study	Male	Female	PWDs (Female)
Nairobi	5	30	2
Mombasa	3	4	0
Total	8	34	2

---

**Table 2 | Mode of data collection**

Country	Virtual	Telephone	Focus Group Discussions (FDGs)	Online
Nairobi	5	2	30	2
Mombasa	3	3	4	0

---

All ethical requirements were adhered to. Respondents were informed that the data would be used to document the existing quantitative and qualitative data that identifies women's representation on the bench and assess the barriers women judges and magistrates face that may impact their progress, promotion, and retention in the judiciary. All respondents were guaranteed confidentiality and anonymity.

A desktop review was undertaken before the primary data was collected. The information from the review of existing scholarship was used to triangulate the primary data collected and trace the historical trajectory of women's participation as the basis of analysis to inform conclusions on their status and to make recommendations for requisite interventions.





# FINDINGS



# 5

## RECRUITMENT, RETENTION, AND PROMOTION OF WOMEN JUDGES



In 2010, the enactment of the new Kenyan Constitution broadened the country's opportunity structures and created new openings for more women to join the bench. Prior to 2010, Kenya's judiciary was a closed institution dominated by men, with few women judges (NGEC, 2019). Women's underrepresentation was attributable to several factors. Firstly, traditional and patriarchal power structures ensured that power was unequally distributed, with men traditionally holding authority over women. The power imbalance was primarily manifested in governance arrangements, through which discriminatory formal laws and informal normative systems perpetuated gender inequality (Baraza, 2018).

Secondly, women in Kenya joined the legal profession late due to the Eurocentric colonial education policy, which prepared girls for jobs such as teaching and nursing and not for the legal profession, which was considered the preserve of men (IDLO, 2018). Thirdly, women were subjected to an obscure and undemocratic practice for selecting judges characterized by political biases. Who would become a judge was a political decision, and thus women needed to be well-connected or have a well-connected spouse to join the bench (NGEC, 2019). Even after gaining entry to the bench, women could not easily be promoted due to obscure and undemocratic promotion policies.

Promotions depended on who occupied the Office of the Registrar, a role predominantly filled by men with misogynistic attitudes and biases against women. Furthermore, the victimization of women through unfair transfer policies was common. This form of victimization discouraged many women from serving as judges or magistrates as they feared having their chances of promotion compromised once they joined the bench (NGEC, 2019). The colonial, social and political structure alienated women from the legal system. Kenya became a colony of Britain in 1897, and its governance and legal structure took the shape of what prevailed in Britain then. During the colonial and post-colonial periods, the legal profession was male-dominated. Those who already understood the English legal system needed to manage these legal institutions. Thus, professional lawyers were imported from the United Kingdom to be judges and magistrates in the newly created court structures (Cotran, 1983, p. 46). There were few law practitioners of African origin, and those few had all received their legal education outside the country, in either Britain or India. Among the pioneer African lawyers, none were women. The colonial policy then was to limit the training of Africans to become lawyers due to indigenous lawyers' role in liberation movements in other colonies (Ghai & Ghai, 2014).

The establishment of law faculties and law schools to train lawyers began at the University of Dar-es-Salam, Republic of Tanzania, another British colony within East Africa, on the recommendation of the Denning Committee. The Denning Committee Reports laid the basis for establishing and developing legal education and training lawyers in Africa in the 1960s. Despite the reforms that allowed women entry into the legal profession, there was little gender balance until the 1990s. The delay in achieving gender balance was due, in part, to the intersection of cultural and social norms and gendered expectations of girls about attending basic school or moving into professions considered to be reserved for men (Ghai & Ghai, 2014; IDLO, 2018).

The first female lawyers in Kenya graduated from the University of Dar-es-Salam but were few. These female lawyers included Effie Owuor, Sarah Oneyo, Joyce Aluoch, and Roselyn Nambuye. The number of females joining the legal profession increased in 1970 when the University of Nairobi admitted law students (Ghai & McAuslan, 1970). The first woman resident magistrate, Effie Owuor, was appointed in 1971. She was later appointed to the Court of Appeal in 2003. Effie Owuor was joined by Joyce Aluoch, appointed District Magistrate in 1974. The two remained the only magistrates for a long time and were joined years later by Roselyn Nambuye and Sarah Oneyo. Later, Effie Owuor and Joyce Aluoch were elevated to the High Court, where they served for ten years each before being promoted to the Court of Appeal.

When interviewed about women's experiences on the bench at that time, a retired woman judge, who was one of the pioneers on the bench, stated that the recruitment and promotion processes were not transparent but were carried out secretly between the President of the Republic and the male leadership of the judiciary. She provided an example of the first two female judges on the bench who were passed over for promotions by their male colleagues and even some juniors, leading to their stagnation in their positions. The promotion criteria were unknown, and it seemed normal to treat women that way. She also stated that women judges earned less than their male counterparts for the same work.

The respondent said:

**No explanation was ever given as the whole process of appointment, and promotion was shrouded in secrecy. All people could hear were lunchtime announcements on radio or TV that so and so has been appointed a judge or Court of Appeal judge by the president.**

The 1980s saw more women appointed as magistrates because their numbers in the university had increased. At an individual level, women were drawn to join the judiciary because it was seen as employment that guaranteed a stable source of income, stability, and progression, as opposed to the unpredictable tough legal terrain in private practice. From an institutional perspective, the judiciary discovered that while male magistrates stayed only a short time before venturing into the more lucrative private practice, women judges and magistrates stayed on and worked harder, showing exemplary devotion to their work.

However, women's numbers were good at the magistracy level but remained low in the High Court, Court of Appeal, and Supreme Court, as shown in Table 3.

**Table 3 | Selected Cadres in the Judiciary, 2017–2018**

Position	Males	%	Females	%	Total
Judges (Supreme Court)	5	71.4 %	2	28.6 %	7
Judges (Court of Appeal)	13	65.0 %	7	35.0 %	20
Judges (High Court & equivalent)	97	62.6 %	63	37.4 %	160
Presiding Judges	29	65.9 %	15	34.1 %	44
Chief Magistrates	27	58.7 %	19	41.3 %	46

Source: Judiciary Gender Audit 2018 Report

Between 2018 and 2019, women were concentrated at the magistracy level (41.3%) and High Court level (44.3%) while their numbers remained low in the Court of Appeal (33.3%), and Supreme Court (28.6%). These numbers are reflected in Table 4.

**Table 4 | Selected cadres in the judiciary 2018 - 2019**

Position	Males	%	Females	%	Total
Judges (Supreme Court)	5	71.4 %	2	28.6 %	7
Judges (Court of Appeal)	14	66.7 %	7	33.3 %	21
Presiding Judges	29	65.9 %	15	34.1 %	44
Judges (High Court & equivalent)	73	55.7 %	58	44.3 %	131
Chief Magistrates	27	58.7 %	19	41.3 %	46

Source: Judiciary Gender Audit Report, 2019

The study also revealed that the number of women judges rose dramatically compared to male judges over the years preceding 2022. As of July 2022, the percentage of women on the Supreme Court stood at 42.8%, the Court of Appeal at 48.0%, the High Court at 44.2%, Environment and Land Court at 44.4%, while at the Employment and Labour Court, at 55.6% as demonstrated in Table 5.



**Table 5 | Number of female judges vis-à-vis male judges as of July 2022**

Court	Male	Female	Percentage Female
Supreme Court	4	3	42.8
Court of Appeal	13	12	48.0
High Court	67	53	44.2
Environment and Land Court	10	8	44.4
Employment and Labor Court	4	5	55.6
Total	98	81	45.3

Source: Judiciary of Kenya Human Resource Department

The number of women at the magistracy leadership as of July 2022 remained lower than men, with chief magistrates at 42.8% and senior principal magistrates at 34.7%. However, 51.1% of principal magistrates were women and 68% of resident magistrates. It is notable that in that period, there were no female Kadhis, yet Kadhi courts determined issues that concerned women the most. In general, women occupied 50.6% of the magistracy, as shown in Table 6.

**Table 6 | Number of female magistrates vis-à-vis male magistrates as of July 2022**

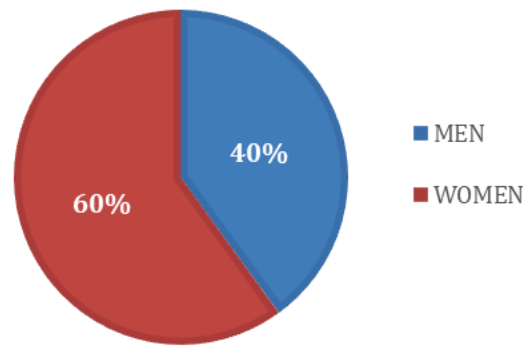
Role	Male	Female	Percentage Female
Chief Magistrate	40	30	42.8 %
Senior Principal Magistrate	47	25	34.7 %
Principal Magistrate	68	71	51.1 %
Resident Magistrate	48	102	68.0 %
Chief Kadhi	1	0	0.0 %
Senior Principal Kadhi	1	0	0.0 %
Resident Kadhi	19	1	5.3 %
Total	224	229	50.6 %

Source: Judiciary of Kenya Human Resource Department

As noted earlier, the situation for women in the judiciary has changed drastically since 2010. With the historic appointment of Nancy Baraza as the first Deputy Chief Justice (DCJ) and Vice President of the Supreme Court in 2011, many more women have aspired to and now occupy leadership positions. For the first time in the country's history, the positions of Chief Justice and Deputy Chief Justice are occupied by women. The head of the High Court, Lydia Achode, is a woman, as is the head of the Employment and Labor Relations Court, Maurine Onyango. Women in leadership positions in the judiciary now stand at an impressive 60% compared to 40% of men, as shown in Figure 2.



**Figure 2 | Percentage of women in leadership positions on the bench as of July 2022**



Source: Judiciary Human Resource Department

### **5.1. Promoters and facilitators of women's progress on the bench**

The current representation of women in the Kenyan judiciary is a positive and exemplary development worth emulating by other countries. This section examines some variables that explain the recent success in women's representation in the Kenyan judiciary.

#### **A. Constitutional frameworks advancing women's right to public office**

Most of the respondents in the study attributed the steady increase of women on the bench to the 2010 Constitution, individual women's courage and ambition, and the reformed Judicial Service Commission (JSC). The Kenyan Constitution guarantees gender equality in all spheres of life, including governance (Baraza, 2018). The historical subjugation of women and the generally inferior position that society places women and girls in explain the Constitution's emphasis on addressing women's rights. Its text is specifically geared toward transforming social relations within and beyond the family context and wherever rights may be trampled upon (Kameri-Mbote, 2018).

