



Women in Law & Leadership

South African Judiciary



PATTERNS | PROGRESS | PROSPECTS

WOMEN IN LAW AND LEADERSHIP: SOUTH AFRICAN JUDICIARY

Patterns, Progress, and Prospects



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



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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

Women's representation on South Africa's bench has been progressive over the years, albeit rather slowly. The slow progression has affected women's rise to leadership. Of the leaders within the judiciary, the few women are usually deputies. Although some female judges, including myself, have worked hard to break glass ceilings, more remain. No South African female judge has yet reached the highest office of chief justice. I look forward to the day we will celebrate a woman for that win.

This IAWL-commissioned report touches on the critical issues that will help advance female judges in leadership. As a woman on the bench, I encountered my own barriers in rising to where I am today. But those barriers play out differently for different women and change over time. Therefore, the barriers this report identifies shed light on the old, new, and emerging obstacles to women's retention and promotion. Age-old barriers, such as patriarchal attitudes, persist, whereas the negative consequences of COVID-19 are new and emerging. The pandemic stirred up the judiciary in a way never seen before. For some, it worsened existing limitations, especially for mothers of young children who had to take care of them and work from home. The pandemic further slowed them in their journey to the top. Others, by contrast, were propelled higher during the pandemic. They had the opportunity to better their technological skills and get more done working remotely.

The report also provides some facilitators, key among them the support of judicial associations, civil society advocacy, and women's self-confidence. As a founding member and active player in the activities of the South African Chapter of the International Association of Women Judges, I am elated about its significant contribution to women's leadership pursuits that this report recognizes. I am particularly happy that it partnered with IAWL to produce this report, which underscores the barriers, points of attrition, facilitators of promotion, progress, and trends for female judges' leadership.

The concluding parts of this report offer a long list of recommendations, providing a guide to each stakeholder group—institutional gatekeepers, policymakers, civil society, advocacy groups, researchers and funding agencies, and female judges—about what they can do better to advance women's leadership. I implore all named stakeholders to give each recommendation the weight it deserves so that together we can transform the leadership of South Africa's judiciary into one equally representative of women. Kudos to the research team at IAWL for the good work.

Mandisa M. L. Maya
Deputy Chief Justice, South Africa

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. 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.

FOREWORD

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

CSO	Civil Society Organization
DJP	Deputy Judge President
DRGU	Democratic Governance and Rights Unit
IAWL	Institute for African Women in Law
JP	Judge President
JSC	Judicial Service Commission
NGO	Nongovernmental Organization
SAC-IAWJ	South African Chapter of the International Association of Women Judges
SADC	Southern African Development Community
SCA	Supreme Court of Appeal
SDG	Sustainable Development Goal
UN	United Nations

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Executive Summary

This study provides a broad overview of women's representation in leadership roles in the South African 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 South African bench.

The legal system plays a unique role in addressing gender-based discrimination. Therefore, it is crucial for women to 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 scant literature on women's leadership in the legal sector across Africa. It serves as a foundation to better understand the dynamics of gender inequality and the obstacles that impact the retention and advancement of women to leadership in the legal profession—bar, bench, and academy—in four priority countries, including South Africa.

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 South Africa's judiciary. It reports on a survey of 67 judges and magistrates, including women and men of all races and at different courts and locations.

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 the following:

	The uneven playing field for women due to patriarchal attitudes
	Work-life balance
	Lack of political will
	Lack of institutional gatekeepers' commitment to women in leadership
	Sexist practices
	Female judges' personal traits that make them hesitate to pursue leadership.

An investigation was conducted into the impact of COVID-19 on the judiciary's operations in general and its effect on the leadership prospects of female judges. It was a double-edged sword; it helped judges upskill because of technological interventions but led to a massive backlog of cases that could threaten women's leadership pursuits.

Using action-oriented and solution-driven approaches, the study draws on the research analyses and participants' suggestions to provide robust suggestions and recommendations on interventions that can lead to positive outcomes for women.

These facilitators of promotion to leadership and recommendations for supporting women in leadership include the following:

	Transparent and inclusive criterion for judicial leadership appointments
	Developing strategies for work-life balance
	Creating sexual harassment policies
	Increasing targeted advocacy by civil society
	Strengthening collegiality among female judges
	Investing more funds into large-scale empirical research on the challenges women in leadership face
	Female judges building their self-confidence.

Despite the challenges and barriers, women in the South African judiciary are forging ahead. The general trends and patterns show that although more women are being appointed to the judiciary and its leadership, progress has been slow and unsatisfactory. Most female judges are deputies, proving that even in leadership, women deputize men.

The findings from this study indicate the need for multipronged approaches to addressing the intersectional challenges women face in the legal academy. 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 Goal #5 forward to provide women equal and complete access to participating in decision-making.

The report's findings indicate the need for more research and data collection on women in the judiciary and investment in relevant leadership-boosting initiatives because of the significant role of the judiciary in upending discriminatory practices.



1 | INTRODUCTION



The literature on gender and judging has evolved from symbolic representation to the difference a gender-diverse bench brings to decision-making and gender-equitable judicial outcomes (Dawuni, 2021; Gilligan, 1982; Malleson, 2006; Sherry, 1986). Much of the scholarship came from outside Africa. In 2016, Bauer and Dawuni's (2016) edited volume pioneered scholarly discussions on women in African judiciaries. Since then, the nascent scholarship on the subject has covered the progress, challenges, trends, and prospects in some African counties and international judicial bodies, although more research is needed (Addadzi-Koom & Nkansah, 2021; Bauer & Dawuni, 2016; Dawuni, 2016b, 2018, 2020, 2021; Dawuni & Masengu, 2019; Gayoye, 2021; Masengu, 2016, 2020a; Uzebu-Imarhiagbe, 2020).

Even less research addresses gender and leadership in African judiciaries, despite notable exceptions (see Dawuni & Kang, 2015; Masengu, 2015). This study, focusing on women in leadership in South Africa's judiciary, is set in that context. A plethora of international and African regional frameworks on women support empowering women and girls to fully and equally participate in leadership. Article 9(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) imposes an obligation on African states to ensure “increased and effective representation and participation of women at all levels of decision making.”

Similarly, the Southern African Development Community (SADC) Protocol on Gender and Development (2008) Article 12(1) initially required state parties to ensure that women have at least 50% representation in decision-making positions in the public and private sectors by 2015. However, this was revised in 2016 to read that state parties are to ensure “equal and effective representation of women in decision-making positions in the political, public and private sectors” (Agreement Amending the SADC Protocol on Gender and Development, 2016, Art. 9). The amendment was in line with the 2015 United Nations (UN) Sustainable Development Goal 5 (SDG 5) which is concerned with achieving gender equality and empowering all women and girls (Sen, 2014; UN, 2014).

It sets out nine targets that the international community should attain by 2030. The target relevant to this study is 5.5, ensuring “women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life” (UN, 2014, p.14). The judiciary is a public decision-making body. Therefore, research on women's participation and opportunities for leadership in this profession will significantly contribute to achieving that goal. In view of contributing to the realization of SDG-5's Target 5.5, this report examines the factors affecting women's ascent to leadership in South Africa's judiciary.

Closely related to SDG-5 is SDG-16, on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable, and inclusive institutions at all levels. Specifically, Target 16.7 requires the judiciary to ensure responsive, inclusive, participatory, and representative decision-making at all levels (Edroma, 2019; UN, 2014). Gender parity on the bench is assessed with indicator 16.7.1, which emphasizes the proportions of positions in national and local institutions compared to national distributions by sex, age, persons with disabilities, and population groups. SDGs 5 and 16 establish the fundamentals for attaining gender-diverse judiciaries worldwide by 2030.

Maddison (2017) believes that women in leadership are essential in driving not only SDG-5 but also all the SDGs for one simple reason—they will not be achieved if only half the world's population is the target. Thus, “if we're going to achieve the SDGs, we've got to have gender equality, and if we're going to work toward gender equality, women should be leading that change” (Maddison, 2017). According to Dawuni and Kang (2015), the structure of the legal profession and the pool from which judges are drawn influences the extent to which women rise to leadership positions. They further suggest that women have a higher chance of advancement in countries with fused legal professions than in those with a split one, such as South Africa (Kaburise, 2010; Masengu, 2020b; Wildenboer, 2010). Therefore, it is likely that the rate at which women in its judiciary advance is low and measured. The existing records support this hypothesis.

South Africa has more women than men. As of midyear 2021, approximately 51.1% of the population was female (Stats SA, 2021). However, the gender demographics of the judiciary and its leadership do not mirror those of the population (Tables 2 and 3). Women represented 943 judges out of 1,960 (48%) in the 2021 judiciary (South African Judiciary, 2021): 101 (43%) of 234 superior court judges and 842 (49%) of 1,726 magistrates were women (South African Judiciary, 2021). South Africa has shown an increase in the number of women judges over the years; however, this increase does not translate into equal representation in judicial leadership.

Therefore, while this report explains the increase in the number of women judges, the focus is to explain the continuing barriers and points of attrition and to provide recommendations on facilitators of promotion.

The Department of Justice and Constitutional Development stated that “the appointment of female judges has been slower than was initially anticipated” (Department of Justice and Constitutional Development, 2013, p. 7). At that point, only 76 (24%) of the 311 superior court judges appointed since 1994 (when the Judicial Service Commission (JSC) was established) were women (Department of Justice and Constitutional Development, 2013).

South Africa had its first female judge president (JP) in 2012¹ and the second in 2014² (Masengu, 2015). Although in 2022, South Africa had its first female deputy chief justice, it is yet to see a female chief justice (South African Government, 2022). As of February 2022, nine (31%) out of 29 leaders in the superior courts were women. This study investigated the attrition points in the pipeline, barriers to retention, facilitators of promotion, and progress and trends on women in leadership in South Africa's judiciary over the last five years (2017–2022). The findings add up-to-date empirical evidence to the literature. The report includes the voices and experiences of female and male judges to present a balanced perspective. It further introduces a novel dimension by examining how COVID-19 impacted female judges in their day-to-day activities in their leadership roles. This report is also a step in the direction of achieving SDG-5 and, by extension, all the SDGs.

This report is structured as follows: the next part reviews the literature on female judges in Africa, focusing on women in leadership and its connection with the SDGs. The third part outlines the intersectionality theory on which the study was anchored. Part four provides the methodology. Parts five and six discuss the study's findings. Part seven lists recommendations for facilitating promotion. Part eight outlines notable progress and trends. Part nine concludes the report.

¹Monica Leeuw was the first female JP of the North-West division of the High Court.

²Mahube Molemela was the first female JP of the Free State division of the High Court.

2

WOMEN IN THE SOUTH AFRICAN JUDICIARY: A REVIEW



2.1. Women in Africa's justice sector

Research shows a scarcity of qualitative and quantitative data on women in the justice sector in sub-Saharan Africa (IDLO, 2018), with a few exceptions (Bauer & Dawuni, 2016a; Dawuni, 2016b, 2018, 2020, 2021; Dawuni & Masengu, 2019; Gayoye, 2021; Masengu, 2016, 2020a; Uzebu-Imarhiagbe, 2020). Hence, it is necessary to document more data. Bauer and Dawuni's (2016) country case studies set the African context for understanding gender issues in the judiciary, including the role of female judges in promoting democracy and women's rights. Before their book, a few studies had addressed women in African judiciaries, primarily focused on South Africa (Andrews, 2006; Bonthuys, 2013; Cowan, 2006, 2013; Dawuni & Kang, 2015; Johnson, 2014; Kamau, 2013; Masengu, 2015). Bauer and Dawuni (2016) set a new research agenda on gender and judging in Africa. Since then, the study of gender and judging in various African countries have been growing (Addadzi-Koom & Nkansah, 2021; Bauer & Dawuni, 2016a; Dawuni, 2016b, 2018, 2020, 2021; Dawuni & Masengu, 2019; Gayoye, 2021; Masengu, 2016, 2020a; Uzebu-Imarhiagbe, 2020). Studies on African women in regional and international courts have also emerged (Alapini-Gansou, 2021; Dawuni, 2018, 2019).

Female representation in the courts is varied. The UN Women (2012) study showed that women average about 27% of judges globally. In sub-Saharan Africa, women's representation in the justice system was about 28% (UN Women, 2012). The data showed substantial regional variations in representation for several reasons. First is the type of legal system which influences how judges are appointed. More women are in judiciaries in civil law countries than in those with common law or mixed legal systems. However, most of them may be in the lower courts (Bauer & Dawuni, 2016).

Additional factors identified are women and girls' access to legal education, the degree of gender-based discrimination in employment, the role of specific gatekeepers, such as judicial service commissions, availability of constitutional quotas for gender parity, the selection process used (elections, appointments, or nominations), the court's status, the executive's role and political will, the role of legal associations and civil society actors, and the level of respect attached to women's role in society (Bauer & Dawuni, 2016).

With the increasing number of women on African benches comes increasing impact and contributions to judiciaries and the justice system. Dawuni (2016a) identifies some of these. First, their presence leads to judicial diversity in terms of not only gender but also the courts' reasoning and decisions, which ultimately enhances the courts' legitimacy. Second, patriarchal and masculinist norms and culture are confronted with the growing presence of women on the bench (socializing male judges to be gender sensitive). Third, female judges have significantly contributed to shaping the legal and constitutional jurisprudence of many domestic courts by introducing gender-sensitive perspectives that have resulted in gender-sensitive decisions. Fourth, societal perception of corruption in the judiciary has been challenged by the increasing number of female judges. Finally, more women in African judiciaries contribute to the general constitutional and legal agenda for equal representation in political offices (Dawuni, 2016a).

In South Africa, women have been gradually appointed as judges since 1994, when a new constitutional era was ushered in, marking the end of apartheid (Andrews, 2021). A 2017 study found that the Constitutional Court had not had more than three women at any given time (Baines, 2017). Due to the legacy of apartheid, which systemically excluded Black people from pursuing legal education, race rather than gender has been the primary focus for transforming the legal and judicial profession (Albertyn & Bonthuys, 2016; Bonthuys, 2015). Advocacy for more female judges has often been made as an alternative to more African (Black) judges. However, the true need is for more African (Black) women as judges (Bonthuys, 2015).