The promulgation of the new Constitution in 2010 gave women opportunities that had not been available. It created a constitutionally backed mandate for more women in public appointments through the new two-thirds gender quota. This quota provided opportunities for more female judicial officers to join the judiciary and rise to higher ranks beyond the magistracy, where they were mostly concentrated. The quota system created an institutional mechanism facilitating women's appointments to the higher courts—the Supreme Court, the Court of Appeal and the High Court (Kamau, 2013).



When asked about the impact of the constitutional mandate on the increase in the number of women judges, one respondent remarked:

**I am quite satisfied with the current composition of women in the judiciary in the sense that there is near parity in all the courts. This is a positive development because it [means] well for balanced decision-making, which has been lacking in the past. However, the female proportion is still not as high in the Court of Appeal and the Supreme Court. The Kadhi's courts, for example, remain uncompliant.**

Another respondent connected the number of women on the bench to broader issues such as access to justice for vulnerable groups:

I am happy that women are on the bench in more numbers than before. The judiciary has done well with the implementation of the gender equality provisions of the Constitution when compared to other organs such as the legislature and the executive. But we should be concerned about the quantitative part of it. Qualitatively, we have done well. I would like to see what those numbers will translate into regarding access to justice and the quality of justice delivered. We would like to see the impact that they bring. Shall we see the end of patriarchal outcomes like has been the case in the past? The delivery of justice has to be improved for girls, women, and children. The laws and the Constitution have to be interpreted differently. I expect women to interpret the law according to their lived experiences as women. This will improve the quality of justice because women tend to go for what is fair and just in a very practical manner.

Article 27 of the Constitution's Bill of Rights outlines Kenya's commitment to equality, including prohibiting discrimination against anyone in all spheres of life. It guides the State to implement measures such as affirmative action to ensure diversity and representation of marginalized groups and apply national values of equality, equity, gender diversity, and inclusiveness contained in Article 10 of the Constitution (NGEC, 2019, p. 8). As one of the three arms of government, the judiciary is obligated to ensure gender equality in the various cadres of the bench. The Constitution has also incorporated international human rights principles such as gender equality in Articles 2(5) and (6), which have been invoked to advance gender equality in the judiciary.

## B. Changes in the selection criteria

Apart from the impact of the equality and non-discrimination provisions of the law, all respondents attributed the current gender parity on the bench to the rejuvenated and reformed Judicial Service Commission (JSC) as the appointing authority for judges and magistrates. Previously, the recruitment and promotion processes were questionable, unaccountable, and male-centric as the executive controlled the JSC. Most of the members of the JSC were patriarchal men who recruited and promoted men to the bench, oblivious to the existence of women. Scholars such as Dawuni and Masengu (2019) have noted that judicial appointing bodies and selection methods are key determinants of the outcomes of judicial appointments for women. Their comparative study on JSCs in Nigeria and Zambia found that judicial appointment bodies can promote gender diversity, depending on whether they adhere to established rules and guidelines and carefully evaluate stereotypical perceptions of women. They also noted that this promotion of gender diversity could only happen if the JSC is empowered to promote transparency, accountability, and gender diversity principles in the selection process.

The JSC in Kenya has historically not been sensitive to women nominees during the vetting processes. One respondent captured the previous toxicity in the appointment processes:

**I have been in the judiciary for the last 38 years. The culture of the judiciary has changed a lot. When I left the university, I wanted to join the judiciary as a magistrate. The principal of law recommended me for it, and he thought I was one of the best students to take up that job. I went for the interview before an all-male panel, but they only took men. The only reason was that I was a woman with a toddler. At the time, there were few women—except Owour, Justice Aluoch and later on, Justice Nambuye joined the bench. In 1984, Justice Mary Ang'awa was appointed a magistrate, the only woman among men. I attributed their failure to appoint women to the bad and negative attitude towards women. After three years of rejection, I applied again, having worked as a lands legal officer and advocate. With this additional experience, they appointed me a magistrate, but I had to acquire extra qualifications to merit it.**

The narrative above shows that despite being one of the ostensibly qualified graduates in her class, this respondent did not stand a chance before an all-male panel. This experience of acquiring “additional experience” before being appointed as a magistrate corroborates existing research that shows that women have to work twice as hard if not more than their male colleagues, to be considered competent for positions.

The Constitution of Kenya envisions a gender-sensitive as well as a gender-diverse JSC. A key provision in the Constitution is Article 171, which is explicit on women's representation in the JSC. For example, of the High Court and Magistrates' Courts representatives in the JSC, one must be a woman. Article 172 (2)(b) of the Constitution, read together with Section 3 of the Judicial Service Act (JSA), the JSC is to promote gender equality when recommending candidates for appointment.

Article 232 of the Constitution provides for adequate and equal opportunities for men and women in their appointment, training, and advancement at all levels of public service. All justice actors within the formal justice system, which fall under public service, are expected to infuse life into this provision at the institutional level. While that article refers explicitly to public service, Article 10 of the Constitution enjoins both public servants and everyone else to observe and embrace national values and principles of governance, including equity, equality, and non-discrimination, among others. Thus, men and women should be accorded equal employment opportunities in all the justice sectors without distinction. Similarly, those hiring are expected to jealously guard this principle and ensure gender balance in recruitment and promotion, including appointments at all levels. The constitutional provisions on equality and non-discrimination are crystal clear.

Therefore, apart from the progressive Constitution and international human rights norms, it is the reformed JSC that has facilitated the increase in the number of women on the bench (Kamau, 2013; IDLO, 2018), though it also comes with some challenges and barriers, which are discussed later in this report.

### **C. Civil society and women's rights organizations**

---

There is a strong link between the role of civil society organizations and women's representation on the bench in the emerging scholarship on women and the judiciary in Africa, which holds in the Kenyan context (Bauer & Ellet, 2016; Dawuni, 2016a; Kamatali, 2016; Masengu, 2016). In Kenya, other institutions and individuals have contributed to this positive development, including women's advocacy groups such as the Federation of Women Lawyers, Kenya (FIDA-Kenya) and *Maendeleo ya Wanawake* (Advancement of Women), a pioneering women's empowerment organization in Kenya. These organizations have spearheaded the gender discourse that has resulted in the increased appointment of women to the bench. They have spoken out against the appointment of fewer women, which has sometimes been contrary to the Constitution. For instance, in *Federation of Women Lawyers in Kenya (FIDA-K) & 5 others v. Attorney General & another* (2011) eKLR, FIDA sought the Supreme Court's Advisory Opinion in a petition in which it challenged the gender composition of the Supreme Court. FIDA argued that the JSC violated the not more than two-thirds gender constitutional principle by appointing only two women among the seven judges on the Supreme Court.

International Development Law Organization (IDLO) Kenya, in conjunction with the International Association of Women Judges (IAWJ) Kenya chapter and the National Gender and Equality Commission (NGEC), have been cited by the respondents as having been highly devoted to promoting and supporting women judges.

Individual FIDA-Kenya members have also encouraged qualified women to apply for higher positions, which has been valuable because most women fear the interviews and are reluctant to face the tough interviews.

One respondent highlighted the impact of support from women's groups:

**Another factor contributing to the increased number of women on the bench is institutional support from organizations such as the FIDA-Kenya Chapter, which supports women who have been shortlisted for interviews. FIDA-Kenya prepares them for the interview, and as a result, the confidence of women who attend such interviews is increased. FIDA-Kenya members also encourage qualified women to apply and give them moral support.**

Nancy Baraza, the first Deputy Chief Justice of the Republic of Kenya, and Martha Karua, former Minister for Justice and Constitutional Affairs, were cited as seniors who have been supportive. They, for example, encouraged and supported the Chief Justice (CJ), Martha Koome, to apply for the position. When Martha Koome was set to appear before the Justice and Legal Affairs Committee, many women leaders, including the first chair of FIDA, Lillian Mwaura, sent affidavits and petitions to the Parliamentary Legal Affairs Committee to support her nomination and even accompanied her during the interview.

#### **D. Changing stereotypes about competence and merit**

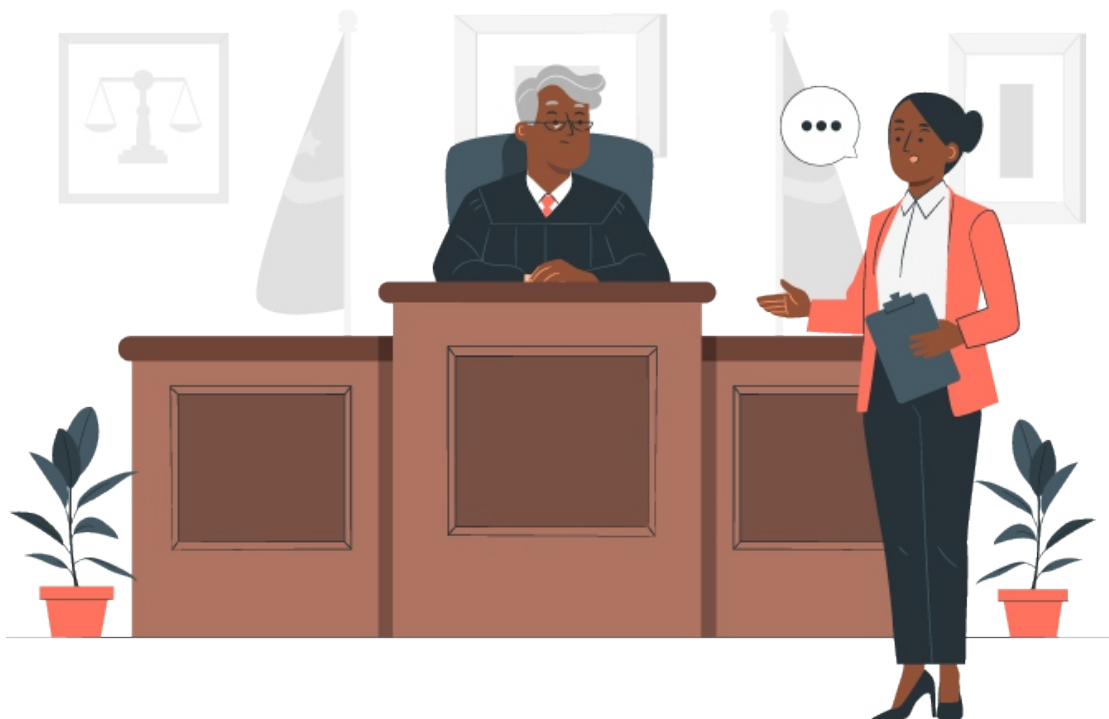
A global comparative analysis of women in the legal profession shows a common thread that women have had to prove over and above that they are equally qualified for and merit the positions they occupy (Hunter, 2008; Malleson, 2006; Rackley, 2013; Schultz & Shaw, 2013). Emerging studies show that women across Africa have not been spared these negative stereotypes and perceptions of incompetence. The early careers of women on the bench across Africa show patterns of implicit gender biases in the appointment and promotion of women in countries such as Egypt (Hamad, 2016), Benin (Kang, 2016), and Nigeria (Ibrahim, 2016). However, these stereotypes varied, as captured by Uzebu-Imiriagbe (2020) on Nigeria, Dawuni (2016b) on Ghana, and Kamtali (2016) on Rwanda. In other countries, such as Zambia, women continue to battle against the negative perceptions of incompetence and the lack of merit for their judicial appointments (Masengu, 2021). However, the persistence of gender-based stereotypes against women's competence appears to be diminishing.