“Women” in South Africa goes beyond gender to include race—African, Colored, Indian and White. The most pressing concern is the underrepresentation of African women in South Africa. Whereas 45.5% of superior court judges were African as of September 2020, only 19.65% were women (Judges Matter, 2021). Compared to White and Indian women as percentages of all judges of their race and the racial distribution of the overall South African population, there is a stark disparity among African female judges (Table 1).

Table 1 | Racial composition of female judges in South Africa as of September 2020

Percentage/Race	African	Colored	Indian	White
Superior court judges	19.65%	5.24%	4.36%	12.20%
Female South African population	80.80%	8.80%	2.50%	7.90%
South African population	41.32%	4.52%	1.26%	4.05%
All judges of each racial category	43.26%	42.86%	41.67%	38.36%

Source: www.judgesmatter.co.za & www.statssa.gov.za

As seen in the statistics cited, most female judges are in the lower courts. This dynamic aligns with Bauer and Dawuni's (2016) findings, which attribute the prestige of the courts to factors that influence female judges' representation in various African judiciaries.

Albertyn and Bonthuys (2016) and Andrews (2006, 2021) associate the somewhat laggard appointment of female judges with seven barriers, some of which line up with the generic factors Bauer and Dawuni (2016) identified. However, others are peculiar to the South African context. The first is the legacy of apartheid, which was particularly devastating for Black women. Second, the nature of the profession, largely populated by White men, leads to a masculine culture that is neither appealing nor receptive to women. The third is the patriarchal and masculinist attitudes and sexist practices deeply ingrained in South African society. Fourth, women's career choices may not necessarily align with judicial ambitions. Fifth is the lack of support for women and confidence among female lawyers aspiring to pursue a judicial career. Sixth is work-life balance issues for women. Finally, the appointment process frustrates realizing gender inclusivity and diversity goals (Albertyn & Bonthuys, 2016; Andrews, 2006, 2021).

Albertyn and Bonthuys (2016) point out factors that may advance South African women's equal representation and advancement. These include the constitutional requirement that the judiciary's racial and gender composition should replicate that of the population and the transparency of the judicial nomination and appointment processes, and the role of civil society actors in influencing it. Given the key role of the appointment process in achieving the Constitution's gender equality objective, it has attracted extensive scholarly attention (Andrews, 2006; Bonthuys, 2015; Corder, 2016; Cowan, 2006; Du Bois, 2006; Masengu 2020a; Oxtoby & Masengu, 2017).

Attaining gender parity in judiciaries is not just a South African challenge but a systemic global problem. Even in countries with a higher number of female judges, their representation in the top ranks is not as high (Escobar-Lemmon et al., 2021; Toxopeus, 2007). Accordingly, underrepresentation as leaders, especially in African judiciaries, is of even greater concern. This report closely examines women's pursuit of judicial leadership while remaining cognizant of the progress and barriers to their presence in African judiciaries.

2.2. Women in leadership in Africa's judiciaries

Literature on women in Africa's justice sector are few, and those on female leaders in the sector are fewer. The findings in this report add to that limited scholarly literature. The paucity of female leaders is inextricably linked to the size of the pool female judges are drawn from. Given this correlation, the barriers and promoters of female judges in leadership roles will share some commonalities with those concerning women's presence on the bench as ordinary judges.

Women only began rising to the upper echelons of judiciaries across Africa in the 1990s. Between 1990 and 2014, 18 women became chief justices and presidents of constitutional courts in 14 African countries (Dawuni & Kang, 2015). Most of these positions were a first for women (Bauer & Dawuni, 2016). In their study, which assessed where and when women have become chief justices and presidents of constitutional courts, Dawuni and Kang (2015) identify five main factors explaining women's ascent to leadership: legal system, selection method, the commitment of gatekeepers, end of a major armed conflict, and regional diffusion. Except for major armed conflict, these factors create a valid premise for investigating women's ascent within the South African context. Therefore, the survey questions for the study leading to this report incorporated these variables. Dawuni and Kang's (2015) work centered on only chief justices and presidents of constitutional courts in selected jurisdictions in Africa (1990–2014). However, this report focuses on South Africa but targets a broader spectrum of leadership: all heads of courts and not only those in the highest positions. This report also updates its work by collecting data over the past five years (2017–2022) to reflect the changing leadership trends.

The low number of women in leadership in South Africa's judiciary is due to the JSC's attitude and questionable assessment of potential leaders and not the absence of qualified women, which is the common perception (Masengu, 2015). Masengu's (2015) argument aligns with two of the factors identified by Dawuni and Kang (2015): the commitment of gatekeepers and the selection process.

According to Masengu (2015), before 2015, the JSC, as the constitutionally assigned gatekeeper of judicial appointment in South Africa, had yet to publish the criteria used to determine what makes a candidate a successful judicial leader. However, it published the criteria for judicial appointments in 2010.

Based on a review of interview questions posed to candidates for leadership positions between 2010 and 2014, Masengu (2015) pinpoints five areas that could be guiding benchmarks for the JSC: experience, rapport with colleagues, awareness of challenges facing the specific court in question and plans to address them, suggestions to increase the pool of female judges, and whether the candidate has a backlog of cases. However, she noted some inconsistencies with how these benchmarks have been applied to female and male candidates. She cited examples of women who had the experience but were disqualified because they did not have prior acting judicial leadership experiences, such as acting JPs or DJPs. Female candidates with overwhelming support from their colleagues due to their good relations have also been denigrated by the JSC during interviews. In contrast, their male counterparts with similar backing were lauded (Masengu, 2015). Andrews (2006, 2021) also cites instances where the JSC was openly hostile to qualified female candidates during interview sessions through biased and chauvinist remarks. In order to elicit the prevalence of attitudes and inconsistencies that contain discriminatory undertones today, specific survey questions were designed to probe these issues further.

Judicial nominees submit their applications to the JSC, and a subcommittee publishes a shortlist to be interviewed after a winnowing process and approval by all members of the JSC. The process of selecting candidates, particularly the unknown factors that are considered, has been questioned because the list of nominees published only includes those who made it to the shortlist and not all nominees (Andrews, 2006). Therefore, it is not clear how much gender influences the shortlisting process. However, evidence in other African countries shows that JSCs lacking gender parity lead to a preponderance of male appointees (Dawuni & Masengu, 2019).

In her attempt to dispel the perception that the paucity of women leaders in South Africa's judiciary is due to the limited number of qualified women, Masengu (2015) acknowledged some truth to that perspective as a relic of apartheid. Andrews (2006) elucidated the systemic hindrance to education that Black women suffered under apartheid, causing them to be late in entering the judiciary. Due to the predominantly White and male composition of the legal profession, fewer women than men will be available to occupy judicial positions.

Thus, it appears that in South Africa, racial rather than gender diversity will be realized faster (Andrews, 2006; Masengu, 2015). Despite this, Masengu (2015, p. 666) advocates that it is the constitutional mandate of the JSC to champion the shift from “an apartheid-era executive-mindedness to a transformative, value-laden and Constitution-based adjudication,” which it should ensure includes women in leadership. This report assesses the extent to which the JSC keeps up with this goal.

According to Dawuni and Kang (2015), regional diffusion is where a woman's advancement in a neighboring or peer country may (a) influence gatekeepers in deciding on leadership candidates, (b) motivate female activists to rally and urge women to vie for leadership, and (c) inspire female judges to apply for and be open to taking up leadership roles. The snowball effect of regional diffusion appears nonexistent in the SADC (Masengu, 2020b) because, as of 2017, Tanzania, Zambia, and Zimbabwe all had more than 40% female judges, but Botswana had 5.6%. The report later comments on the influence of the regional diffusion hypothesis on judicial leadership for women in South Africa based on current events.

The literature review revealed several factors associated with the decline and promotion of women in the judiciary and leadership. This report assesses how the factors identified have combined to influence women's equal representation in the South African judiciary's leadership over the past five years. The findings will significantly add to the burgeoning scholarship on African female leaders generally and South Africa in particular.



3

THEORETICAL FRAMEWORK



Black feminist scholars have used the phenomenon of intersectionality and the axes of domination to examine the intersection of factors on Black women's lived experiences (Collins, 2019; Lorde, 1984). The theory was popularized by Crenshaw (1989), who used it to draw attention to the simultaneous intersection of race and sex that creates multidimensional experiences for Black women under U.S. anti-discrimination laws. Since then, varied conceptions have been presented (Carbado, Crenshaw, Mays, & Tomlinson, 2013; Davis, 2008; Else-Quest & Hyde, 2016; Gillborn, 2015). In a 2017 interview, Crenshaw described intersectionality as:

a lens through which you can see where power comes and collides, where it interlocks and intersects. It's not simply that there's a race problem here, a gender problem here, and a class or LGBTQ problem there. Many times, that framework erases what happens to people who are subject to all of these things.

Gillborn (2015) defines intersectionality as the interrelations and interconnections of various inequities and identities in diverse settings over time. To Atewologun (2018), it focuses on multiple positionalities of individuals and groups at different levels. Else-Quest and Hyde (2016) provide three broad assumptions common to the various definitions and conceptions of intersectionality. The first recognizes that all persons have multiple memberships in linked social categories such that one category's experience is connected to the other. Second is the assumption of the interconnections of inequality and power entrenched in the various categories. Third, all categories have individual and contextual components.

For a racially and socially diverse country such as South Africa, the intersectionality theory explains the nature of the multiple social categories, identities, and contexts that influence women's ascent to judicial leadership.

It also helps us to better understand how the interconnected identities affect the power, advantages, and inequities female judges face in their pursuit of leadership. Being a female judge in South Africa is intersectional due to the multiple identity markers that characterize women, including gender, race, ethnicity, class, sexual orientation, disability, and religion. The lived experiences and inequities of an African female judge will be different from that of a White or Indian woman, which will also be very different from that of a Colored lesbian.



4 | METHODOLOGY



This study used a cross-sectional online survey design, which allows for observations, descriptions, and analyses of information regarding a population at a specific time. It explored, described, and analyzed information (points of attrition, barriers, promoters, progress, and trends) about South African female judges' leadership pursuits in 2017–2022.

This report also relied on the literature reviewed through comprehensive desktop research. It first reviewed existing global views on women in African judiciaries by African scholars to situate this study within the research on female judges. It then reviewed South African literature on the topic to provide a contextual background. The review yielded findings that led to hypotheses that were created and tested in the survey. The survey's conclusions were juxtaposed with the literature to analyze and evaluate the data generated. Interviews were not conducted for the study due to the challenge with scheduling interviews with multiple judges who are often busy. Also, the limited time for collecting data did not allow for scheduling interviews which could spread over a longer period depending on the sample size. The survey, however, asked some open-ended questions that allowed respondents to express themselves in their words and to provide some form of qualitative data.

This study principally targeted superior court judges. However, input from magistrates was welcomed to provide insight into the challenges to women's rise from the lower to the higher courts. Though the focus was on women, the survey was open to both male and female judges to provide balanced insight. Men's perspectives as a counterpoint were necessary to ascertain how they navigate or perceive the leadership ladder differently.

The sample size was 67 respondents: 38 superior court judges (response rate 16.2%) and 29 magistrates (response rate 1.7%). Research has shown lower response rates (10% or less) for online surveys than paper surveys due to survey fatigue and technical issues (Nulty, 2008; Sax, Gilmartin, & Bryant, 2003; Van Mol, 2017). The survey's main target was superior court judges and not magistrates, so the response rate for superior court judges is adequate, although the 1.7% response rate for magistrates is negligible.

Table 2 provides the background information on survey respondents.

Table 2 | Demographics of survey respondents

Variable	Frequency	Percentage
Gender		
Male	4	6.0
Female	63	94.0
Race		
African	27	40.3
Colored	13	19.4
Indian	8	11.9
White	14	20.9
Prefer not to say	5	7.5
Years of Experience		
Below 5 years	8	11.9
5–10 years	9	13.4
11–15 years	13	19.4
16–20 years	16	23.9
Above 20 years	21	31.3

The survey also elicited the specific courts each judge was assigned to at the time (Table 3).

Table 3 | Court distribution of survey respondents

Level of Court	Frequency	Percentage
Constitutional Court	1	1.5
Supreme Court of Appeal (SCA)	7	10.4
High Court	30	44.8
Magistrate Court	29	43.3

The four respondents were men; three of these were African (one had over 20 years of experience and the other two had 5–10 years), and the other was White with 11–15 years of experience. Two were High Court judges, and two were magistrates. Their responses will be highlighted to show how their perceptions differ from those of the female participants and present a balanced perspective.

The racial distribution for the survey largely reflects that of the South African population; the racial composition as of midyear 2021 was African (80.8%), Colored (8.8%), White (7.8%), and Indian (2.6%) (Stats SA, 2021). Table 2 shows that African respondents were the majority, followed by White, Colored, and Indian.

More than two-thirds of respondents (74.6%) had over 10 years of judicial experience and therefore have known and experienced the workings of the judicial system long enough to give informed answers to the questions.

A snowball sampling technique was used; this involves asking specific participants or contacts to identify others to form part of the sample (Creswell, 2012). The survey link was sent to specific judges and associated individuals to forward to colleagues. IAWL leveraged an existing memorandum of understanding with the South African Chapter of the International Association of Women Judges (SAC-IAWJ), a partner in this study. There was a respondent from each of the four main court ranks, as seen in the court distribution for the survey (Table 3). Respondents were also in various stages of their careers: some were leaders, some were not, some had less than five years of experience, and some had more than 20 years (Table 2).

A Google Form was used to create the online questionnaire. The study used an online survey because of its convenience and cost-effectiveness. Judges have hectic schedules, so an online survey allowed them to participate in the study at their own pace and in the comfort and privacy of their chambers or homes. The survey link was distributed through specific judges and other contact persons associated with judicial circles.

The link was first distributed through the principal contacts on April 2, 2022. Three reminders³ were sent to the SAC-IAWJ and other contacts to redistribute to the target populations. The last was sent on May 3, 2022. The reminders were necessary, considering the judges' workloads. No new entries were received for about four weeks after the last reminder was sent, so the survey was closed on June 15, 2022.

³ Scholars such as Van Mol (2017), Fan and Yan (2010), and Kanyongo and Helm (2010) recommend sending at least two reminders when online surveys are distributed.

It took about 10 minutes to complete the survey, which comprised closed- and open-ended questions and was divided into eight sections: demographics; leadership; points of attrition and barriers; facilitators of promotion, progress and trends, COVID-19 impact; recommendations; and final words. Appendix III contains the survey. Qualitative and quantitative data were analyzed because the survey collected both. Descriptive statistics were used to analyze quantitative data, facilitated by the statistical software embedded in Google Forms. Thematic analysis was used to examine qualitative data. Several themes and subthemes were created to systematically present the data (parts five and six of this report).

Participation was voluntary. The survey refrained from collecting any identifying information, such as names, email addresses, phone numbers, or mailing addresses, to protect the respondents' anonymity. A statement provided at the beginning of the survey promised anonymity, informed respondents about the study's aim, and assured them that their responses would be used only for research purposes.





FINDINGS



5

ENTRY, RETENTION, AND PROMOTION



As mentioned earlier, women's representation on the South African bench is quite impressive as it is nearing parity, with 43% of superior court judges and 49% of magistrates being women as of 2021 (South African Judiciary, 2021). However, the growing trend in women's numbers on the bench is yet to translate into equality in leadership. The section briefly explores some of the factors for the increase in representation.

5.1. Explaining the increase in the number of women judges

A. Constitutional provisions advancing women judges' numbers

A major factor responsible for this increased representation of women in the judiciary is the gender-advancing provisions in the South African Constitution. Section 174(2) of the Constitution on the appointment of judicial officers stipulates that “the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed”. This constitutional obligation imposed by section 2 of the Constitution must be fulfilled. Therefore, since the gender composition of the South African population currently comprises more women than men, then it is expected that the membership and leadership of the bench will reflect that ratio.

The increasing representation of women is gradually trickling up the leadership ladder, which stood at 31% as of February 2022 at the superior courts. Respondents for the study captured this progressive trend of more women being appointed as judges and moving up the leadership ladder. One commented, “more women moving upward is encouraging,” while another also said, “more women are appointed”. In addition to the constitutional basis for the increase in numbers, some other factors in the literature explained the promoters that facilitated women's representation over the years were tested in the survey. Respondents indicated their level of agreement with eight statements explaining the increase in the number of women judges.

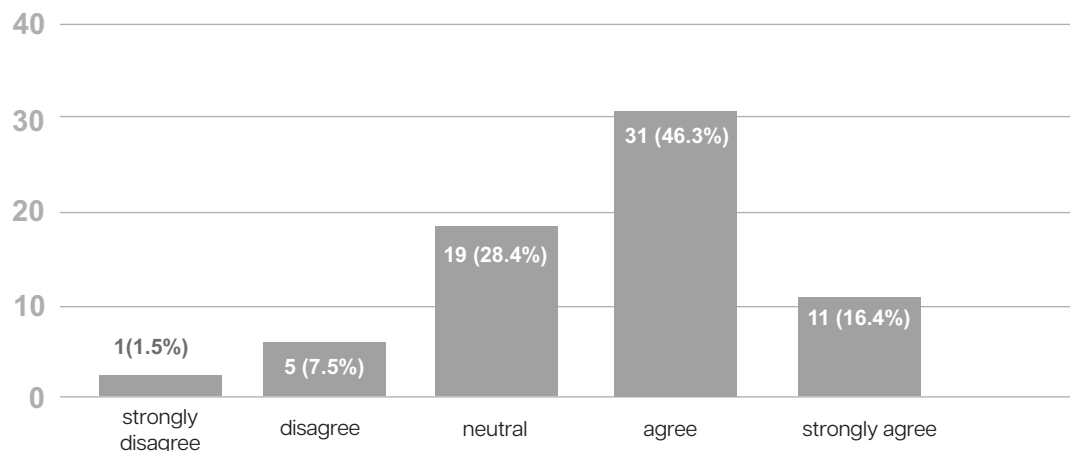
B. Criticism and advocacy by civil society

Studies suggest that a facilitator for the increase in women's appointments to judicial positions is the contributions of civil society actors through criticism and advocacy (Albertyn & Bonthuys, 2016; Bauer & Dawuni, 2016). The survey presented the statement, "Criticism and advocacy by civil society organizations have contributed to increasing women leaders or women nominees for leadership in the judiciary," and 62.7% agreed.

Figure 1 | Respondents' thoughts on the role of CSOs in promoting female judges

Criticism and advocacy by civil society organisations have contributed to increasing women leaders or women nominees for leadership in the judiciary.

67 responses



Source: IAWL survey, 2022

In South Africa, civil society organizations (CSOs) have been actively critiquing and documenting the slow feminization of the bench and the barriers to female judges' promotion. For instance, in 2012, two nonprofit organizations, the Democratic Governance and Rights Unit and Sonke Gender Justice, filed a complaint on the topic with the Commission on Gender Equality. In 2016, the commission published an investigative report based on that complaint and confirmed the slow feminization and multiple barriers to female judges due to institutional culture (DRGU, 2022b; Commission on Gender Equality, 2016). A follow-up report was released in 2018 (Commission on Gender Equality, 2018). This report, produced through a collaborative effort of the Institute for African Women in Law (IAWL) and the SAC-IAWJ, documents the barriers, promoters, progress, and trends of female judges' leadership and evidence of civil society's significant contribution.

The respondents called for more proactive advocacy by civil society, especially before leadership appointments, where advocacy would matter most. A respondent remarked on “distinguishing between constructive critique after the fact by civil society and being proactive beforehand.”

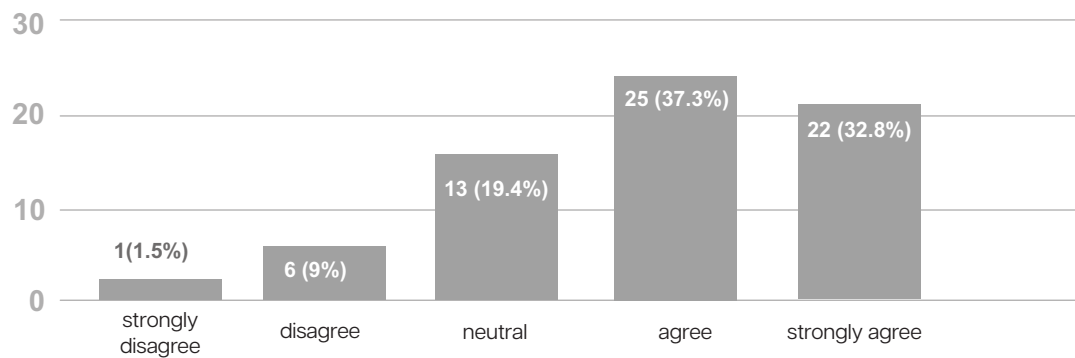
C. The role of female judges' associations

SAC-IAWJ, founded in August 2004, is an active female judges' association. Its principal aim is to create an inclusive judiciary. It is open to all judges, magistrates, and judicial officers regardless of gender, race, or rank (SAC-IAWJ, 2022). It provides professional support and capacity-building programs and creates opportunities for its members to participate in national and international conferences, judicial exchanges, training programs, and community-based projects. It also organizes mentorship and legal education programs for students in partner South African universities and law schools (SAC-IAWJ, 2022; DRGU, 2022b) and recently launched a journal targeted at providing female jurists and men aligned with its objectives with a platform to publish their contributions (Juta, 2021).

Figure 2 | Respondents' views on the role of female judges' associations in promoting female judges

Women judges associations have helped women to rise to the top in the judiciary.

67 responses



Source: IAWL survey, 2022

Based on this laudable track record, it was unsurprising that 71.1% of respondents either agreed or strongly agreed with this statement. The SAC-IAWJ's active role, therefore, is a factor that explains the increase in female judges in South Africa.

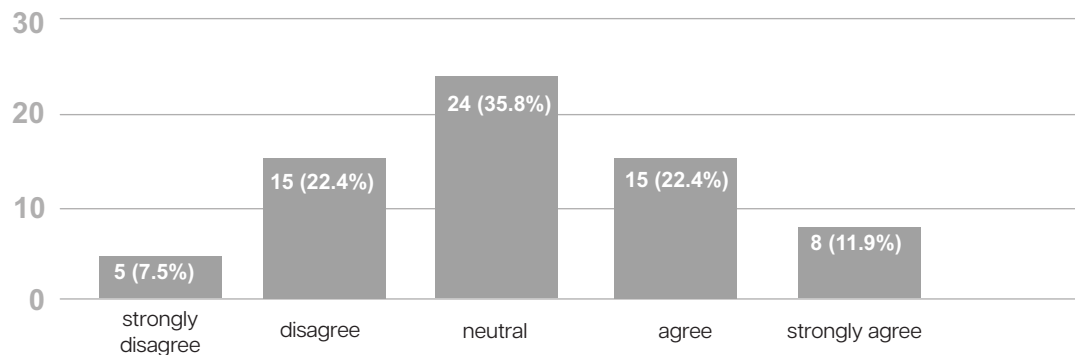
D. Collegiality among judges

Masengu (2015) highlighted the possible influence of collegial relations on the appointment process, leading to an increase in women's representation. However, when presented with the statement, "Collegiality among judges, both men and women, encourage female judges to advance," respondents had no clear consensus.

Figure 3: Respondents' thoughts on how collegiality among judges helps women to advance

Collegiality among judges both men and women to encourage women judges to rise to the top.

67 responses



Source: IAWL survey, 2022

Consequently, the impression from the survey responses is that collegiality is merely a potential promotion facilitator but does not explain the current increase in numbers.

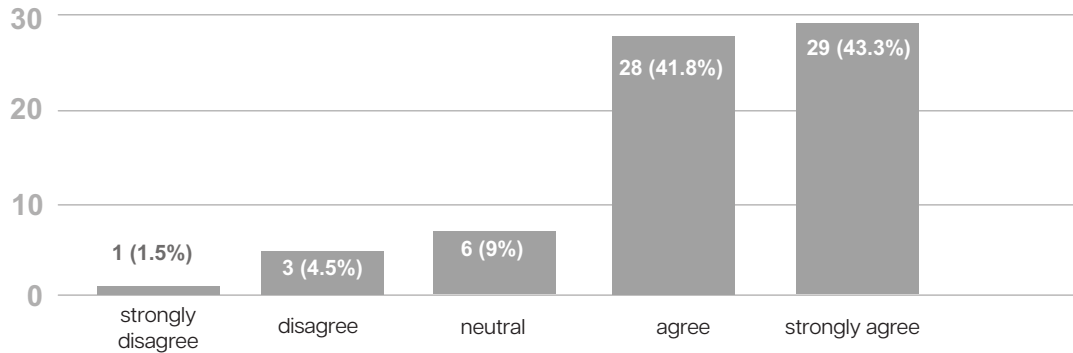
E. Female judges' confidence

Self-confidence is a potent catalyst for advancement. An overwhelming 85.1% of respondents agreed that women's self-confidence has helped. Only 6.0% disagreed, and 9.0% were neutral.

Figure 4 | Respondents' thoughts on how female judges' confidence helps women to advance

Women's self confidence has helped to advance their judiciary leadership carrers.

67 responses



Source: IAWL survey, 2022

Other personal traits and leadership qualities that have facilitated female judges' ascension are closely related to self-confidence. Recognizing the role of inborn attributes, a male judge said:

“Women, as a class, do not require gender solidarity for individual women to have their leadership qualities recognized. What is critical is that an individual woman manifests leadership attributes; this is partly innate and partly acquired. A judge with extensive litigation experience as a practitioner [ha]s a huge advantage in being perceived as a leader.”

Therefore, female judges' self-confidence and other leadership traits, whether innate or learned, are facilitators for the increasing number of women judges.

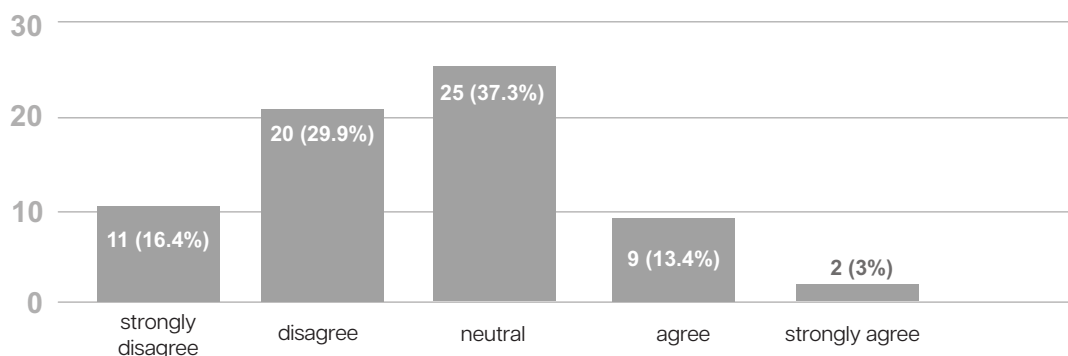
F. The role of the JSC

Given the constitutional mandate of the JSC to take steps toward a judiciary that reflects the population's gender composition, the survey presented respondents with the statement, “The Judicial Service Commission is proactive in ensuring more women are appointed as leaders.”

Figure 5 | Respondents' thoughts on the JSC's proactiveness in facilitating female judges' leadership

The Judicial Service Commission is proactive in ensuring more women are appointed as leaders.

67 responses



Source: IAWL survey, 2022

Over a third (37.3%) were neutral, almost half (46.3%) disagreed, and 16.4% agreed. The outcome appears to be a vote of no confidence in the JSC's pro-gender-equality efforts and commitment. Therefore, the respondents did not consider the JSC, the institutional gatekeeper of the Constitution's gender equality agenda, a facilitator of the increasing number of women on the bench.

The discussions above lead to the following conclusions. First, most respondents agreed about activism by civil society actors, efforts by the SAC-IAWJ, and female judges' self-confidence and other innate leadership traits as explaining the increase in the number of women judges over the years in line with the existing literature. Second, collegiality is not a strong factor in explaining the numbers and could become a viable promoter. Finally, respondents generally did not find the JSC to be a promoter of women's numbers.

5.2. The paradox of more women but less in leadership

Despite the near gender parity of the judiciary's composition, given the factors explained above, it suffers some deficiencies. This section points out some of those deficiencies.

A. More women, but less in leadership

The gender parity is bottom-heavy. In other words, most of the women are in the lower rungs of the courts – a common pattern that Bauer and Dawuni (2016) find among women judges' representation across African judiciaries. Thus, although women's numbers are increasing within the judiciary, they are subservient to their male counterparts who dominate the higher ranks and the leadership. The bottom-heavy trend for women in South Africa's judicial leadership is illustrated in Tables 4 and 5, which show the gender distribution of the superior court leadership and interviews for leadership positions conducted by the JSC, respectively, from 2017 to 2022.