The combination of women proving their competence and the changing institutional equitable opportunities have created new perceptions, as presented by one respondent:

Many women are qualified for appointment to the bench and can equally compete with their male counterparts for such positions. Consequently, there has been an increased number of women on the bench due to their competence. Much emphasis has been given to women due to their important role in society. The underlying notion is that due to the values and virtues inherent in women, they can effectively discharge the judiciary's core role toward the dispensation of justice.

One respondent suggests that the changing perceptions of women's competence can be attributed to their output and role in justice delivery: "the judiciary as an institution has recognized the important role of women in the administration of justice and has consequently appointed more women on the bench through the Judicial Service Commission."

Lastly, one may attribute these changing attitudes to the role of women's advocacy groups in promoting awareness of women's contributions to the bench and their legal and ethical right to be equally represented and acknowledged for their work. A respondent observed, "women advocacy groups such as FIDA and Maendeleo ya Wanawake have also spearheaded the gender discourse whose result has been increased appointment of women in the bench".



# 6

## BARRIERS TO PROGRESS AND RETENTION AND REASONS FOR ATTRITION OF WOMEN JUDGES



Although the promulgation of the 2010 Constitution has seen a significant number of women join the bench as judges and hold several leadership positions, Kenya still faces challenges that have a direct impact on attrition, barriers to retention, promotion, and progress over time. Gender discrimination is fluid in nature, and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging (Nzomo, 2018). Although educated and able to compete for positions of power and influence with men, women jurists are still part of the larger society. They are caught up in the wider limitations that patriarchal societies consign women to.

Most respondents reported that stereotypes exist in the hiring, transfer, promotion, and firing policies and practices, with implications for attrition, lack of promotion, and stagnation in progress. Thus, although Kenya has achieved gender equality in numbers and eliminated formal discrimination, women still experience nuanced and covert forms of discrimination in their daily work. While symbolically important, the representation of women on the bench has not ameliorated the persistent workplace inequities they encounter. Women face unfair recruitment processes, stereotypes, conflicts in balancing professional and family responsibilities, and a lack of support networks compared to their male colleagues. These challenges are explored in detail, drawing from existing studies and responses from the judges and magistrates interviewed for this report.

### 6.1. The judicial service commission as a barrier

JSCs play important roles as gatekeepers of who gets appointed to the bench (Andrews, 2021; Dawuni and Masengu, 2019; Masengu, 2021). In Kenya, the role of the JSC in the selection of judges has become institutionalized with the use of public hearings during selection processes (Kamau, 2003). However, the de facto publicization of hearings has not eroded questions of what happens behind the scenes, including the political calculations on who gets appointed.



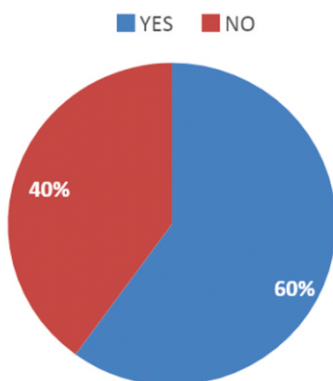
One respondent noted:

**“The recruitment process for judges is often ruthless and infringes on personal matters. This deters many women from advancing their careers, fearing humiliation and condemnation. The recruitment process needs to be dignifying and less intrusive to encourage more women to take leadership positions in the judicial sector.”**

The experiences of women judges appearing before the JSC mirror other studies that have questioned the intrusive nature and gender-insensitive questions posed to women during the public interview processes (Andrews, 2021).

**Figure 3 | Women judges' perceptions of JSC interviews**

Are JSC interviews hostile to women?



Source: IAWL survey, 2022

Figure 3 shows the number of respondents who believe that the JSC has a hostile and humiliating approach to interviewing women. The respondents suggested that perhaps it needs to engage the services of human resource experts to conduct the interviews. They argued that the JSC does not consider how people are affected differently by abrasive interview tactics. For instance, women have been subjected to questions such as why they are divorced or not married. While some may withstand the ridicule, humiliation, and invasive questions, others are devastated. A respondent, who was one of the first women to hold a senior position on the bench, reported that she felt so harassed by questions about her divorced status and other very personal issues that after she got the job, she had no appetite for it. Some just do not bother to apply for promotions for fear of humiliation, which may affect their families. A respondent from FIDA reported that the recruitment process for judges is often ruthless and infringes on personal matters, primarily for female applicants. This deters many women from advancing their careers for fear of public humiliation, ridicule, and condemnation.



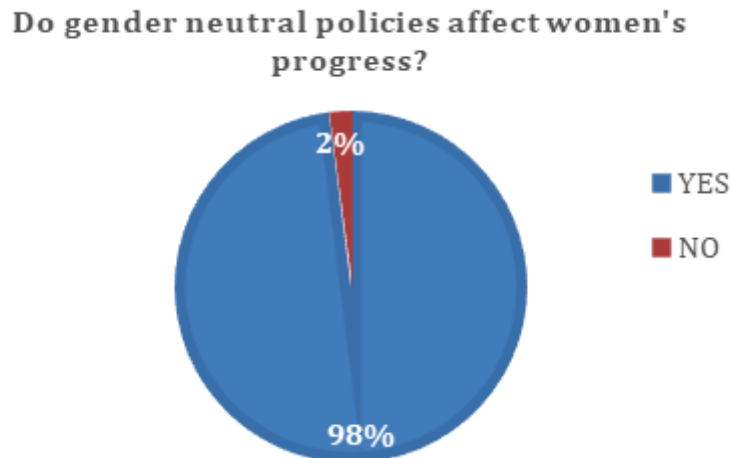
Another respondent, however, held a different view: “Women are given equal opportunities with men. They compete for positions when it comes to promotions. In fact, in the recent appointment for resident magistrates, the majority of those who were successful in the interviews were women.” While in this respondent's view, there were equal opportunities for both men and women, a note must be taken of the reference to “resident magistrate” positions. Given that these courts fall under the “lower courts” structure and candidates do not appear before the JSC for interviews, the stakes are lower. Therefore, women may stand a better chance of not being publicly humiliated in the selection process. These intersectional biases women face hinder their upward mobility and affect their relative standing and chances for promotion when they appear before the JSC.

## 6.2. Gender-neutral work policies and work-family balance

An overwhelming majority of the interview respondents agreed that stereotypes and patriarchal attitudes underpin gender-neutral policies such as policies on transfer and promotion (Figure 4).

The gender-neutral policies do not consider the unique and multiple roles female judges and magistrates play simultaneously. Women have to juggle the multiple and intersecting identities that cut across the private and public divide—they are professionals working publicly, wives, mothers and caregivers in the privacy of the home.

**Figure 4 | The impact of gender-neutral policies on women**



Source: IAWL survey, 2022

Two percent of the female respondents felt the policies were manageable, while the majority thought that the policies were problematic. The multiple roles that women play make it difficult for women to balance work and family roles. The judiciary's transfer policy requires all public servants to serve anywhere in the country, a policy crafted and implemented by men who have no idea what its blanket application means for women. During interviews, several female magistrates who were younger expressed their dissatisfaction, stating that they typically attain the position of magistracy during their prime years when they usually get married and start families.

As a result, they may face difficulties frequently relocating when such gender-neutral transfers are enforced. Their families are disrupted, affecting them negatively as their male counterparts remain stable and progressive.

On the other hand, judges are occasionally transferred to different stations around the country, and these transfers primarily affect women judges since they take the judges away from their families. Women judges could thus end up turning down such appointments to remain with their families.

A magistrate respondent highlighted the gender-based difficulty of transfers:

**I had just delivered my son by cesarean section when I received a letter of transfer to a new station far from home.. I called to plead with the authorities that they excuse me for another month to recover before I report to my new station. I was begrudgingly granted the month and had to report to the station that I had this newborn baby under challenging circumstances.**

The chairperson of an influential women's rights organization concurred with the concerns of women judges and magistrates interviewed:

Constant transfers, especially in the lower courts, destabilize families and thwart the efforts of women in career advancement. Heavy workload is taxing on women as they have to balance family and work. The intrusive manner in which recruitment interviews are carried out is embarrassing and bars many from taking up such opportunities.



Another respondent described how women are affected through their lifecycle as judges:

“

**At the magistracy level, we all start with confidence that we will rise to higher positions. But by the time you get to the higher ranks, the number of men reduces, but women keep constant. This is because it takes years to rise, and most men leave for greener pastures. Because you joined at the time of your prime, you are dealing with the social culture—a career and starting a family, it is very challenging, and gender roles hinder progress as measured today. There is so much that I am juggling. For men, those who remain have it easier, and gender roles help them, even in transfers. They get transferred to stations that can make them excel and shine. Even in performance, for them, it improves because they are able to excel since they devote most of their time to the job while their female counterparts are juggling around. Men can acquire skills, study, attend conferences, etc. On the other hand, a female has all these challenges. When it comes to promotions, these are things that are taken into account without considering that culture does not help women.**

”

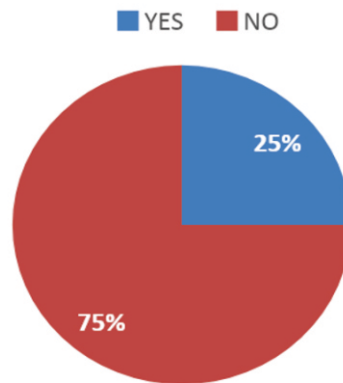
The response above indicates that while de facto equitable opportunities exist for both sexes, women's lived experiences and intersecting obligations limit their ability to move around, take advantage of professional development opportunities, and meet their professional obligations holistically. These challenges can adversely impact some women's performance evaluation as they have to manage multiple responsibilities simultaneously, which could affect their overall performance.

### **6.3. Gender stereotyping and promotion criteria**

Although the JSC was singled out as the primary institution that has led to the increased number of women on the bench, it has also been faulted for various reasons. The general perception was that when it came to the promotion of women, the promotion criteria were still not transparent. 75% of the respondents believed that the promotion policies are not gender-inclusive. The criteria for promotion are gender-blind, with the same standard applied to both men and women, without consideration for the multiple challenges that women face compared to their male counterparts.

**Figure 5 | Perceptions of promotion policies**

Are promotion policies gender inclusive?



Source: IAWL survey, 2022

A female judge commented:

By the time they go for interviews, men have better curriculum vitae because they have improved their skills through training and attending workshops and reading, as opposed to women. On the other hand, by virtue of being wives, mothers, [and] caregivers, women miss out on these opportunities. Some are elderly, some have disabilities, and some are heads of households. Yet requirements for promotions are standard and sometimes arbitrary, and at best distressing for women aspiring to progress out of no choice of their own.

Another judge added:

Women's promotion could be impeded by the pressure to balance between caring for their families and the demanding task of discharging judicial functions. This sometimes limits the performance of women on the bench, a good example being the writing of rulings and judgments.

One respondent noted the intersection of gender norms and executive overreach:

Women's promotions and retention on the bench could be impeded by factors such as the inherently patriarchal nature of Kenyan society. Further, the influence of the executive could also impede women's promotions and retentions on the bench.

Most respondents also expressed concern about the lack of transparency in the process and the criteria used to evaluate judges for promotion, thereby creating loopholes. This lack of transparency leads to selective promotions of less qualified candidates. Job performance evaluations are also gender-blind and disadvantageous to women due to their mothering and family roles. Policies, especially gender-neutral ones, often reinforce these injustices by failing to account for the unique needs of women professionals.

One respondent presented this challenge:

**Women face many challenges when it comes to promotions. Although these are now done through public processes by the JSC, due to the multiple identities for women as wives, judges, mothers, caregivers etc., their paths are littered with multiple discriminations and challenges. When we appear before the JSC, the criterion for promotion for both men and women is the same. Yet, men, by virtue of being free from domestic and wifely chores, have developed extra skills through training, attending conferences, writing, among others, or just being able to focus and run a station well which makes them shine. Most women have hardly achieved all these, yet the promotion criteria demand all these. Perhaps it is time that interviewers considered all these multiple and intersecting issues that are a drawback to women. Further, although the JSC is supposed to promote equality and non-discrimination, transparency, and accountability in their decision-making have been alleged and are apparent. It is quite apparent that members operate in camps and serve certain interests. It is not clear anymore if they can remain fair to all. Some pick their friends and tribes, men and women who may not necessarily be the most competent. This is a drawback for legitimate expectation for promotion for most women on the bench.**

According to Acker (1990), the forms of gender discrimination formalized in human resource policies have the same impact as overt discrimination, which most countries have attempted to address through formal laws and policies. Hence, beneath a veneer of neutrality of the rules and regulations at the judiciary, these same rules and regulations are responsible for entrenched social attitudes and practices that women judges and magistrates experience as women and professionals. As they juggle work and family, women lose out on assignments that can build them professionally or fail to acquire extra skills through training and attending workshops and conferences. These factors lead to deeper setbacks in career growth compared to their male counterparts. Gender stereotypes about women can cause them to be denied the kinds of work that help them move ahead and succeed, leading them to choose alternative career paths, which strengthens the original stereotypes that kept them from advancement in the first place (Hunter, 2008).

The two respondents who live with disabilities (PWDs) felt that women judges and magistrates living with disabilities have extra challenges. One reported having been constantly rebuked for placing too many demands on the judiciary to alleviate her disability issues. No consideration was made for her regarding social and professional support to help her cope. Disability has stood in her way throughout, and as much as she tried to get a promotion, she never did. Today there is a disability policy, but it is yet to be rigorously implemented.

## 6.4. Stereotypes and work allocation

---

Most respondents reported that stereotypes influenced work allocation in the judiciary. In most cases, these stereotypes lead to women being assigned cases and courts that deal with what has been societally understood to be women's area—family and criminal law. Men, on the other hand, are allocated to what is regarded as intellectually taxing and professionally rewarding areas, such as tough human rights cases, election petitions, constitutional, and judicial review cases. These areas tend to position men in the lead when they go for promotions because they are seen as handling “tougher” cases. The sexist assumptions and expectations about what women can or cannot do are often couched in stereotypes that women are not aggressive and tenacious enough to make good lawyers or judges. In most cases, stereotypes determine what work is allocated to women in the legal profession, including the judiciary. Sexism plays a significant role since the men who make promotion decisions may see a job's time commitments and stress level as inimical to women's well-being (French, 2010).

Gendered networks explain the exclusion of women when it comes to opportunities for upward mobility. As one respondent noted:

**“Prior to this [appointment of Chief Justice Martha Koome], there was discrimination in opportunities as most went to men. For instance, most opportunities for travel for conferences or training went to men, mostly due to the boys' network that seems to have worked in their favor. Women did not know of most of these opportunities. There was subtle favoritism based on brotherhood.”**

A recurring theme with work allocations and their impact on women was the issue of transfers to remote areas. A respondent presented it succinctly:

Transfers to hardship areas which do not take into account their social roles [are] detrimental to them. She should be considered a mother and a wife. Young men, [the] unmarried, etc., could serve in these stations. A distressed judge who is a mother and wife taken to far-flung areas affects their work and inhibits them from performing well, and it impacts their chances of promotion. Some opt for early retirement because they cannot cope.

Lastly, women are also susceptible to institutional hierarchies and arrangements that can lead to their sabotage. In the words of one respondent:

There is the man-made assertion that women are temperamental, and this is what has led to the attrition of women on the bench. There is a subtle way of cherry-picking as a challenge to women leaders in the various courts. You may be the head of a branch of the bench, but the registry holds the key to your success. You can be sabotaged in the sense that files can keep [getting] missing so that all you do is adjourn cases, which eventually reflects negatively on your work. This goes into your promotion attempts.

## **6.5. Stereotypes and sexism in disciplinary and firing processes**

---

Stereotypes and sexism in disciplinary and firing processes at the judiciary also emerged as a barrier. Most respondents cited temperament as one measure of suitability for hiring or promoting judges and magistrates. Most of the female respondents argued that this requirement is irrational as there is no measurement for temperament, and it has been used to victimize women. Very deserving women judges who have consistently delivered judgments have been denied promotion because of their “temperament.” Some have been vetted out of the judiciary because of their “temperament.” In fact, for most women judges who have lost their jobs, it has been on account of “temperament.” There is a double standard in the application of disciplinary measures on women judges.

A respondent observed:

Sometimes women are judged too harshly. When judges were being vetted, a number of women judges were dismissed on the grounds of their temperament, which had nothing to do with immoral issues such as corruption. There were double standards applied.. Our temperaments are not the same. Women face a lot of challenges at home, issues of children and marriages, and this is not considered. The institution should find ways of helping them but not throwing them away. Men are engaged in confrontations known to the public, some drink and get arrested and locked up in police stations, but nothing happens to them— equality is what women seek. They seek equal opportunities, yet they carry many problems. This should be considered.

Respondents hinted that women judges and magistrates in Kenya are sometimes victims of this self-fulfilling prophecy of women being temperamental.

One respondent noted:

**“If one looks at the history of women on the bench, women judges dismissed from the judiciary have been due to their “temperament” and hardly on other issues such as corruption. Some male judges have been accused of worse things, such as drunkenness to the extent of being locked up in police stations or more serious accusations, but this has been hushed up, and none lost their jobs. In most cases, women who have been strict with their work and refused to grant frivolous adjournments to the detriment of litigants and at the behest of advocates have been labeled temperamental. This follows them when they apply for promotions. This is also the criteria seen at the vetting of judges.”**

#### **6.6. Dismantling the impact of judicial hierarchies on mentorship and social networks**

Another barrier to women's progress to leadership positions is the lack of mentorship within the judiciary. Young judges and magistrates have no access to senior judges who would naturally be good mentors for them. There is a rigid hierarchical arrangement within the ranks of the bench to the extent that magistrates are not allowed to mix with or even appear anywhere near judges. Yet, this can be an excellent pool of mentors to help young judges and magistrates.

A magistrate recounted how severe this regimentation is in the judiciary:

**“I recall an incident when we were invited to a conference of judges and magistrates in Cape Town. The organizers of the conference booked us in a high-class hotel. Some of us were put on the same floor with a senior Court of Appeal judge. When he realized this, he asked the organizers to transfer him to another hotel or leave the conference. When they did not comply, he booked a flight back to Nairobi and left in a huff.”**

Yet, these people should be mentoring younger judicial officers who are yet to develop strong networks for themselves. Mentoring is an essential strategy for enhancing skills and building networks to help women's retention on the bench. Women lack social networks for support, but through mentorship, young women judges and magistrates are likely to gain more confidence and knowledge, and they are less likely to leave if they feel supported in their work.



The lack of supportive networks for judges and magistrates exposes them to many consequences, including mental and physical health challenges, bad choices such as resorting to excessive drinking, and susceptibility to corruption.

## 6.7. Sexual and gender-based harassment

---

Sexual harassment was reported to be rife, although few talked about it. Some respondents said they know the vice exists and that it primarily affects the younger judiciary members.

One respondent who had worked on the sexual harassment policy recounted efforts by women judges to address the issue:

**“When the Mutunga administration came in [referring to the former Chief Justice Willy Mutunga], we started to work on a sexual harassment policy, but it stalled after he left. Men were not enthusiastic about its implementation, yet sexual harassment has been rampant in the institution for years. It is only recently that the gender policy was launched. This is because sexual harassment and gender issues were seen as women's things, and efforts were made to ridicule them and submerge them.”**

However, she added that she was happy that the policy has been adopted under the new administration of CJ Martha Koome and is under review for effective implementation. Even so, sexual harassment is insidious and still occurs, with or without a policy. This is because most victims avoid speaking up about their experiences for fear of shame and victimization. The creation of sexual harassment policies requires the engagement of men and the commitment to igniting institutional change.