Table 4 | Gender distribution of leadership positions in superior courts as of February 2022

Court	Leadership Position	Gender of Leader	
		Women	Men
Constitutional Court	Acting Chief Justice ⁴		✓
	Deputy Chief Justice		✓
Supreme Court of Appeal	President	✓	
	Deputy President		✓
High Court Divisions			
Western Cape	Judge President (JP)		✓
	Deputy Judge President (DJP)	✓	
North-West	JP	✓	
	DJP		✓
Gauteng	JP		✓
	DJP		✓ (2) ⁵
Free State	JP		✓
	DJP	✓	
KwaZulu-Natal	JP		✓
	DJP		✓
Limpopo	JP		✓
	JP	✓	
Mpumalanga	JP		✓
	DJP	✓	
Northern Cape	JP		✓
	DJP	✓	
Eastern Cape	JP		✓
	DJP		✓ (2) ⁶
Labor Court and Labor Appeal Court	JP		✓
	DJP (Acting)	✓	
Land Claims Court	JP (Acting)	✓	
Competition Appeals Court	JP		✓
Electoral Court	JP		✓
TOTAL	29	9	20
PERCENTAGES	100%	31%	69%

Source: www.judiciary.org.za

⁴At the time of writing, the deputy chief justice was also acting chief justice pending the appointment of a new one.

⁵ There are currently two DJPs for the North and South Gauteng divisions of the High Court.

⁶The Eastern Cape division has two DJPs.

As of February 2022, nine (31%) out of 29 leaders at the superior courts were women. Thus, although the percentage of female judges forms a critical mass (usually 30%), it is still far from true parity, usually 40–60% of the two dominant genders.⁷

Table 5 | JSC interviews for leadership positions in superior courts 2017–2022

Month/Year	Leadership Position	Number of Interviewees	Gender Distribution of Interviewees		Gender of Appointees	
			Women	Men	Women	Men
2022						
February	Chief Justice ^a	4	1	3	-	-
2020/2021 ⁹						
April	Deputy Judge President (DJP) (Free State)	3	2	1	1	-
	DJP (Gauteng)	1	-	1	-	1
	DJP (Limpopo)	3	1	2	1	-
	DJP (Northern Cape)	1	1	-	1	-
2019						
October	DJP (Limpopo)	4	-	4	-	-
	DJP (North-West)	1	-	1	-	1
April	Deputy President (SCA)	1	-	1	-	1
	DJP (Labor and Labor Appeal Court)	2	-	2 ¹⁰	-	-
	DJP (Northern Cape)	2	2	-	-	-
2018						
October	Judge President (JP) (Free State)	1	-	1	-	1

Source: www.judgesmatter.co.za

⁷Although 40–60% is broadly considered to be near parity, parity properly is achieved when there are equal numbers of men and women or the difference in numbers is almost negligible.

⁸At the time of writing, the chief justice was yet to be appointed.

⁹Interviews in 2020 were suspended indefinitely due to COVID-19 and continued in 2021.

¹⁰ Both interviews were cancelled.

2017						
October	JP (Eastern Cape)	2	-	2	-	1
	DJP (North-West Cape)	1	-	1	-	-
	DJP (Northern Cape)	2	2	-	-	-
April	JP (Eastern Cape)	4	-	4	-	-
	JP (Mpumalanga)	1	-	1	-	1
	JP (Northern Cape)	2	1 ¹¹	1	-	1
	DJP (Northern Cape)	2	2 ¹²	-	-	-
	DJP (North-West Cape)	2	1	1	-	-
TOTAL		39	13	26	3	7

Source: www.judgesmatter.co.za

The JSC interviewed 40 candidates in 2017–2020; 13 (33%) were women. Of those 13, two withdrew from the interviews, and another two were repeat candidates. These 13 women also form a critical mass but are below true parity, affecting the number of women appointed to leadership. As anticipated, only 10 interviewees were nominated; three were women.

B. Limited pathways to leadership

As indicated, Dawuni and Kang's (2015) hypothesize that the rate at which women rise to leadership is influenced by the structure of the legal profession, which is the pool from which judges are drawn. South Africa's legal profession is split, so it was hypothesized that that rate would be low and measured. Scholarship and data from the literature were cited to support this hypothesis. From Tables 4 and 5, women are still lagging, confirming that the split legal profession is one challenge.

Another entry challenge is the requirement for an acting judgeship to earn a permanent spot at the superior court.

¹¹ Withdrew from interview.

¹² One candidate withdrew from the interview.

A magistrate explained:

“

The whole process starts with acting appointments. In SA no statute regulates how the acting positions in the High court/Lower court should be filled. This hinders women's empowerment and succession plan. I say this because, even though it is not a requirement to act in the High Court before one gets appointed full-time, the JSC only considers those who have acted and recommends them for permanent positions. For as long as the criteria for acting positions remain unclear as it is right now, most women will suffer. The system that we have right now is very prejudicial, especially for those who come from disadvantaged spaces.

”

Another added:

There is no transparency at all. For starters, [a]cting as a Judge at the High Court in SA is a prerequisite for a permanent appointment. From what we heard, you don't just apply. You must be told by the relevant judge president. To get an acting appointment at the High Court, you must be highly connected. The whole process is, and can be open to corruption, for those who are willing to do anything to get ahead. Which is a very sad thing because ours is a noble profession. Occupying an honorable office through dishonorable ways, God forbid. That to me tells me that no matter how brilliant you are, you will not go anywhere. We are perpetuating injustice against our colleagues, yet we are expected to administer justice to the litigants. I find it to be hypocritical.

This lack of acting stints means a lack of experience and exposure, so women are underqualified for promotion. A respondent explained, “Not enough training given to women judges. Let more women act on the bench to become experienced to perform the judiciary functions adequately. Women to be selected on merit and not because they must provide sexual favours”.

The survey data also revealed that the intersection of race and gender makes the acting requirement challenging for some identities, usually women and Black women in particular.

A magistrate shared:

...they must give everyone a chance to act at the High court as a judge, regardless of who I know or don't know. People are demoralized out there. We must be given a chance to grow within the judiciary, by giving us training. For example, in a certain province that I know, the High Court doesn't train magistrates, they prefer attorneys and advocates. The Regional court appoints whites and males (including African males) in acting appointments. The judiciary is in trouble, and if something is not done quickly, an injustice will prevail, which is a very sad thing to witness. We must do away with hypocrisy and do the right thing because this is the legacy that our children will inherit. History will judge us. I suggest that an investigation must be done in all the provinces to root out all these. Accountability must start from above. If we are serious about transformation, we must start by removing all obstacles, including subtle ways that people use to frustrate transformation.

The lack of support, especially from judicial associations and other women, was an issue. Women who did not receive enough support were sometimes not confident enough to put in for promotion. "Lack of support for women in [p]ractice, results in them struggling to build enough confidence to avail themselves for higher positions," a respondent noted.

C. Uneven opportunity for judicial leadership

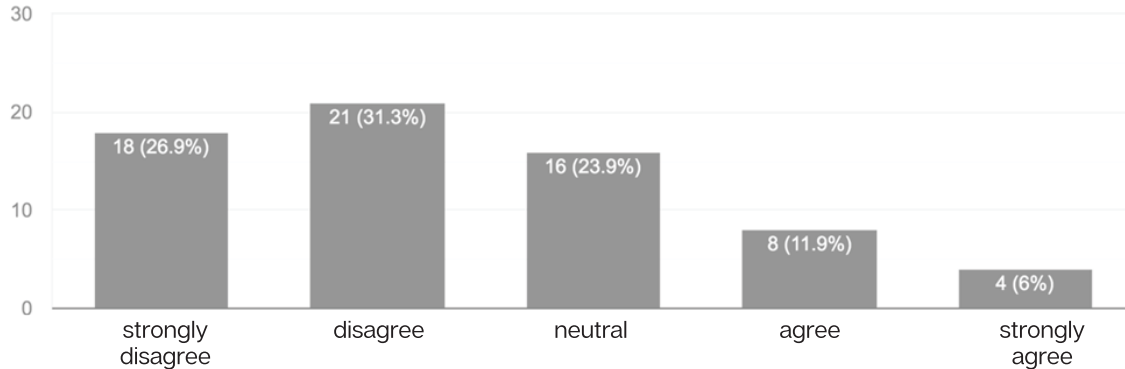
Based on the conclusions in the literature and data about women's underrepresentation in the bench's leadership and the myriad of reasons assigned to those findings, the survey presented respondents with the statement "There is an even playing field for both women and men judges to attain leadership positions in South Africa's Judiciary." More than half (58.2%) disagreed or strongly disagreed. Figure 6 provides details of the responses.



Figure 6 | Respondents' perception of evenhandedness in the judiciary's leadership

There is an even playing field for both women and men judges to attain leadership positions in South Africa's judiciary.

67 responses



Source: IAWL survey, 2022

It was interesting that the four male respondents were split. One (African with over 20 years of experience) strongly disagreed. Two (Africans with 5–10 years of experience) were neutral, and the last (White and with 11–15 years of experience) strongly agreed.

It is likely that race and years of experience rather than gender heavily influenced the outcome, giving credence to the intersectionality theory; race is often more pronounced than gender in South Africa. Most of the respondents who strongly disagreed or disagreed were African and Colored women with over 10 years of experience. The White respondents, regardless of experience, tended to be neutral, agree, or strongly agree. The Indian respondents were evenly divided. Regardless, the responses taken as a whole show an unequal playing field.

While women are increasingly being represented in the judiciary, continuing barriers and points of attrition have slowed their increased representation in leadership. Part six highlights some of those barriers and points of attrition.

6

POINTS OF ATTRITION AND BARRIERS



The survey provided 10 relevant statements covering various challenges drawn from the literature. Respondents were to indicate their level of agreement with each on a five-point Likert scale (1= *strongly disagree*, 2 = *disagree*, 3 = *neutral*, 4 = *agree*, 5 = *strongly agree*). The survey also included an open-ended question asking for additional barriers respondents may have experienced or identified. The findings from the responses are discussed in this part.

6.1. Patriarchal attitudes toward women

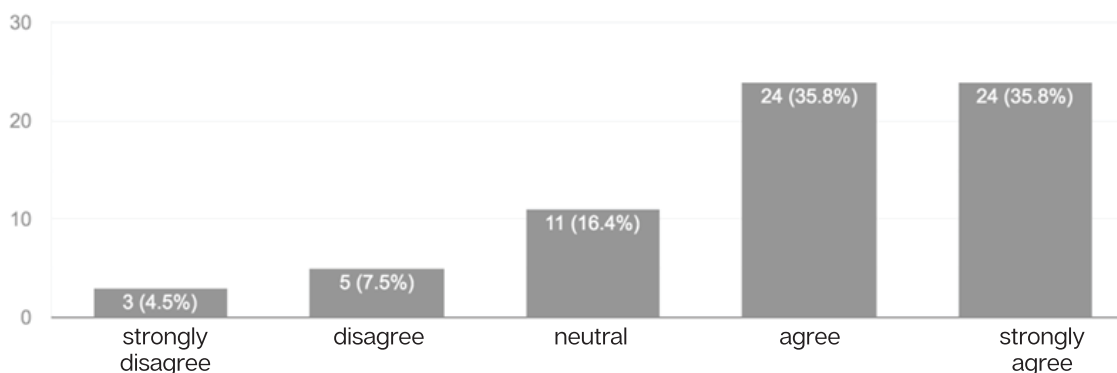
According to Albertyn and Bonthuys (2016) and Andrews (2006, 2021), the entrenched patriarchal and masculinist attitudes in society are the reason few women are appointed judges. The survey presented the statement, “Society's perception of women's roles negatively affects women's leadership ambitions in the judiciary”; 71.6% of respondents agreed. Three of the four male judges also agreed, although the other strongly disagreed. “Patriarchy is still an enormous elephant in the room,” a respondent commented. Several others also mentioned patriarchy as a barrier.



Figure 7 | Respondents' view on how society's perception of women's roles affects female judges' leadership ambitions

Society's perception of women's roles negatively affects women's leadership ambitions in the judiciary.

67 responses



Source: IAWL survey, 2022

Patriarchy manifests in a lack of confidence in women, their abilities, and their leadership. One respondent mentioned a “lack of confidence in women's leadership capabilities in a patriarchal society.” Another said, “[t]he perception [is] that males are better leaders and stronger leaders than women. They can be more assertive than women. Males feel more dominant, and many do not want to be under the leadership of women.” Taking a more personal stance on the issue, a respondent said, “[t]he perception [is] that as a woman I am unable to be precise in my response, unlike men.” In giving a more detailed description of patriarchy, a respondent stated:

The views about women and leadership prevalent within society and how views shape the debate and decision about women and leadership ... That it is an anomaly, and it draws such fierce criticism from all angles, including women in different fields who have no leadership backgrounds and no leadership experience.

Ultimately, patriarchal attitudes lead to “different standards applied to men and women,” as one judge put it. Thus, a judge emphasized the need to address it head-on: “[t]he leadership of women is long overdue, and we should be deliberate about pushing back the frontiers of patriarchy. It should be removed by design and not by incidence.”

These masculinist views about women translate into myths and perceptions about female judges.

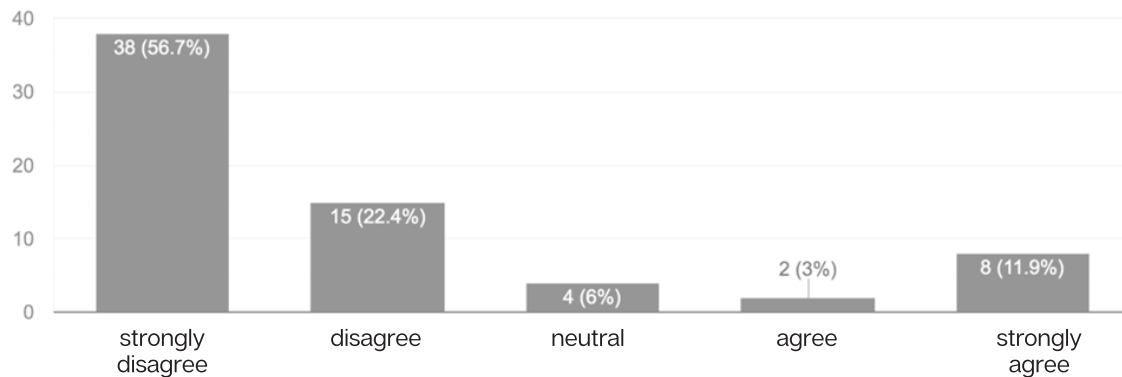
6.2. Myths and perceptions of female judges

A majority of respondents (79.1%) disagreed with the perception that female judges' underrepresentation in leadership was because they were not qualified enough.