The International Bar Association (IBA, 2019) report on bullying and sexual harassment in the legal profession showed that even though many policies have been adopted to address sexual harassment in some law firms, there is evidence showing that in male-dominated sectors, women tend to be more susceptible to sexual harassment and those who complain about it are not likely to be taken seriously (IBA, 2019; Laband and Lentz, 1998). An institution or organization without protective mechanisms such as policies to address sexual violence is implicitly tolerant of such discriminatory acts. Sexual harassment has physical, psychological, and occupational consequences (French, 2010, p. 20). Unless addressed, sexual harassment can result in attrition at the workplace, as existing literature shows. For instance, Laband and Lentz (1998) noted low job satisfaction levels and high attrition among female lawyers who had experienced or observed sexual harassment by their male counterparts, superiors or colleagues. The authors speculated that employers and coworkers could sexually harass female workers in a manner that would not attract sanctions but may cause the women to leave their jobs.

## 6.8. Self-imposed barriers

---

Notwithstanding the institutional challenges and structural barriers discussed above, some respondents believed that some of the challenges women face in their upward mobility are self-imposed barriers. Thus, adopting an anti-essentialist framing of the issue, it is necessary to isolate the fact that women are not all the same and that the experiences generally described cannot be applied broadly to all women.

One respondent noted the need to be mindful that, as in all workplaces, some women judges may be simply unqualified and incompetent on the job. Thinking of the position on the bench as a government or bureaucratic job can lead some women to develop attitudes that do not push them forward. Some women are not proactive in seeking opportunities to develop their skills and advance in their careers.

One respondent argued:

Historically, female judges joined the bench and proved hardworking and reliable workers. That is what kept them there and the reason that they were hired in the first place. Initially, all judiciary appointments favored men, but they would quit after a while to seek greener pastures, and so this made the JSC consider hiring women as magistrates. However, the current generation of female judges is in a hurry to get to the top, owning properties and big houses, a value that has not been there in the past. This is also introducing them into the league of corruption, and when women are corrupt, it can be very dangerous and insidious. We also have women on the bench who have love affairs even with junior staff through intimidation, which is not good.

Women are social beings and different as a group. Not all women face the same challenges. The nuances within the category “woman” must be examined to differentiate the individual factors contributing to the marginalization and lack of progress some women experience.

## 6.9. Possible backlash against women

---

The possible backlash against women as a barrier is speculative at this stage, based on the trends and patterns of women's representation within the judiciary and in leadership positions. Women now make up more than 50% of the Kenyan judiciary leading to calls in some quarters for men to be given affirmative action considerations.

One respondent captured this sentiment:

**At the moment, I do not think that overt discrimination against women exists in the judiciary. However, there is covert discrimination, and men are alarmed at how women's numbers have increased on the bench. There are instances when if an opportunity arises, for instance, I vied for the presidency of the Court of Appeal but lost by one vote because the men thought that women were taking most leadership positions. Now the Chief Justice and President of the Supreme Court is a woman, and so is the Deputy Chief Justice. The Principal Judge of the High Court is a woman, and so is the head of the Land and Environment Court. This seems to be alarming the men.**

It is unclear if there will be a backlash, and if so, what it will look like. It remains to be seen if men will invoke the two-thirds gender rule against women or simply choose to leave the judiciary and go back to the private practice of law.

#### **6.10. Effects of the COVID-19 pandemic**

Most respondents reported that the COVID-19 pandemic posed a major challenge to their work, with the potential to hinder their progress and retention. Regarding access to justice, some women and children were forced to stay at home with their abusers at a time when external support was limited. Stay-at-home orders in Kenya, for instance, meant that victims of gender-based violence could not access courts staffed by women judges and magistrates, who normally have more empathetic attitudes in such matters. Women with disabilities were at an even greater risk of being subjected to relational and sexual violence pre-COVID-19 (Kameri-Mbote & Meroka-Mutua, 2020). These COVID-19-induced challenges are in addition to the fact that the courts, as the primary avenue to seeking justice, could not always offer justice under gender equality norms and standards (Kameri-Mbote & Meroka-Mutua, 2020).

The pandemic found the judiciary unprepared to use technology in delivering justice. The judiciary had in the past encountered issues with internet accessibility and use, and the pandemic compounded an existing problem. Though the judiciary had recognized the importance of technology for the delivery of justice, it had not taken its use seriously. Ndulo (2021) noted that COVID-19 has brought gender-based inequalities into sharp focus by, among other things, increasing the care burden of women. This increased burden of care has left women disproportionately vulnerable to economic shocks, resulting in a marked increase in gender-based violence. Judges and magistrates had not been trained in the use of technology. Therefore, the urgency with which most were required to use technology in their work was a challenge.

Women judges and magistrates with school-age children had increased burdens of care due to the pressures of working from home and tending to family and school obligations, which fell squarely on women. Balancing care work and attending to their judicial obligations affected their ability to hold court remotely from home and deliver their written judgments on time. These challenges have combined to increase professional burnout for women juggling taking care of children, attending to sick family members, and effectively managing their caseload. For women who sat in family and criminal courts, the increase in applications for hearings on domestic violence and intimate partner abuse meant they had an increased caseload (Tibatemwa-Ekirikubinza, 2021).

For women (and men) judges located in remote parts of the country, the lack of sufficient ICT infrastructure also interfered with their work and the delivery of justice because of the lack of accessibility, especially in remote areas. Not only has this impacted access to justice by the vulnerable and marginalized litigants, but it has also meant that lawyers in these situations cannot provide their services to those most in need, most of whom are women.

One respondent, however, had a different perspective on the impact of the pandemic on women's professional situation:

**“The pandemic, though tragic, has had some positive impact. We have had to embrace technology which has eluded the judiciary for years and negatively impacted the delivery of justice. Now it is more expeditious because delays can be eliminated. Advocates and litigants do not have to travel, so this is good. We have been able to do more than before. Because we now rely on written submissions, it is easier to write judgments. Women judges have been able to multitask with ease, tending to their wifely and motherly caregiving jobs and attending courts and writing judgments. Those living separately from their spouses can now stay together as a family, which was difficult for most in the past.”**

While the above statement highlights the positive outcomes, it must be qualified in its evaluation. Some women judges in abusive relationships may not have the same benefits of being at home with their partners. For those without children, staying at home may have benefits, but the same cannot be said for those who have younger children, as multitasking will not be easy.

# 7 | RECOMMENDATIONS ON FACILITATORS OF PROMOTION



This section synthesizes some factors that can sustain and further promote women's pathways to leadership in the judiciary.

## **7.1. Enforce constitutional and legal instruments on equality**

A key factor in facilitating women's access to the bench and upward mobility within the ranks is the enforcement of the gender-equitable principles enshrined in the 2010 Constitution. Even though the current data show that the two-thirds rule positively impacts women, women's rights groups and the women judges' association must remain vigilant to ensure no regression of the success achieved so far.

Regarding the appointment and recruitment processes, the barriers identified earlier show that the JSC still has some work to do to be gender inclusive in the recruitment and promotion of women. To facilitate equity in the process, the JSC should remain truthful to its constitutional mandate and standards and not be seen as championing partisan and sectoral interests. It should also engage the services of human resource experts to train the commissioners on how to conduct interviews. In addition, it is recommended that the JSC evaluate its policies for hiring, promoting, and terminating employees in a gender-neutral manner, considering the various complex and intersecting obstacles that women encounter.

## **7.2. Adopt intersectional approaches in addressing gender stereotypes**

The judiciary and its organs should be sensitized on intersectional approaches to detect and eliminate nuanced discrimination caused by patriarchal tendencies and stereotypes in its policies and operations. The judiciary should re-examine the criteria for promotion by considering the multiple intersecting issues that impede women. The policies currently in use are gender-blind and do not consider the challenges women face as wives, mothers, and caregivers that hinder them from competing well for promotions and leadership positions. The judiciary should ensure that all its processes for appointments and promotions are transparent and accountable. Clear promotion criteria should consider the experiences of men and women on the bench. Applying objective promotion standards would help address the challenge of attrition and reduce the barriers to women's leadership pathways. Lastly, in the recruitment and promotion hearings, the JSC is mandated to balance regional, ethnic, and social diversity.

For each of these categories, the JSC should be attentive to the intersectional challenges that apply and make efforts to encourage applications by women who fall within these axes of oppression, marginality, and exclusion. For instance, the JSC could encourage more applications from women from geographic regions that are priority recruitment areas or women with disabilities who come from regions or ethnic backgrounds that are priority target areas for each recruitment cycle.

### **7.3. Targeted skills development, training, and support**

---

The judiciary should establish a psycho-social mechanism, created by female judges and magistrates and supported by the judiciary, in which women magistrates and judges have confidence and develop emotional intelligence skills. This mechanism will offer women the much-needed social capital to advance in their careers. To equalize the advantage male judges gain by using their networks to get external training and exposure, there should be intentional and direct opportunities for education and training to enhance women's capacity to participate and lead in the justice sector.

However, judicial training requires understanding the local context and adopting mechanisms to disrupt existing institutional and structural challenges.

As rightly captured by one respondent:

**There are no guarantees that an increased number of female judges will positively impact judicial adjudications and outcomes. Culture, training, and skills development are crucial for any positive impact.**

Increasing the appointments of qualified and competent women is not enough to increase opportunities for other women to gain access to leadership in the justice sector. Competence in the current women judges will facilitate a shift in perceptions of women's competence and lead to the appointment of more women in leadership in the justice sector. Competence comes with training and skills building.

One respondent recounts the impact of such training opportunities:

The Kenyan Women Judges Association (KWJA) should assist in preparing women judges for interviews for entry and promotion. My background in the women's movement enabled me to interact with people from all over the world and opened up opportunities. The constitution-making process also enabled me to appreciate the tenets of the rule of law, and when I sit down to write my judgments, I am inspired by all [these].

Other individual-level factors must accompany skills training to create the desired change. One respondent stressed:

If you have many female judges who are incompetent and not passionate about their work, they will negatively influence the adjudication and outcomes of the cases handled. On the other hand, if you have an increased number of judges with competent skills as a result of proper training in case management, passion, positive attitude to achieve and focus on the aspirations of the judiciary, then this will result in a positive influence on the adjudication and outcomes. Guarantees are competence, a positive attitude, and passion.

As an organization dedicated to the welfare of women judges and magistrates, the KWJA should be given institutional financial support to enable it to continue with programs that empower female judges and magistrates on gender judging.

In the wake of COVID-19 and its implications on the work and well-being of everyone, adopting a holistic approach to supporting women judges may be needed. Providing access to mental health and psychological support for women on the bench will go a long way toward enhancing women's participation and leadership in the judiciary.

#### **7.4. Adopt inclusive sexual harassment and workplace policies**

---

The judiciary has recently adopted a sexual harassment policy, which is undergoing review to ensure appropriate procedures for receiving complaints and sanctioning culprits. There should, however, be constant monitoring and evaluation mechanisms to ensure effective implementation. Implementation procedures should also establish adequate safeguards against false accusations and complaints and excessive punitive sanctions where there are sincere misunderstandings or accidental wrongs.

#### **7.5. Unconscious bias training**

---

The judiciary should undertake continuous education and training to enhance women judges' and magistrates' technology skills to take advantage of the technology-induced changes the COVID-19 pandemic brought to justice delivery. All judiciary members must undergo periodic unconscious bias training, focusing on the role of gender constructs in the workplace. These training sessions should, however, be for both male and female judges on gender characteristics, strengths, and weaknesses. Understanding the different roles gender plays is crucial, and concentrating on one gender when advocating for gender inclusivity is pointless.





## 7.6. Judicial mentoring networks

Women have joined an institution where men—due to their long history in the judiciary—have developed their support and mentoring networks. Women's exclusion from these networks denies them the social support necessary to work well. The judiciary should tap into its human resource by facilitating senior judges, both men and women, to mentor the younger judges and magistrates as a catalyst for empowerment, retention, and progression. All the respondents in this study noted the lack of institutionalized mentoring programs for judges. New judges and magistrates are often left to build their networks and seek mentors, but the hierarchy hampers this within the judiciary. These institutional hierarchies further isolate women and adversely affect their advancement to judicial leadership.





# 8

## PROGRESS, PATTERNS AND TRENDS



### 8.1. More women on the bench and impact on decision-making

The quantitative data presented in this report show that women currently comprise 60% of the Kenyan judiciary. The increase in their symbolic representation correlates with an increase in the substantive representation of gender-related issues in the court's jurisprudence. A thorough assessment and longitudinal study of Kenyan case law will be needed to determine if and how women judges impact decision-making. Emerging studies, however, have drawn a link between the steady rise in the proportion of women on the bench and gender-sensitive decision-making and interpretation of the law (Baraza, 2021; Gayoye, 2021).

Some respondents highlighted that women on the bench are sensitive to the general welfare of the community, especially families and children. While their decisions are founded on the law, they reflect diversity and offer a different perspective on matters of personal law. Others believed that even though there are women on the bench, women judges do not take gender into account when making judgments. These sentiments expressed by women judges in Kenya mirror similar sentiments by women judges in other jurisdictions: Ghana (Dawuni, 2016b), Benin (Kang, 2016), and Nigeria (Ibrahim, 2016).

### 8.2. More women in leadership

The seminal study of women in leadership in African judiciaries by Dawuni and Kang (2015) highlighted the rise of women chief justices and heads of constitutional courts across the continent. The study examined factors that led to the rise of women in leadership positions, including the type of legal tradition, the selection methods, the role of gatekeepers, regional diffusion and the end of civil conflict. Of these factors, the authors identified the qualification and merit of women as key to their ascension to leadership roles. The appointment of Martha Koome as the first woman chief justice of Kenya adds to the long list of African countries with women as leaders of the judiciary. The Kenyan judiciary has been familiar with women in leadership. Before Chief Justice Martha Koome, Nancy Baraza had been appointed Deputy Chief Justice in 2011; she was succeeded by Justice Kalpana Rawal (2012) and later by Deputy Chief Justice Philomena Mwilu in 2021. The representation of women in the leadership ranks of the judiciary is an encouragement to other women that the glass ceiling can be broken.

Reflecting on what the appointment of Chief Justice Martha Koome means for the judiciary, one respondent noted:

It is good that for the first time in history, we have a female [chief justice], but does she bring experiential justice to the high office? Does she make people more comfortable to approach the judiciary? To some extent, so far, yes, but it might be too early to judge and determine. Currently, she is simply managing what has been left behind by the previous male-led administrations.

A respondent shared their thoughts on how the appointment of the first female chief justice affected how citizens perceive the role of women in the judiciary:

“

**This [the appointment of Martha Koome] will have an impact on how the citizens view the judiciary because they now know that it is a fair institution where anybody can aspire and become whatever they wish to become. Secondly, women strive twice as much to succeed. She will ensure that she succeeds because she knows she will be judged harshly. Like other women judges, she has the experience of being a woman and the challenges that womanhood faces. So, she comes with empathy for fairness. This is seen in matters such as children in conflict with the law because they look at that child not just as a subject of law but as a child. Women have lived with drunkard husbands, abusive husbands, etc., and so they know, and this gives them a special experience that makes them see things differently as opposed to male judges.**

”

Other respondents emphasized the importance of a judicial leader's feminist background:

For this particular CJ, she brings in a lot of experience from the women's movement, which will make a difference in the administration of justice. She would want to see quick and expedited justice for litigants, especially the vulnerable, because she has struggled and fought for this. She understands the issues of poverty for Kenyans, generally issues of illiteracy and poverty, which have many implications for access to justice for most Kenyans. She will be sensitive to all this. She is already focusing on mechanisms such as small claims courts nationwide and mobile courts in remote areas so that poor people can access justice.

One respondent hinted at the importance of women supporting other women in leadership:

The Chief Justice position is a political position, and politics is a different ball game. Men move together, they have political networks and ears on the ground. This helps them. Women may not have that political advantage, and this may pose problems for her. She needs to build these networks for support. She must also look for male allies and some male mentors who should speak for her—within the political area. Another thing for her is to avoid the queen bee syndrome and seek to nurture support within the women so that she gets their support.



Existing studies have shown that women leaders are often subjected to harsher judgments by the media and in the court of public opinion (Escobar-Lemmon, 2016).

One respondent pointed to the double standards of judging women's leadership:

**This [the appointment of Martha Koome] is commendable because women have served on the bench and in the judiciary diligently, yet they had been relegated despite their numbers and merit. Hence getting a woman CJ confirms that there is an opportunity for all to rise to the top. This encourages others to aspire and work towards achieving leadership positions. There is a downside to this, though. Some naysayers ask if the judiciary has leadership because the CJ is not constantly in the news like the past male CJs. She is not issuing threats and talking tough like them, and this is due to her own stated approach to leadership, that she will talk through judgments as a judge and is not going to be confrontational for the sake of it. She would rather focus on how best, without compromising the independence of the judiciary, she will work with the other arms of government to deliver justice. She understands the principle of interdependence of the arms of government. Yet, this may be seen as a weakness because people are used to men in power “sounding tough”. She is more consultative and approachable in her new leadership, marking a paradigm shift from the males.**

Communication from her office is not abstract and not through memoranda. Hard decisions are being made but not in talk down manner but rather in a consultative and consensus-building manner. This approach has been received very well by judiciary staff and judges. I believe part of this is a value system of being a woman. However, it is still a man's world, and every move she makes and every word she utters is closely watched, and many reactions are unpleasant. If she keeps quiet, there are complaints that there is no leadership in the judiciary. She is being judged harshly even for things that the male CJ did or did not do. She will require institutional support. She needs a team around her, not a one-woman show: continuous engagement with others in the judiciary is important.

### **8.3. Feminist/gender consciousness still not institutionalized**

The increase in the representation of women in the judiciary should be accompanied by intentional efforts to increase gender-conscious training for all judges.

One respondent mentioned the impact of gender-related theory in influencing the personal philosophies of judges:

The program adopted by the Kenya Magistrates and Judges Association (KMJA) to educate both men and women on feminist and human rights approaches to judging did help those who underwent it to be more gender-sensitive in their judgments in respect of matrimonial property and land cases. Before this, even women judges were indifferent and hostile to women litigants. The case of *Rono v. Rono ...* and others like *Kimani v. Kimani ...* So, it is true that some of us are influenced by feminist and human rights theories.

Gender-sensitivity training is important because not all women believe there are gender disparities and discrimination in the judiciary.

Consider the response from this judge:

I have never been discriminated against as a judge on account of my gender. I have worked blind to gender. I have approached my work not as a woman but as a judge. I was the only woman at the [name of the institution omitted to prevent respondent identification]. I never felt discriminated against. What I remember is that I was given more jobs than the rest of the other members, I delivered my outcomes on time, and I never complained. In the judiciary, the independence that goes with the job ensures that no one pushes you to do anything.. It is your work that speaks for you. If you do not know the law, the males look down on you. Discrimination does not really exist. Leadership has been male. Leadership is contested posts, but nobody discriminates in the contests. Recruitment by the JSC is not fair, and there are many dynamics, such as tribalism. All JSC members have vested interests. We could have done better as was intended. They muddle.

Her statement that “... what I remember is that I was given more jobs than the rest of the other members, I delivered my outcomes on time, and I never complained” raises the question of why she was given more work than the rest. Was it because she was a woman? Why did she not question it? This reality shows the power hierarchies that affect women and the socialization women have received, not to question such occurrences. A gender-aware approach to judicial training is, therefore, necessary to discuss the inherent gender biases that women face.

#### **8.4. Institutional challenges in the workplace**

---

This report has highlighted many challenges women face within the current institutional structures, policies, and practices. Notwithstanding the increase in the numeric representation of women, institutional changes have not caught up with the changes in the feminization of the judiciary. Issues such as gender-based stereotypes of women's capabilities and gender-neutral promotion policies that do not consider women's intersectional challenges exist. Additionally, the persistence of gender-based assignments of caseloads and courts, and limited opportunities for mentoring and professional development, require intentional strategies and interventions to even the playing field for women in the judiciary.

## 8.5. Individual-level intersectional challenges remain for women

---

The changing terrain of the Kenyan judiciary has strong potential to influence many institutional and structural changes to facilitate women's total inclusion in the judiciary. At the institutional level, many policies must change to accommodate women fully. The individual lived realities of women will not always change—the intersection of gender, age, religion, ethnicity, motherhood, disability, and sexual orientation are yet to be fully explored. This study has highlighted these intersections and advocates for more research to examine how institutional mechanisms can be changed to accommodate women's intersectional identities. A few women judges have been identified as living with disabilities, but no judge has been openly identified as belonging to the LGBTQ community. In Kenya, as in many other countries, the LGBTQ community remains marginalized, and openly identifying as such holds grave consequences for many.