Figure 8 | Respondents' opinion on female judges' qualification for leadership

Few women judges are in top leadership positions in the judiciary because they are not qualified enough.

67 responses



Source: IAWL survey, 2022

Their position validates Masengu's (2015) view that the low number of female judges in leadership is not because women are unqualified. However, a respondent who strongly disagreed emphasized that despite dismissing that perception, “women should not be appointed to leadership roles merely because they are women. They need to have the requisite experience, qualifications, and track record of being good and fair leaders. The best women for the job must be appointed.”

Connected to the myth about women's qualifications is another barrier created by women who seek promotion even though they are not qualified. A High Court judge explained, “In some instances, other women who want to jump ahead, in spite of lack of experience, are the problem.” Masengu (2020a) discusses this problem of women who were underqualified for leadership positions and harshly criticized by the JSC. The consequence was limiting other women's chances by casting doubts about whether enough women are qualified to judge.

6.3. Systemic barriers: The JSC and the executive

Masengu (2015) pinned the reasons for women's low representation in leadership on the JSC's attitude and questionable assessment of potential leaders. This argument agrees with Dawuni and Kang's (2015) assertion that the level of gatekeepers' commitment and the selection process could influence female representation. Likewise, Albertyn and Bonthuys (2016) and Andrews (2006, 2021) cited the appointment process as obstructing gender inclusivity and diversity in leadership goals. The survey presented respondents with the following statements:

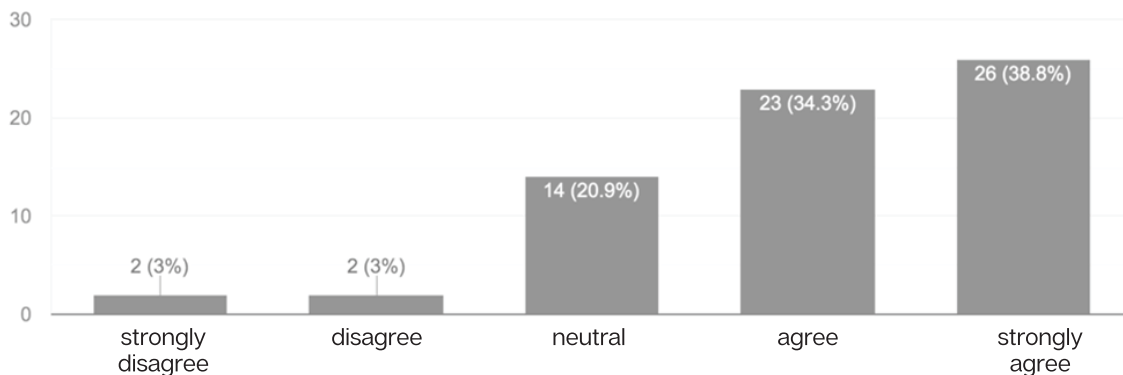
- (a) The nomination and appointment processes frustrate women judges' inclusivity in the judiciary's leadership.
- (b) The gender and racial composition of the Judicial Service Commission adversely affect the number of women leaders appointed.
- (c) The criteria for appointing judicial leaders hinder more women from being promoted than men.

For statement (a), most respondents (73.1%) agreed.

Figure 9 | Respondents' opinion on the nomination and appointment process

The nomination and appointment processes frustrate women judges' inclusivity in the judiciary's leadership.

67 responses



Source: IAWL survey, 2022

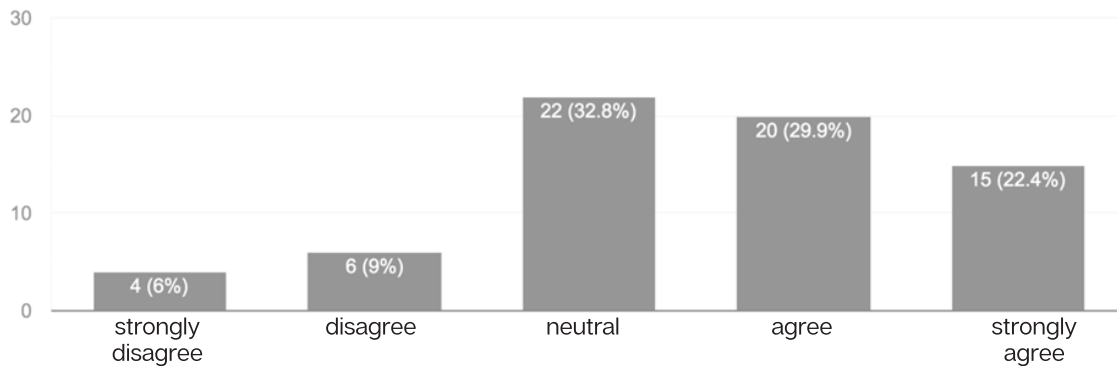
One High Court judge remarked,

“the interviews at the JSC have been a brutal process so far. There is a patronizing attitude during the interview process. As if women can only succeed to comply with a nonexistent quota.”

Another stated that “the bad reception by member[s] of the JSC” was a barrier to female judges.

Figure 10 | Respondents' view on the impact of the criteria for appointing judicial leaders on women's leadership

The criteria for appointing judicial leaders hinder more women from being pointed than men.
67 responses



Source: IAWL survey, 2022

Similarly, respondents mainly (52.3%) agreed that the criteria for appointing leaders hindered women. One respondent felt that

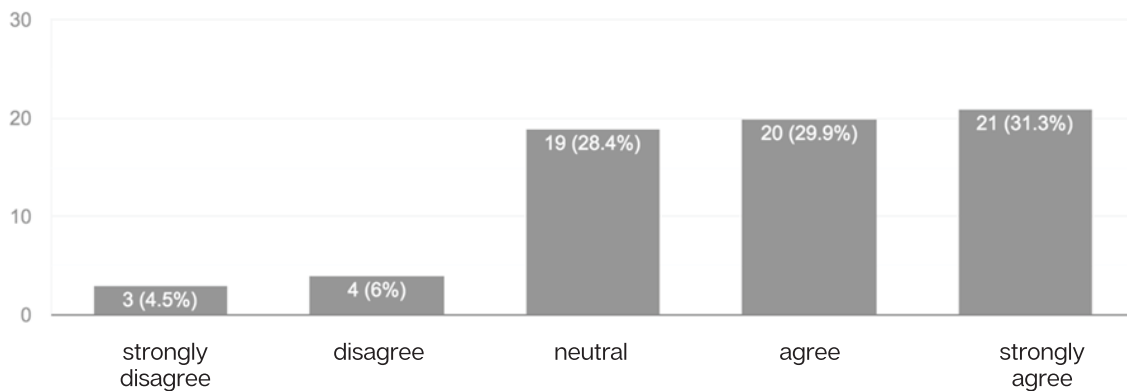
“lack of criteria rather than criteria is [the] problem.”

Respondents also generally agreed with the statement (C).

Figure 11 | Respondents' thoughts on how the JSC's gender and racial composition affects women's leadership

The gender and racial composition of the Judicial Service Commission adversely affects the number of women leaders appointed

67 responses



Source: IAWL survey, 2022

“[T]hat the prerogative to appoint or not appoint women as leaders in the judiciary lie with the existing heads of Courts that are 90% male” creates a barrier, as one High Court judge stated.

However, a White male judge strongly disagreed with all three statements. He said that “the premise of the [statement] is false” as “there is no deliberate hindrance to women rising in the judiciary.” He pointed to female judges' personal traits as responsible for advancement, an issue discussed later in this section.

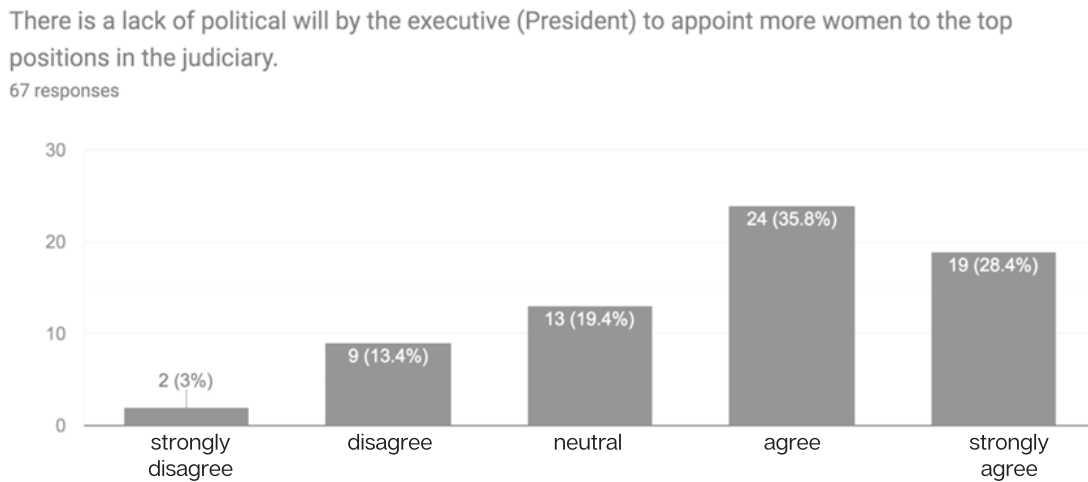
He then made an observation that contradicted his earlier remark:

The JSC is a discredited and discreditable institution at the most basic level—an utter lack of expertise, insight and integrity and distinguished only for its capriciousness and vulgarity. To the extent that women are perceived as diminished persons by the members of the JSC it is an aspect of these fundamental dysfunctions.

Therefore, it appears from his final reflection that the JSC is complicit after all and cannot be regarded as a trustworthy gatekeeper of judicial appointments. Another male judge was neutral concerning all three statements and added that he had “no clue” about additional factors that create barriers for female judges. The third male judge was on the side of the majority, expressing his agreement with the systemic barriers within the JSC’s nomination and appointment process. Together, the responses of these three male judges speak to three broad categories of male counterparts within the judiciary: detractors/belittlers, clueless, and allies. Knowledge of these groups should inform how to reach out to male judges to transform them into allies.

Commenting more generally on women’s underrepresentation in African judiciaries, Bauer and Dawuni (2016) listed the lack of the executive’s political will as a contributory factor. The survey presented the statement, “There is a lack of political will by the executive (president) to appoint more women to the top positions in the judiciary.”

Figure 12 | Respondents' opinion on the impact of lack of political will on women's advancement



Source: IAWL survey, 2022

The responses generally agreed with that assertion, although most did not feel strongly about it.

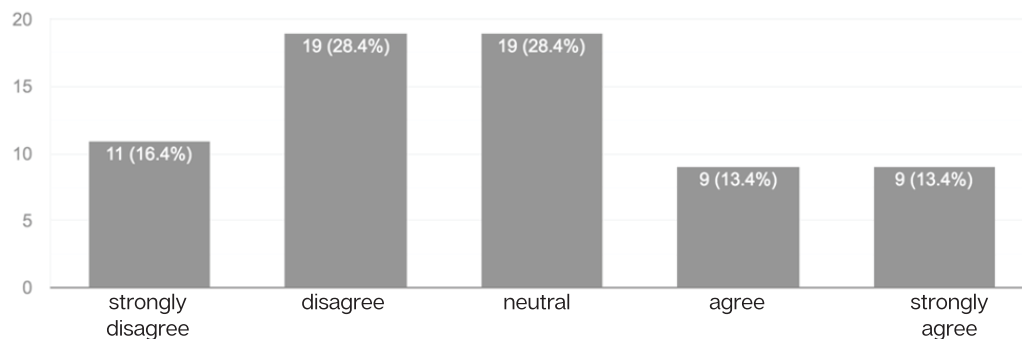
6.4. Limited support

The lack of support for female judges came up in the literature as one of the barriers women face (Albertyn & Bonthuys, 2016; Andrews, 2006, 2021). The survey presented the statement, “There is a lack of group support from associations like the International Association for Women Judges with leadership ambitions.” The respondents generally disagreed, although almost a third (28.4%) were neutral.

Figure 13 | Respondents' view on group support and its impact on female judges' leadership ambitions

There is a lack of group support from associations like the International Association for Women Judges for women judges with judicial leadership ambitions.

67 responses



Source: IAWL survey, 2022

Nonetheless, the open-ended responses showed diverse manifestations of lack of support; as one judge noted, “the lack of support for women in leadership position[s] is from all spheres.” Thus, respondents referenced a lack of support from various sources, including male counterparts, women's organizations, the Commission for Gender Equality, and other female leaders. One respondent also captured the lack of support as a “lack of mentorship.”

On women not supporting other women, a judge had this to say:

Women leaders in the judiciary in particular tend to only support those candidates who are part of their in-groups. As a result, they caucus with members of the JSC to support their candidates over more competent and able ones. This practice has to stop.

The lack of support for women by other female leaders has been associated with possible in-groups and cliques in the judiciary.

A respondent shared:

...even if they appoint women in leadership, when they are in leadership, they kick the ladder so that other women shouldn't come where they are. They promote their own, without considering merit. Most of them do not give others a chance to grow within the judiciary. They do their best to push out those who are seen as a threat. We have lost some of the most talented women who left the judiciary because of those problems. Everyone wants to grow, but if you are not given a chance to grow where you are, you are bound to leave and go somewhere. Sometimes one may be tempted to think that we might be having groups within the judiciary, looking at how things are done. You must belong to a certain group for you to get ahead.

It is not clear if such cliques are defined by race, class, ethnicity, or another category; this calls for deeper inquiries. One judge described “other women judges pulling down [other] women judge[s].” Another judge brusquely remarked, “women are our own enemies!”