# 9

## CONCLUSION



This report set out to document women's participation in the judiciary, focusing on their pathways to leadership positions. The findings have traced women's judicial pathways starting with recruitment and entry, including barriers to promotion and retention and the contributions of women to the bench and jurisprudence, identifying the facilitators of promotion and the challenges to accessing leadership roles. Kenya has achieved gender equality within the judiciary following the adoption of the 2010 Constitution, which has enabled women to occupy some of the highest-ranking positions within the judicial system. Despite the increased numbers of women on the bench and in leadership positions, women continue to face covert and intersectional discrimination due to gender stereotypes. This discrimination exists in hiring, promotion, working conditions, and disciplinary processes.

The report provides proposals for facilitating the promotion of women in leadership in the Kenyan judiciary and creating a gender-inclusive and gender-sensitive judiciary for women judges and magistrates in all ranks of the judiciary to ensure the effective participation and leadership of women on the bench.

These recommendations for supporting women in leadership include:

- Eliminating institutional and structural discrimination and harassment
- Stricter enforcement of the constitutional and legal instruments on gender equality
- Greater institutional will and commitment to promoting substantive gender equality
- Adopting intersectional approaches to addressing gender stereotypes
- Targeted skills development and training on gender sensitivity and unconscious bias sensitization and awareness creation
- Reviewing employment and promotion policies to make them gender sensitive; and
- Training all judges to be gender sensitive.



# REFERENCES

---

- Acker, J. (1990). Hierarchies, jobs, bodies: A theory of gendered organizations. *Gender and Society*, 4(2), 139–158.
- Alapini-Gansou, R. (2021). The feminine face of the African Commission on Human and Peoples' Rights. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 161-188). Routledge. <https://doi.org/10.4324/9780429327865>
- Andrews, P. (2021). Pursuing gender parity through the courts: The role of South Africa's women judges. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 189-208). Routledge. <https://doi.org/10.4324/9780429327865>
- Aura-Odhiambo, R. (2018). Gender equality: Integration of women in the judiciary in Kenya. In K. Wanjiku, P. Mobote, K. Nkatha, & A. Meroka (Eds.), *Changing the Mainstream: Celebrating women's resilience* (pp. 93-22). Kenya: University of Nairobi Press.
- Baraza, N. (2008). Lost between rhetoric and reality: What role for the law and human rights in redressing gender inequality. *Kenya Law Reports*, 1–6.
- Baraza, N. (2018). Women's participation in constitution-making and its nexus with the constitutional text: The case of Kenya's 2010 constitution. In W. M. Kabira, P. K. Mbote, N. Kabira, & A. Meroka (Eds.). *Changing the mainstream: Celebrating women's resilience* (pp. 73–92). African Women Studies Centre, University of Nairobi. <https://www.ielrc.org/content/w1801.pdf>
- Baraza, N. (2021). Equality jurisprudence by the Kenyan courts since the enactment of the 2010 constitution. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 25-39). Routledge. <https://doi.org/10.4324/9780429327865>
- Bauer, G., & Dawuni, J. (Eds.). (2016). *Gender and the judiciary in Africa: From obscurity to parity?* Routledge.
- Bauer, G., & Ellett, R. (2016). Botswana: Delayed indigenization and feminization of the judiciary. In Bauer, G., & Dawuni, J. (Eds.). (2016). *Gender and the judiciary in Africa: From obscurity to parity?* Routledge
- Belleau, M., & Johnson, R. (2008). Judging gender: Difference and dissent at the Supreme Court of Canada. *International Journal of the Legal Profession*, 15(1–2), 57–71.
- Cotran, E. (1983). The development and reform of the law in Kenya. *Journal of African Law*, 27(1), 42–61.
- Cowan, R. B. (2006). Women's representation on the courts in the Republic of South Africa. *University of Maryland Law Journal of Race, Religion, Gender and Class*, 6, 291-318



- Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, (1) 139–167, <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>
- Crenshaw, K. (1991). Mapping the margins: intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241–1299, <https://doi.org/10.2307/1229039>
- Dawuni, J. (2016a). Gender and the judiciary in Africa: An introduction. In G. Bauer & J. Dawuni (Eds.). *Gender and the judiciary in Africa: From obscurity to parity?* (pp. 1-15) Routledge.
- Dawuni, J. (2016b). To “mother” or not to “mother”: The representative roles of women judges in Ghana. *Journal of African Law*, 60(3), 419–440.
- Dawuni, J. (2017). Valuing diversity in all forms in international courts. *Proceedings of the ASIL Annual Meeting*, 111, 296–299. <https://doi:10.1017/amp.2017.84>
- Dawuni, J. (2021a). Gender and judging across Africa: A case of old wine in new wineskins or new wine in old wine skins? In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 1-22). Routledge. <https://doi.org/10.4324/9780429327865>
- Dawuni, J. J. (2021b). The legal profession in Ghana: from indigenization to globalization. *International Journal for the Legal Profession*, 29(1), 75–101. <https://doi.org/10.1080/09695958.2021.1992283>
- Dawuni, J. & Kang, A. (2015). Her ladyship the chief justice: The rise of female leaders in the judiciary of Africa. *Africa Today*, 62(2), 45-69. <https://doi.org/10.2979/africatoday.62.2.45>.
- Dawuni, J. & Masengu, T. (2019). Judicial service commissions and the appointment of women to high courts in Nigeria and Zambia, In Sterett, S.M. & Walker, L. D. (Eds), *Research Handbook on Law and Courts*. Edward Elgar Publishing.
- Escobar-Lemmon, M. C. (2016). Just the facts? Media coverage of female and male High Court appointees in five democracies. *Politics & Gender*, 12 (2016), 254–274.
- Escobar-Lemmon, M. C. et al (2021). *Women's Representation on High Courts*. Oxford University Press.
- French, J. L. (2010). *Gender bias in the legal field: Experiences of female attorneys and law students*. Master's Theses and Capstones. 131. University of New Hampshire, Durham.
- Gayoye, M. (2021). Why women judges really matter: The impact of women judges on property law outcomes in Kenya. *Social & Legal Studies* 3(1) 72-98. <https://doi.org/10.1177/09646639211007905>.
- Gilligan, C. (1982). *In a Different Voice*. Harvard University Press.
- Ghai, Y. P., & Ghai, J. C. (Eds.). (2014). *The legal profession and the new constitutional order in Kenya*. Strathmore University Press.

- Ghai, Y. P., & McAuslan, J. P. W. B. (1970). *Public law and political change in Kenya*. Oxford University Press.
- Gilligan, C. (1977). In a different voice: Women's conceptions of self and of morality. *Harvard Educational Review*, 47(4), 481–517.
- Hale, B., & Hunter, R. (2008). A conversation with Baroness Hale. *Feminist Legal Studies*, 16(2), 237–248.
- Hamad, M. (2016). Egypt: The lingering battle for female judgeship. In G. Bauer & J. Dawuni (Eds.), *Gender and the judiciary in Africa: From obscurity to parity?* (pp. 16–32). Routledge.
- Hunter, R. (2008). Can feminist judges make a difference? *International Journal of the Legal Profession*, 15(1–2), 7–36.
- Ibrahim, H. (2016). Women judges enhancing the judiciary in Nigeria. In G. Bauer & J. Dawuni (Eds.), *Gender and the judiciary in Africa: From obscurity to parity?* (pp. 67–79). Routledge.
- ICJ (International Commission of Jurists). (2013). Women and the Judiciary Geneva Forum Series no. 1. <https://www.icj.org/geneva-forum-series-no-1-women>
- IDLO (International Development Law Organization). (2019). Women's Professional Participation in Tunisia's Justice Sector: Pathways and Opportunities. Promoting Gender Equality in the Judiciary. [https://www.idlo.int/sites/default/files/pdfs/publications/idlo\\_womens-professional-participation-in-tunisias-justice-sector\\_low-res\\_oct2019.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/idlo_womens-professional-participation-in-tunisias-justice-sector_low-res_oct2019.pdf)
- International Development Law Organization. (2018). Women delivering justice: Contributions, barriers, pathways. Retrieved February 15, 2022. (Available from IDLO Website: <https://www.idlo.int/publications/women-delivering-justice-contributions-barriers-pathways>).
- Kamau, W. (2013). Women judges and magistrates in Kenya: Challenges, opportunities and contributions. In U. Schultz & G. Shaw (Eds.) *Gender and judging*. Hart Publishing.
- Kamatali, J. (2016). Rwanda: Balancing gender quotas and an independent judiciary. In G. Bauer & J. Dawuni (Eds.), *Gender and the judiciary in Africa: From obscurity to parity?* (pp. 137–153). New York: Routledge.
- Kameri-Mbote, P. (2018). Constitutions as pathways to gender equality in plural legal contexts. *Oslo Law Review*, 5(1), 21–42. <https://doi.org/10.18261/issn.2387-3299-2018-01-02>
- Kameri Mbote, P. & Meroka-Mutua, A. (2020). Gendered impacts of responses to the Covid-19 pandemic in Kenya. Independently published.
- Kang, A. (2016). Benin: Women judges promoting women's rights. In G. Bauer & J. Dawuni (Eds.), *Gender and the judiciary in Africa: From obscurity to parity?* (pp. 108–119) Routledge.

- Laband, D. N., & Lentz, B. F. (1998). The effects of sexual harassment on job satisfaction, earnings, and turnover among female lawyers. *ILR Review*, *51*(4), 594–607.
- Lasseko-Phooko, M., & Mahomed, P. (2013). [The challenges to gender equality in the legal profession in South Africa: A case for substantive equality as a means for achieving gender transformation](#). *African Human Rights Law Journal*, *21*(1).
- Malleson, K. (2006). Rethinking the merit principle in judicial selection. *Journal of Law and Society*, *33*(1), 126–140. <https://doi.org/10.1111/j.1467-6478.2006.00351.x>
- Masabo, J. (2021). Unlocking inequality through judicial training. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 233-253). Routledge. <https://doi.org/10.4324/9780429327865>
- Masengu, T. (2021). Illegitimacy perceptions of women judges in Zambia. In J. Dawuni (Ed.), *Gender and judging Across Africa*. Routledge.
- Masengu, T. (2016). It's a man's world: Barriers to gender transformation in the South African Judiciary. Perspectives from women advocates and attorneys. *International Journal of the Legal Profession*, *23*(3), 305–319. <https://doi.org/10.1080/09695958.2016.1179639>
- Masengu, T. (2019). Book review [Review of International courts and the African woman judge: Unveiled narratives, by J. Dawuni & A. Kuenyehia, Eds.]. *Feminist Legal Studies*, *27*(3), 357–360, <https://doi.org/10.1007/s10691-019-09402-5>
- May, V. (2015). Pursuing intersectionality, unsettling dominant imaginaries. Routledge.
- Menkel-Meadow, C. (1989). Exploring a research agenda of the feminization of the legal profession: Theories of gender and social change. Cambridge University Press.
- Meroka-Mutua, A. (2018). Public interest litigation and women's rights in Kenya: The double edged sword. In W. M. Kabira, P. K. Mbote, N. Kabira, & A. Meroka (Eds.), *Changing the Mainstream: Celebrating women's resilience* (pp. 123–142). African Women's Studies Centre, University of Nairobi. <https://www.ielrc.org/content/w1801.pdf>
- Mlambo, C., & Kapingura, F. (2019). Factors influencing women political participation: The case of the SADC region. *Cogent Social Sciences*, *5*(1), Article 1681048. <https://doi.org/10.1080/23311886.2019.1681048>
- Mohammed, W. F. (2022): Why we need intersectionality in Ghanaian feminist politics and discourses. *Feminist Media Studies*. <https://doi.org/10.1080/14680777.2022.2098798>
- Mutua, E. K. (2019). Access to justice in Kenya: A critical appraisal of the role of the judiciary in advancement of legal aid programs. University of Nairobi Research Archive.
- Ndulo, M. (2021). COVID-19, courts, and the justice system. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 279-296) Routledge. <https://doi.org/10.4324/9780429327865>

- NGEC (National Gender and Equality Commission). (2019). *The judiciary gender audit 2019*. [https://www.ngeckenya.org/Downloads/Judiciary\\_Kenya\\_Gender\\_Audit\\_Dec.pdf](https://www.ngeckenya.org/Downloads/Judiciary_Kenya_Gender_Audit_Dec.pdf)
- Nzomo, M. (2018). Gender and governance in Kenya: Women's journey beyond numbers. In W. M. Kabira, P. K. Mbote, N. Kabira, & A. Meroka (Eds), *Changing the Mainstream: Celebrating women's resilience* (pp. 45–71). African Women's Studies Centre, University of Nairobi. <https://www.ielrc.org/content/w1801.pdf>
- Obani, P. (2021). “Judging” lesbians: Prospects for advancing lesbian rights protection through the courts in Nigeria. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 57-76) Routledge. <https://doi.org/10.4324/9780429327865>
- O'Connor, S. D. (1991). Portia's progress. *New York University Law Review*, 66(6), 1546–1558. [https://www.law.nyu.edu/sites/default/files/ECM\\_PRO\\_059255.pdf](https://www.law.nyu.edu/sites/default/files/ECM_PRO_059255.pdf)
- Odeyinde, O. (2021). Gender equality and sustainable development: Evaluating the effectiveness of Nigerian laws and practices to guarantee the woman's human right. *Journal of Sustainable Development Law and Policy*, 12(2), 398-420.
- Oyewùmí, O. (2002). Conceptualising gender: Eurocentric foundations of feminist concepts and the challenge of African epistemologies. *Jenda: A Journal of Culture and Africa Women Studies* 2(1), 1-9.
- Rackley, E. (2013). *Women, judging and the judiciary: From difference to diversity*. Routledge-Cavendish.
- Ruiz, V. (2019). The role of women judges and a gender perspective in ensuring judicial independence and integrity. <https://www.unodc.org/dohadecaration/en/news/2019/01/the-role-of-women-judges-and-a-gender-perspective-in-ensuring-judicial-independence-and-integrity.html>
- Rukuba-Ngaiza, N. (2021). Gender awareness training in judicial training institutes in Kenya and Uganda. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies* (pp. 254-275) Routledge. <https://doi.org/10.4324/9780429327865>
- Schultz, U., & Shaw, G. (Eds.). (2013). *Gender and judging*. Hart Publishing.
- Schultz, U. (2014). Raising gender awareness of judges – elements for judicial education in Germany, *International Journal of the Legal Profession*, Special Issue on Gender and Judicial Education, 3, 345–355. <https://doi.org/10.1080/09695958.2015.1060703>
- Tibatemwa-Ekirikubinza, L. (2021). Sexual and gender-based violence in Uganda during the COVID-19 pandemic: New and old lessons for the criminal justice system. In J. Dawuni (Ed.), *Gender, judging and the courts in Africa: Selected studies*. (pp. 297-320) Routledge. <https://doi.org/10.4324/9780429327865>
- UN Women. (2018). UN Women annual report 2018–2019. <https://annualreport.unwomen.org/en/2019>
- Uzebu-Imarhiagbe, E. (2020): Women in the Nigerian judiciary: considerable headway or organized progress? *International Journal of the Legal Profession*, 27(2), 175–188. <https://doi.org/10.1080/09695958.2020.1750410>

## **Constitutions**

Constitution of the Republic of Kenya.

## **Statutes**

The Judicial Service Act, 2011

Sexual Offences Act, No. 3 of 2006.

## **Cases Cited**

*Eliud Waweru Wambui v. Republic* [2019] eKLR

*Federation of Women Lawyers in Kenya (FIDA-K) & 5 others v. Attorney General & another* [2011] eKLR

*Jacinta Wanjiku Kamau v. Isaac Kamau Mungai*, Civil Appeal 59 of 2001 (2006) 59 K.L.R

*Kimani v. Kimani*. HCCC No. 1610 of 1995 (OS). 1EA 80

*Mary Rono v. Jane Rono & Another* [2008] 1KLR 803

*MW v. AN*. HCC 246 OF 2011. [2021] eKLR

*PWK v. JKG* Civil Appeal 33 of 2014 - Kenya Law

*Wanjiru Kimani v. Evanson Kimani Njoroge*, [2000] 1EA 80, 81, 85

# APPENDICES

## Appendix 1: Interview Question Guide

### Part I: Judicial Officers – Judges/ Magistrates

1. Describe the culture of the judiciary with reference to gender?
2. Do you think there is equality and equity in the men and women judges ratio in the judiciary? If so, what reasons would you attribute to this?
3. How has an increased female judge ratio improved service delivery within the judiciary?
4. In which way do you think the ascension of a woman to the office of the Chief Justice will impact service delivery?
5. What are your views on gender discrimination in the judiciary against women? Does it exist?
6. How important is the inclusion of women in the various facets of the bench?
7. Do you think there are any factors that may adversely affect their advancement or promotions on the bench?
8. What other challenges do women face that can hinder their full participation on the bench?
9. Is there sufficient diversity of women, to include persons with disability on the bench and if so what should be done?
10. Do you think there's a link between women's participation, or lack thereof, and the existing legal and policy framework?
11. Have the measures already in place to improve women's representation had any impact in improving the number of women and their influence on the bench?
12. Does gender-related theory influence your personal philosophies on the adjudication of cases?
13. What effects have the onset of the COVID-19 pandemic had on women judges?
14. What needs to be put in place to ameliorate such effects?
15. What practical solutions and policy recommendations can you offer to enhance women's participation and leadership on the bench?

## **Part II: Members of the Legal Profession**

1. What is your perception of gender representation on the bench?
2. Are you satisfied with the current composition of women in the judiciary compared to men?
3. Many groups suffer discrimination and are excluded from the bench, why is there so much emphasis on women?
4. Do you have a preference on the gender of a judge/magistrate /prosecutor adjudicating over or prosecuting a case?
5. Does the gender of a judge/ magistrate affect how a matter is determined? And does the nature of a case play a role?
6. Do you think an increased number of female judges will positively influence judicial adjudications and outcomes? Where are the guarantees?
7. What practical solutions and policy recommendations can you offer to enhance women's participation and leadership in the justice sector?

## **Part III: Members of the Public**

1. Is there sufficient participation of women on the Kenyan bench?
2. Is there sufficient diversity of women to include persons with disability on the bench and if so what should be done?
3. What are some of the positions held /roles played by women already present on the bench?
4. Many groups suffer discrimination and are excluded from the justice sector, why is there so much emphasis on women?
5. Can you share some of your lived or personal experience of the bench in Kenya?
6. Are there any challenges facing women in accessing justice in the judiciary? If yes, what are some of these challenges?
7. Do you think women understand and/or value the importance of their representation on the bench?
8. Are there factors that enable or constrain women's participation or representation in leadership and influence in the justice sector?
9. Has the underrepresentation of women in the justice sector affected policymaking in the representation and adjudication of cases?
10. Are you aware of any measures put in place to improve women's representation?
11. What difference do you think it would make with the increased representation ratio of women on the bench?
12. Are you satisfied with the current representation of females on the bench?
13. What practical solutions and policy recommendations can you offer to enhance women's participation and leadership on the bench?



## **Part 1V: Members of the Legal Profession: Council Members/CEO/ CEO of Female Lawyers Organization.**

- 1.** How have women fared in the profession?
- 2.** The law society's membership has been largely composed of males, right from the colonial to post-colonial period. What is the current membership compared to the previous two phases?
- 3.** What is the composition of membership disaggregated by gender from 1981-2001, 2001-2010, and 2010- 2019?
- 4.** What is the representation of women in leadership in the law society governance structure from independence? What is the impact of their influence?
- 5.** Is there an increase in the number of females in the profession? What do you attribute to the increase?
- 6.** You are occupying an influential position in the profession. How has this impacted female members of the profession?
- 7.** What are the current challenges women members of the legal profession face in private practice?
- 8.** What is your perception of gender representation in the judiciary?
- 9.** Are you satisfied with the current composition of women on the bench compared to men?
- 10.** Many groups suffer discrimination and are excluded from the justice sector, why is there so much emphasis on women?
- 11.** Do you have a preference for the gender of a judge adjudicating over or prosecuting a case?
- 12.** Does the gender of a judge/ magistrate affect how a matter is determined? And does the nature of a case play a role?
- 13.** What do you think the assumption of the highest office of the bench will mean for the delivery of justice?
- 14.** Do you think an increased number of female judges will positively influence judicial adjudications and outcomes? Where are the guarantees?
- 15.** How has the COVID-19 pandemic impacted the performance of women judges? What measures should be put in place to ameliorate the situation?
- 16.** What practical solutions and policy recommendations can you offer to enhance women's participation and leadership on the bench?



Visit our website at:  
[www.africanwomeninlaw.com](http://www.africanwomeninlaw.com)

Email us at:  
[info@africanwomeninlaw.com](mailto:info@africanwomeninlaw.com)

Follow us on:  
Facebook | Institute for African Women in Law  
LinkedIn | IAWL – Institute for African Women in Law  
Instagram | @AfricanWomenInLaw  
Twitter | @AfricaWomenLaw

Copyright © 2023  
Institute for African Women in Law  
All Rights Reserved.



# **Women in Law & Leadership**

## **Kenyan Judiciary**