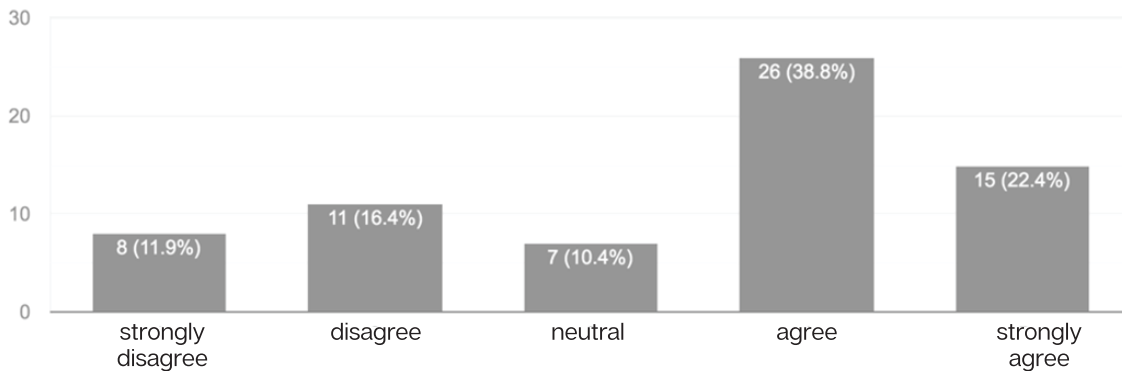
Apart from the absent supporters, the data also showed that the recipients of the little support available could be problematic. In addition, women were not earning support because of their level of community service; one judge said, “[women] must also make sure that they have contributed to society as a whole so that NGOs will support them.” Overall, the implication is that support for female judges' ascent is a two-way street; women have a role to play just as much as their expected supporters do.

6.5. Work-life balance

Regarding the effect of work-life balance on women's pursuit of judicial leadership, 61.2% of the respondents believed that women were more negatively affected than men. Three of the four male respondents shared the majority's view.

Figure 14 | Respondents' view on work-life balance and female judges' leadership

Challenges with work-life balance affect women's pursuit of judicial leadership compared to men.
67 responses



Source: IAWL survey, 2022

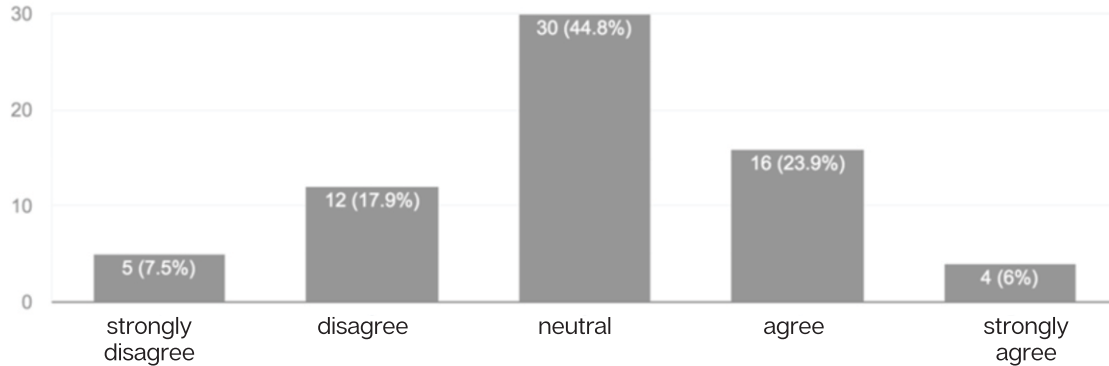
The majority opinion on the issue is consistent with Albertyn and Bonthuys (2016) and Andrews (2006, 2021) that challenges with work-life balance hamper advancement. In the words of one of the judges, “raising children and maintaining [a] household” in addition to her judicial work was a barrier. Another pointed out how female judges are “looked down upon if [they] have to balance work life and private life—children, etc.” “In the end, women prioritize family life, as things like circuit don't accommodate young female judges,” a High Court judge said. No policies by the judiciary on work-life balance and issues surrounding maternity and paternity leave aim at making this more bearable for judges, especially female judges (DRGU, 2022b).

6.6. Sexist practices and sexual harassment

Almost half of the respondents (44.8%) were neutral regarding the statement, “Sexual harassment hinders female judges' leadership ambitions in the judiciary.” The remaining half was split: 25.4% disagreed, and 29.9% agreed.

Figure 15 | Respondents' opinion on sexual harassment as a hindrance to female judges' leadership

Sexual harassment hinders women judges' leadership ambitions in the judiciary.
67 responses



Source: IAWL survey, 2022

Albertyn and Bonthuys (2016) and Andrews' (2006, 2021) findings of sexist practices that hindered female judges' rise to leadership informed this statement. However, the responses indicate that sexual harassment may still be taboo, especially in judicial circles. Possible explanations are that (a) it is personal and sensitive for many people, who are not willing to open up about it, hence the neutral stance of a substantial number; (b) as the arbiters of justice in sexual harassment cases, it is tricky to complain about their experiences, which could be misinterpreted depending on the listener or reader; (c) the South African judiciary has no known sexual harassment policy (DRGU, 2022b); and (d) sexual harassment may not be common among judges, though that is questionable. Regardless, the responses do not allow for conclusive deductions. A more direct inquiry, perhaps, through interviews, may lead to factual findings. One judge did mention that most female judges being appointed “endured sexist questions and criticism.”

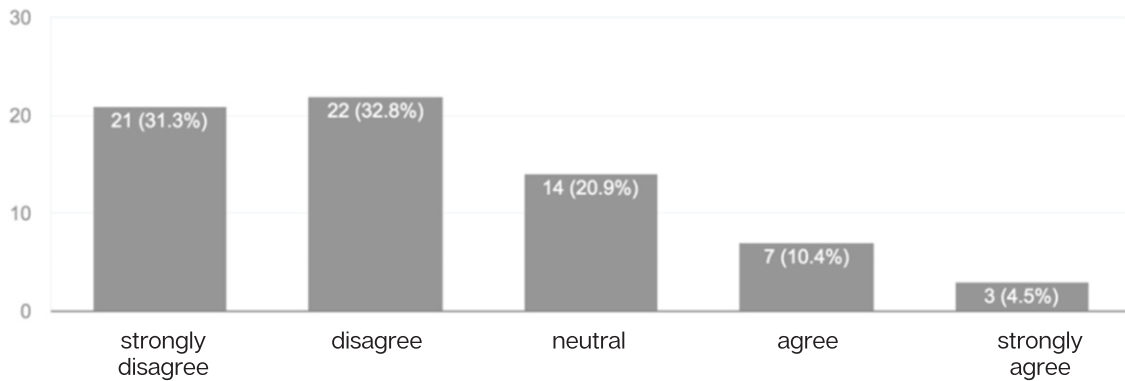
6.7. Women's personal traits

According to Albertyn and Bonthuys (2016) and Andrews (2006, 2021), one reason many female judges are not appointed is a lack of confidence. The survey presented the statement “Women are not confident enough to pursue leadership in the judiciary compared to their male counterparts.”

Figure 16 | Respondents' opinion on women's confidence to pursue leadership compared to men

Women are not confident enough to pursue leadership in the judiciary compared to their male counterparts.

67 responses

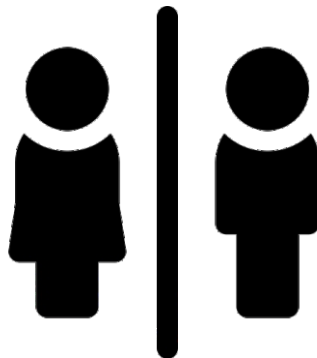


Source: IAWL survey, 2022

However, 64.1% either disagreed or strongly disagreed.

A male judge disagreed:

The judges who progress to leadership are comfortably assertive and enjoy the confidence of their colleagues. Comfortably submissive women will not inspire confidence in their colleagues. In Gauteng, Johannesburg, there are many assertive women who are deeply involved in the organizational operations of the court and constitute a leadership pool that will manifest itself in due course. Generally, most women are relatively junior, and the opportunities to lead are in the midlevel where they are prominent. The senior women are at the forefront and have exercised leadership roles at the highest level of this court.



Nine (14.9%) agreed or strongly agreed. A regional court judge who strongly agreed shared her own experience:

I have been working in the legal field for 29 years. [M]y male counterparts have progressed faster than me in this field not because they were smarter or better qualified but because I did not advertise my skill[s] and abilities. [B]elieving that the world would see what I do instead of what I say. I believe that many women would agree with this philosophy. Unfortunately, it does not get you any credit regarding career advancement.

A judge who was neutral still said that “women do not put themselves forward.” Therefore, female judges with leadership ambitions should be confident and assertive enough to realize their leadership aspirations.

6.8. Additional barriers

Respondents also mentioned other barriers cited in the literature, but that were not tested in the survey because they could not reasonably be doubted, including “historical disadvantages for female African judges” (a legacy of apartheid), “racial discrimination in reverse,” “race”, “lack of experience” and lack of “exposure to promotion.” A respondent added that “[r]acism is rife, but it is practiced subtly, ethnicism is also rife, as well as nepotism.” Albertyn and Bonthuys (2016), Andrews (2006, 2021), and Masengu (2015), for example, cited these barriers, which are authoritatively proven.

However, some additional barriers were not common in the literature but came up in the survey: “workplace not friendly,” “lack of effective strategies to being about career development,” and “[a]ge.

There is a perception that if you are of a certain age group, e.g. 40 you cannot be fit and proper, never mind being competent.

Many factors could account for the unfriendly work environment, including a culmination of all the barriers discussed. Further inquiry on this barrier against a well-defined measuring standard for “work environment” would help unpack it. The lack of professional development strategies also calls for empirical insights to know what works, what does not, and how they work. The findings would inform a well-designed program to facilitate female judges' career development toward leadership. The impact of age on female judges' leadership pursuits also requires deeper investigation.

6.9. Impact of COVID-19

Much of the literature on women in African judiciaries, specifically female judges in South Africa, was before the COVID-19 pandemic (see, for exceptions, Ndulo, 2021; DRGU, 2022c). For a study such as this one conducted amid the pandemic, it was fitting to investigate how it affected judges' work. The survey asked an open-ended question to that effect. Fifty-eight responses (86.6% of the respondents) were received and organized into four thematic areas: technological interventions, working from home, the backlog of cases, and other social, physical, and mental implications.

A. Technological interventions

Technological interventions had the most widespread impact. The responses revealed both benefits and drawbacks. On the positive side, these opened up justice through virtual court sessions.

“We have learned new ways of dispensing justice, bringing justice closer to ordinary citizens of our country and abroad through virtual hearings,

one respondent said. Another stated that in addition to making justice more accessible, the virtual hearings were also cost-effective, “[o]pen[ing] up a whole new world. Virtual hearing[s] direct advantage is open justice—cost reduction.” “It created an opportunity to move closer to the 5th industrial revolution,” another respondent stated.

COVID-19 impacted the judiciary as an institution technologically and had a direct bearing on judges' digital skills. One judge acknowledged the opportunity to upskill: “Usage of remote court hearings has helped advance my technological skills.”

There were also some challenges. For example, the needed “equipment was not being repaired, causing delays,” a judge noted. Another cited “difficulties with long virtual hearings away from the court support systems.” Another judge said, “as a leader, this [virtual hearing] meant that I couldn't reach my other offices and as such, couldn't always be [up-to-date] with what was happening in my other courts.” “Producti[vity] declined because [o]f lack of resources like technology/ network connectivity,” a magistrate noted.

Summing up the pros and cons of the new technological interventions, one judge said, “[r]adically learning [t]o work differently [a]nd continuing to work was a challenge but was accomplished. Very taxing.”

Another respondent stated:

[a]s much as it was debilitating, it forced the legal field to progress into the digital era.

B. Working from home

Social distancing and lockdowns led to many working from home. The judiciary in South Africa was no exception. The survey showed that although some found this welcoming, others did not. To a respondent who enjoyed working from home, “[it] meant more time devoted to my work (less travelling).”

Female judges who did not find working from home appealing lamented. One said, “I had to work from my study at home, which is not my preferred choice as there are more distractions at hom[e], e.g. children, elderly parents.” “Made it more difficult because of having to do more housework etc.,” another said. Before COVID-19, a work-life balance had been cited in the literature as a challenge for female judges, which respondents confirmed. Striking a balance is particularly challenging for mothers, who often tend to be the default parent¹³ and bear the double burden of care (both paid work and unpaid care work), which could be exhausting and lead to poor productivity. Had working from home become the new normal, it would have only exacerbated their work-life balance challenges and further widened the gap between their leadership aspirations and realities.

¹³The default parent is the one who provides (or is expected to provide) the bulk of housework and childcare.

That not all female judges found working from home to be convenient confirms the intersectional existence of women that makes them respond to different situations differently. Consequently, the glass ceilings they confront will also vary.

C. Backlog of cases

Another common impact of COVID-19 that ran through the responses was the backlog of cases, especially for criminal matters. According to one judge, “criminal matters couldn't proceed virtually resulting in backlogs in the courts.” Another mentioned this “especially [for] criminal [cases] but also other trials.” As of March 2021, 870 criminal trials were yet to be finalized; 353 (41%) were backlogged due to COVID-19 (South African Judiciary, 2021).

The survey data revealed two leading causes of the backlog. The first is a postponement, especially during the first pandemic wave.

A respondent explained:

“**there are major backlog of cases that were postponed as a result of [COVID].**”

“Less matters were dealt with, resulting in huge backlog of cases,” another said. The second is inadequate infrastructure and staff support. As one judge described, “lack of resource tools and absence of support staff to assist, have resulted in severe reduction of output.” With the COVID-induced backlog, it is unsurprising that when some semblance of normalcy returned, a judge said that “it feels as if the workload has increased.”

Masengu (2015) established a connection between judicial leadership and the backlog. She identified that whether a candidate had a backlog was one of five possible guiding benchmarks for the JSC in the appointment process. Thus, the backlog due to COVID-19, although it affected everyone, could slow or reduce the chances that some female judges (e.g., those already struggling with work-life balance) had of advancing. Leadership progression could be even slower for those who were already less productive while working from home because of work-life imbalance and so faced a massive backlog upon returning to their office space.

D. Other social, physical, and mental implications

COVID-19 also affected respondents' social, mental, and physical well-being. "It has been a huge challenge physically, mentally and requiring adaptation but was possible," one expressed.

Physically, some judges felt uncomfortable due to the "stifling effect of masks," and others' "health suffered." They also suffered "physical exhaustion" due to "decreased levels of productivity and excessive pressure on clearing backlog after contracting COVID," a High Court judge said. A similar physical implication was emphasized by another judge: "[w]ork has slowed down and the load has increased as Judges themselves get positive, and those who are not sick have to take over their cases."

A magistrate also said:

[n]egatively as most of admin[istrative] [s]taff have become reluctant to make an extra effort to put in more work. I even decided to retire because I cannot live with this and still believe I am serving the community according to the oath I took.

Mentally, some of the judges experienced anxiety. "[C]onstant anxiety while in open court," a High Court judge mentioned. Another said COVID-19 "[h]as hindered productivity; has contributed to increased levels of acute mental and emotional stress."

Socially, networking and collegiality lessened. Respondents commented that "Social distancing has killed the spirit of collegiality among judges" and a "failure to network." Collegiality and networking among judges decreased because of COVID-19, which is unsettling because of the role that support and rapport with colleagues plays in advancing leadership prospects. In discussing the lack of support as a barrier earlier in this report, a lack of support among women emerged. Masengu (2015) also pinpointed rapport with colleagues as a factor influencing the JSC's decision regarding judicial leadership appointments. If female judges already lacked support from female colleagues, their leadership pursuits could be frustrated due to the reduced opportunities to network due to COVID-19, worsening an already bad situation.

6.10. Summary

This section addressed the survey findings on the barriers to female judges' rise in leadership. It highlighted patriarchal attitudes toward women, which metamorphose into certain myths and perceptions about their abilities. The realities of systemic barriers in the nomination and appointment processes tied to the JSC as the principal gatekeeper and the executive's political will to appoint female leaders were also explored. These create glass ceilings. This section examined the lack of support, work-life balance, sexist practices, sexual harassment, and women's confidence. The respondents also mentioned barriers that were not tested in the survey, such as racial discrimination, ethnicism, nepotism, age, career development strategies, an unfriendly work environment, the legacy of apartheid, and lack of experience. The findings under the theme were generally consistent with the literature, as they confirmed the hypotheses tested. The multiple barriers showed how female judges' intersectional existence (gender, race, family orientation, etc.) could disadvantage them. Some barriers, however, require further inquiries, such as sexual harassment, hostile work environment, age, and career development strategies.

Having taken place amid the COVID-19 pandemic, the study would not have been complete if it did not consider its impact on judges, especially female judges. This section also presented the findings on COVID-19's impact based on their responses. First, technological interventions were a double-edged sword. Virtual hearings opened access to justice and offered the opportunity to upskill technological proficiencies. Conversely, technical hitches caused delays, and virtual hearings limited the supervisory roles of some leaders. Second, COVID-19 led to judges working from home. Although some found this a time-saver, some found it taxing, as they had to juggle work with domestic duties. The section showed how the latter group could risk a slower progression toward leadership. Third, COVID-19 caused a backlog of cases, which could impact advancement chances. Finally, it presented physical, mental, and social implications. This part demonstrated how the social implications, in particular, could influence entry into leadership. However, some respondents indicated no or minimal implications: a Supreme Court of Appeal (SCA) judge said, “[m]y court was able to work seamlessly because it is an appeal court,” and a magistrate also said, “COVID-19 hasn't affected me.”

7 | RECOMMENDATIONS FOR FACILITATING PROMOTION



Several recommendations emerged principally from the survey and the literature. This section presents the recommendations for key stakeholder groups: institutional gatekeepers, civil society and advocacy groups, policymakers, researchers, and judges. These recommendations, if implemented, will act as facilitators for promoting more women into leadership.

7.1. Institutional gatekeepers: The JSC, judiciary, and executive (government)

- Offering equal opportunities for substantive and acting leadership will level the playing field. In addition, women “need to be given more opportunities to take on leadership roles from early on their appointment whether it be sitting on subcommittees, chairing them, presiding in appeals etc. it's also important to expose them to high profile complex matters which will assist in building their profile,” a judge suggested.
- Concerted efforts to appoint female judges for head positions and not just second-in-command positions are necessary. A respondent commented:

“
the SA process is among the most transparent in the world. Equity is the challenge because the JSC makes no concerted effort to appoint women.
”

- The JSC should develop more transparent criteria or guidelines for appointing judicial leaders, as it has done for other judicial appointments. For example, the names of all nominees for leadership positions should be published, not merely shortlisted candidates. Improved criteria will increase women's chances of taking up leadership roles. Reasons should also be given (could be published) for why the commission finds some candidates unsuitable. “The lobbying should stop [because] it has the potential to exclude competent and deserving candidates in line with the Constitution,” a respondent remarked.
- Criteria for appointment should consider “court performance, merits, and quality of judgments ... as well as lower court judicial experience,” according to one respondent.
- Gender balance in the JSC's composition will also increase women's chances at leadership, as it will introduce diverse thinking, enhance the JSC's gender-sensitive posture, and improve its legitimacy as an impartial commission. A respondent said, “[t]he structures (JSC) should have a balanced representation of women and men, and each division be represented by two members (female and male) besides the head of the court who will then vote on the nominees to be supported by the head of [the] court.”
- “The JSC should refuse to recommend candidates for leadership in the judiciary if their appointment does not advance gender diversity,” said one respondent.
- JSC interviews should be respectful and eliminate sexist, demeaning, or derogatory remarks and questions. One respondent even suggests disclosing all interview questions beforehand to prevent surprises.

A respondent added:

Interviewers must be aware of their own bias and prejudice to enable them to ask intelligent and relevant questions to appointees. Questions must be carefully thought out and articulated clearly. Judicare is missing in this process. If the proper appointments are made, the importance and relevance of the judiciary in a democracy will improve, and the public will begin to trust the judiciary.

Another respondent noted:

A lot of work still needs to be done to reach a point where everyone who faces the JSC feels confident they will get a fair and equal hearing. The composition of the JSC is a good starting point. Legally trained people are best placed to understand the qualities required for a good and competent judge.

- There should also be transparency regarding “the exercise of the [p]residential prerogative in the appointment of senior judges.”
- “Career progression from lower courts to high courts [should] be open to all with fitting training programs and assessment and not dependent on nomination and appointment only,” one judge recommended.
- There should also be training programs for sitting female judges in “administration, use of digital tools and leadership skills.” A respondent said, “[r]egular training on leadership and public speaking in general as well as for example to chair meetings etc. and judicial leadership specifically, as well as judicial reasoning, judgment writing and research etc., for female judicial officers should assist to equip more women to take up leadership positions.”
- A respondent suggested that “[p]otential applicants should not have to wait for the leaders of courts to give them a nod to apply. They should be able to agree to be nominated regardless of whether the head of an appeal court gives them permission to apply. Women leaders in the judiciary, in particular, tend to only support those candidates who are part of their in-groups. As a result, they caucus with members of the JSC to support their candidates over more competent and able ones. This practice has to stop.”
- Providing better salaries for judges also makes the career attractive, especially for women to join and then progress to the higher ranks. One respondent explained, “Fix the salary that has not even kept up with inflation—it becomes harder to support oneself and to pay for help. Most men who have come from the legal profession have had more financial success and therefore have a better cushion. And also have a woman somewhere who is providing practical support.” “The role of judges in the judiciary is pivotal to our rule of law, judges require support at chambers and an increase in salary to sustain their families. Good candidates don’t come forward for this very reason,” another added.

- Regarding facilitating magistrates' move to the higher courts, a regional court magistrate suggested that “female [m]agistrates that are qualified and experienced in court, should be identified and afforded the opportunity to act in the High Court so that when questioned about their duration of acting stints in the High Court they would be able to properly respond. Exposure to the workload, the manner in which cases are dealt with, and processes in the High Court would then be a formality rather than an impossible dream.”
- Clearly delineating and regulating criteria for acting appointment. “Acting appointment criteria must be set and made public,” as mentioned by another respondent.
- Finally, “political will and a conscious effort in appointing more women in leadership positions will go a long way in addressing this challenge,” a respondent said. “I think the executive has to be deliberate in its approach. Advertise a leadership position and shortlist women only,” another respondent proposed. “Positions to be advertised only for women,” another agreed.

7.2. Policymakers

- In addition to the sexual harassment laws, clear and unique policies within the judiciary should be developed and outline what constitutes sexual harassment, the procedure for handling complaints by and against judges, magistrates, and other judicial officers, and the people or offices authorized to deal with them. This policy will create a safer space and work environment for women, who are often the victims.
- Policymakers should also consider a distinctive and more generous policy on maternity and paternity leave to supplement legal provisions, such as paid or partially paid leave.
- Other policies necessary to enhance the work-life balance of judges, especially female judges, should be explored. Such policies could provide initiatives such as flexible work scheduling, including working from home where possible, family-friendly schemes (e.g., family medical and emergency leave, on-site or proximate childcare facilities, and four-day or half-day workweek initiatives, especially within the first year after nursing mothers return from maternity leave). **“Flexibility in respect of family responsibility pressures; for example, being remotely available for urgent matters rather than insisting on being available in person. E-justice system should address some of these pressures,”** a respondent remarked. A solid work-life balance policy will create an enabling work culture and environment where female judges, who struggle most with it, can thrive and rise up the leadership ladder.

7.3. Civil society and advocacy groups

- More advocacy by CSOs and other advocacy groups will be needed. One respondent said, “women's organizations and the Commission for Gender Equality [should] be more vocal in their support for female nominees.” “Women Associations speaking in one voice on the subject and putting pressure [on]the president to appoint more women [to]leadership positions,” another respondent expressed. Their advocacy should target having a seat at the decision-making table so they are actively involved in judicial leadership appointments. “Judicial Associations should also be represented on the composition of the Judicial Services Commission,” a judge suggested.
- Civil society should also undertake more proactive advocacy before appointments, given its critiques of appointments. A respondent recommended “distinguishing between constructive critique after the fact by civil society and being proactive beforehand.”
- Nominees of relevant associations should be announced in time to allow the membership to offer the necessary input, comments, and support. “Association should disclose to members upfront whom they wish to nominate for judicial appointments so that inputs can be made by members,” a respondent proposed.

7.4. Researchers and funding agencies

- Some respondents appreciated IAWL's research initiative leading to this report. One said:

“ thanks for this initiative. Hope it helps the relevant stakeholders to honestly reflect on their roles in advancing gender diversity in the leadership of the judiciary. ”

“Thank you for your passion to investigate and make recommendations advancing leadership appointments for women judges,” another stated. More empirical research should be conducted on related issues, such as sexual harassment, work environment, and work-life balance. Collaborative efforts with funding agencies should also be undertaken to allow for more large-scale or nationwide research. Most importantly, funding agencies should support programs that will fix or implement the recommendations it provides.

- Researchers should communicate their findings and recommendations to all relevant stakeholders. For instance, a judge suggested that “it will be excellent if this research results in some practical application such as discussions [with] and feedback with Chief Justice Zondo.”

7.5. (Female) judges

- Female judges should also support each other and build wide and strong networks of colleague judges, both women and men, who will rally behind them in their pursuit of leadership. Women supporting women could take the form of coaching and mentorship; as one judge mentioned, “each one coach one.” “Women who are elevated to the bench should make an effort (similar to a curriculum program) to assist in the mentorship and elevation of other women,” another stated. “Mentorship of lower court magistrates by judges and junior judges by senior judges” and “[w]orkshop to be conducted by women leaders to share experiences and pitfalls,” others recommended.
- Individually, female judges should work on their self-confidence until they can boldly present themselves and showcase their skills, professional capabilities, and leadership intentions.

A respondent indicated:

women themselves must be more assertive and indicate openly that they would like to sit as a judge.

- To garner the backing of external supporters, such as CSOs, NGOs, and other advocacy groups and associations, female judges aspiring to attain the highest ranks should actively give back to society through participation in community-based projects and activities.

7.6. Other recommendations

- As experience at the bar or sidebar counts toward judicial aspirations, briefing patterns in South Africa's legal profession also need gender transformation by offering more women opportunities to work on high-impact case briefs. (“Briefing pattern” refers to the trend of an advocate's work; that is, the nature of cases they work on, whether simple or complex. That pattern affects their clientele and financial gains.) The old boy club phenomenon among attorneys and advocates must be replaced. This transformation will enable women aspiring to join the judiciary to build a strong track record of experience that positions them to pursue careers and leadership.

A respondent noted:

change in the briefing pattern in SA. Briefing more female practitioners exposes them to more work and makes them identifiable for judicial positions. That is still lacking in SA.

- Public awareness and education campaigns are required, aimed at demystifying societal perceptions about women, female judges, and women in leadership, such as “that [women] are appointed simply on account of being a woman” and “myths that female leaders are not strong and capable.” As patriarchal perceptions in society seep into the judicial space and influence women's advancement, a broader campaign to instill a progressive attitude is necessary. Change in the judiciary starts with a change in society.
- Attitudinal change toward the starting point of female judges climbing the ladder. It appears, as one respondent lamented, that there is a “stigma when the [u]pward mobility is through different channels [than] the lower court bench, sidebar, and bar. This should be eradicated. It has no place.”

8

PROGRESS AND TRENDS: TOWARD AN EVEN PLAYING FIELD FOR WOMEN'S LEADERSHIP IN THE JUDICIARY



One contribution of this report is to update the literature on women's leadership in South Africa's judiciary. The survey garnered current progress and trends over the last five years. Respondents were given four statements on identified trends and asked to state any other notable trends and progress.

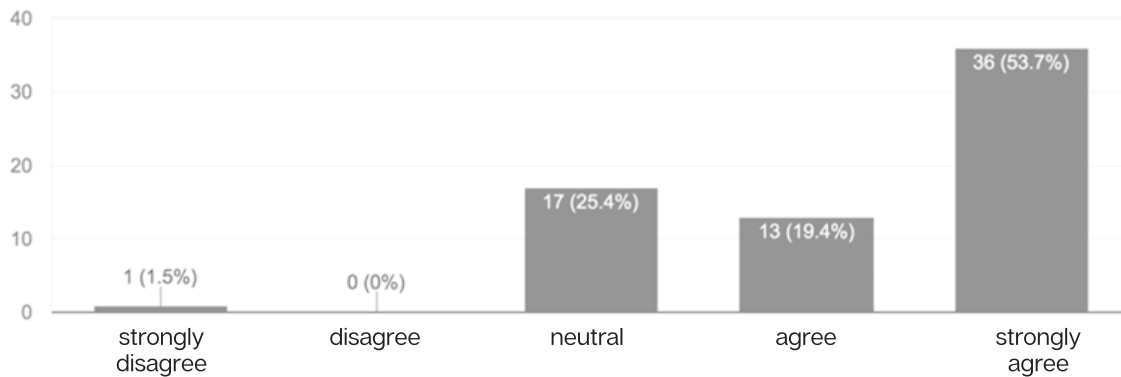
8.1. Does South Africa need a female chief justice?

At the time of the survey, President Ramaphosa had announced his appointment of Justice Zondo as the next chief justice. There were four nominees, including one woman, Justice Mandisa Maya, who was also the first-ever female nominee (Addadzi-Koom, 2022). Many female advocates thought her nomination was a golden opportunity for South Africa to have its first female chief justice (Addadzi-Koom, 2022, DRGU, 2022b). The result partially confirms Masengu's (2020b) suggestion that the regional diffusion hypothesis (Dawuni & Kang, 2015) may not apply in the SADC subregion. That hypothesis is in three parts: influencing gatekeeper's decisions, inspiring more female activism, and personally inspiring female judges. Regional diffusion failed to work in the South African case regarding influencing all gatekeepers—the JSC seemed to have been influenced (it recommended Justice Maya) but not the president.

Based on the surprising outcome, the study offered the statement, “A female chief justice will contribute to advancing female judges in leadership.” A majority (73.1%) agreed, and 25.4% were neutral. There was only one dissenter—a White male judge.

Figure 17 | Respondents' thoughts on how a female chief justice could contribute to advancing female judges' leadership

A female chief justice will contribute to advancing women judges' in leadership
67 responses



Source: IAWL survey, 2022

One respondent said:

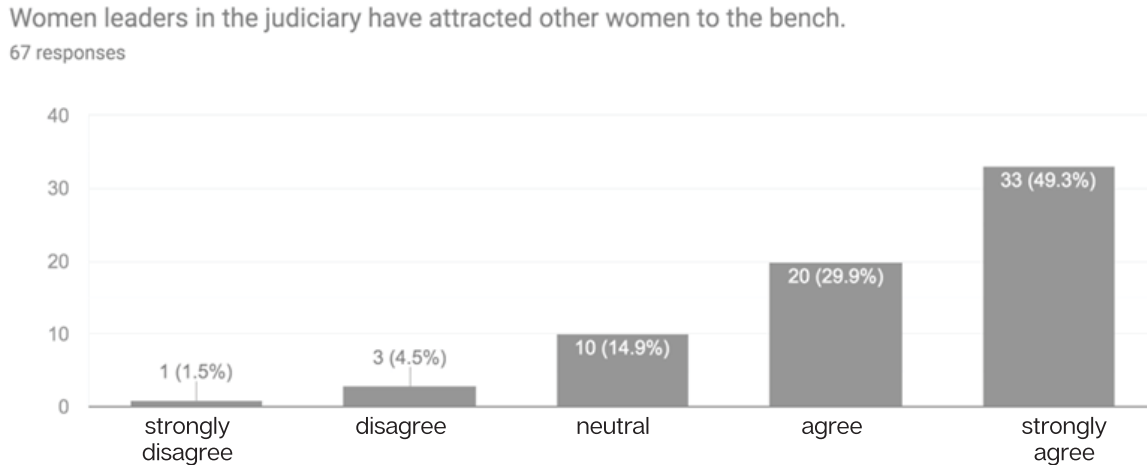
A woman chief justice will put the judiciary of South Africa on a level where the world will take it seriously. Gender-based violence will be eradicated through dedicated programs and systems in courts. Women will be accorded the same respect as their male counterparts. She will unify all legal professions to carve a judiciary that speaks to the values underpinning our Constitution based on Ubuntu and the cornerstone of any society—gender equality.

To answer the question of whether South Africa needs a female chief justice, the words of Justice Mandisa Maya during her interview are apt: “South Africa has always been ready to have a female chief justice” (Addadzi-Koom, 2022).

8.2. Women attracting women

Representation matters. Adding female leaders offers many benefits, including attracting more women to join the judiciary and pursue leadership. The survey presented the statement, “Women leaders in the judiciary have attracted other women to the bench.”

Figure 18 | Respondents' views on whether female leaders on the bench attract other women



Source: IAWL survey, 2022

Agreement was high (79.2%). One respondent, an SCA judge, confirmed this effect: “a lot more women appointed to the SCA. Female leadership [is] the reason for this elevation.” Therefore, progress toward gender parity in leadership is also tied to having more female leaders as symbolic representatives for other female judges.

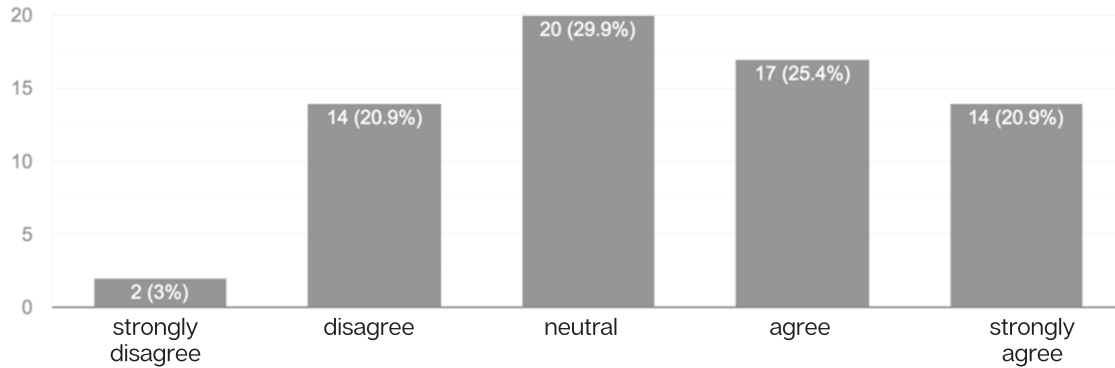
8.3. The effect of women's representation on patriarchal attitudes

With female judges as leaders, society's patriarchal attitudes are waning. This statement was drawn from Dawuni's (2016) finding that the increasing number of female judges in African judiciaries confronts patriarchal and masculinist norms and culture; 46% of respondents agreed with the statement.

Figure 19 | Respondents' thoughts on how female leaders challenge society's patriarchal attitudes

With women judges as leaders in the judiciary, society's patriarchal attitudes are waning.

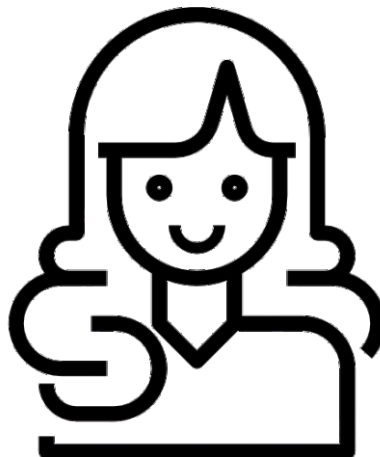
67 responses



Source: IAWL survey, 2022

A respondent commented on “the slow recognition that women can become effective leaders and make a valuable difference to the hitherto patriarchal bench.” Another added, “that women can be innovative and think of practical ways to improve access to justice, can address issues such as sexual harassment which males hardly ever raise or consider.

However, some comments showed that South Africa still has a long way to go in breaking down the entrenched patriarchal attitudes. For example, a judge said, **“more women are being appointed, but most endured sexist questions and criticism.”** Another noted the role that some women played in reinforcing the masculinist attitudes instead of confronting them: “definitely more female judges than before, but women themselves sometimes reinforce the stereotypes.”



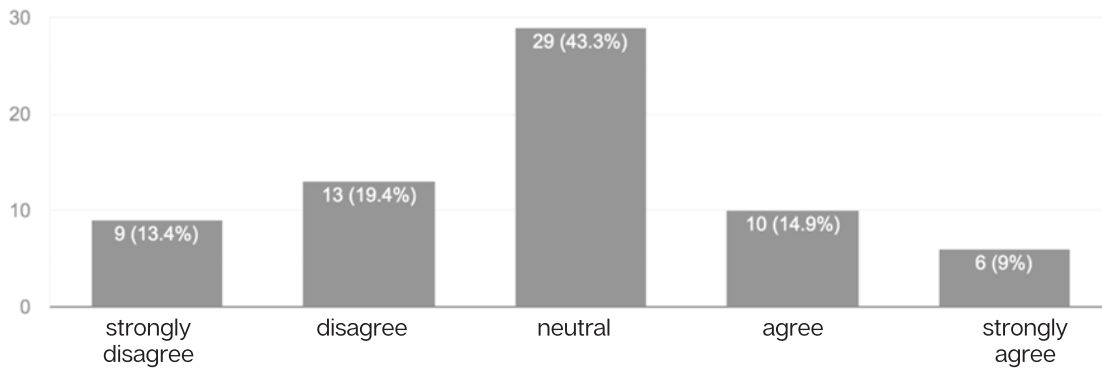
8.4. My “boss” is a woman

As female judges take up leadership positions, they will lead both women and men and confront patriarchal attitudes, so the survey asked how easily male judges work with female bosses.

Figure 20 | Respondents' views on male judges' relationships with female leaders

Male judges easily work with female judges who are their leaders.

67 responses



Source: IAWL survey, 2022

The results show a spread-out distribution over the five responses, with a considerable number choosing to remain neutral. A comment by one judge explained this outcome:

“At present, all but one wom[a]n in leadership positions, deputize men. In Gauteng Division, no woman is in a leadership position, and the position will remain the same in the foreseeable future, which is of grave concern.”

Thus, the trend is that even though more female judges are gradually being appointed as leaders, they mostly occupy second-in-command positions. A classic example is when President Ramaphosa appointed Justice Zondo as chief justice and nominated Justice Maya as deputy. Table 4 confirms the trend. The ultimate head for leadership positions was mostly men, so an objective assessment of how male judges relate to female bosses was not likely. In addition, most female leaders are in the lower court, as noted by a magistrate with over 20 years of experience: “in the lower courts, a lot more women are in leadership positions than is the case in superior courts.”

8.5. More advocacy

The 2022 DRGU report indicated the role that civil society advocacy and, by extension, advocacy had generally played in speeding up the feminization of the South African bench. One respondent also mentioned this remarkable trend, saying, “the need to facilitate the appointment of [w]omen is highlighted more.” Another noted the “support from the IAWJ” but added, “we need to have a representative at the JSC.”

8.6. More women appointed and advancing, but ...

Another common trend identified in the responses was that more women are being appointed as judges and moving up the leadership ladder. “More women moving upward is encouraging” and “more women are appointed” were some comments supporting this observed progress.

However, the progress suffers some deficiencies. First, it is slow and unsatisfactory and depicts a lack of commitment to gender transformation. A High Court judge had this to say:

Progress has been made, but it is not satisfactory. Although section 174(2) of our Constitution expressly states that the need for the judiciary to reflect broadly the racial and gender composition of the South African population must be taken into account when vacancies are filled (and section 2 stipulates that constitutional obligations must be fulfilled), the gender representativity does not match the population demographics even though competent women have been nominated for positions in appellate courts [and] that South Africa has been a constitutional democracy for 28 years. One feels that there is no commitment to see to it that gender transformation is achieved.

Second, female judges are given limited leadership opportunities, as one judge stated:

Able and competent women who should be appointed to the appeal courts are not given the opportunity to rise in the judiciary for fear by female leaders in the judiciary that they are too strong and assertive. As a result, less competent and able women are appointed over the best women for the post.

Another judge observed:

Women have been afforded opportunities to lead, and there have been acting appointments. The recent appointments to judge president [p]ositions have been welcomed. The challenges in the Western Cape are noted and observed. Gauteng has been proactive. It remains to be seen whether a permanent leadership position will be considered for a female. It has served as a conduit for channeling women to senior positions in the judiciary for many years. It has served as an exemplary model and been the leader in this regard.

Finally, as a judge observed, “[t]here has been progress in that more women appointed at middle management, but again the appointment [is] a man's prerogative.”

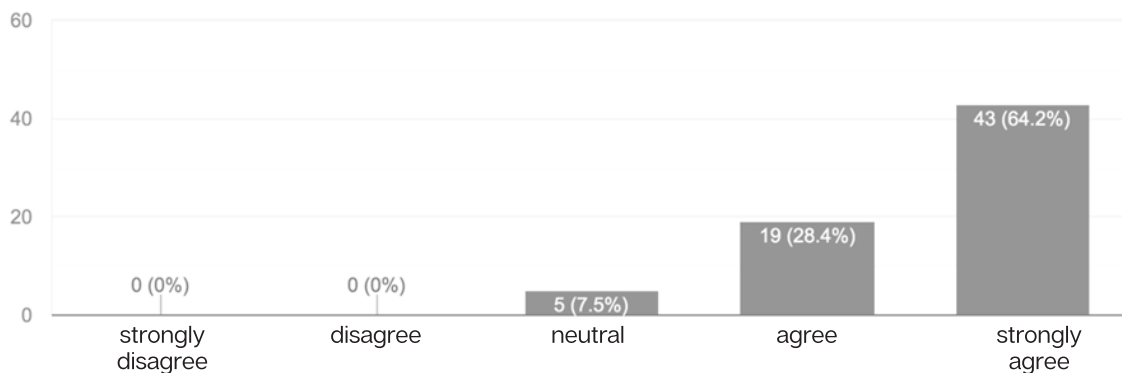
8.7. More room for improvement

Given the observed progress and trends, respondents were presented with the statement, “There is more room for women's representation in the judiciary's leadership.”

Figure 21 | Respondents' views on women's representation in the judiciary's leadership

There is more room for women's representation in the judiciary's leadership.

67 responses



Source: IAWL survey, 2022

Agreement was overwhelming (92.6%). Comments such as “there has been notable progress albeit slow,” “the pace is too slow,” and

“ progress is slow, and it will probably take another decade to achieve gender parity ”

demonstrate that more can be done.

In the words of a respondent:

“ Unfortunately, it seems that with each step we take forward, we take two steps backwards, hence there isn't much noticeable improvement in the number of women in leadership in the judiciary, especially in the superior courts. ”

Some respondents were hopeful about gender equality in South Africa's judicial leadership; one stated,

“ we are slowly but surely getting there. ”

8.8. Summary

This part drew attention to the progress and current trends in women's leadership. It started by emphasizing the need for South Africa to appoint its first female chief justice. That single step will quicken the feminization of the bench, given that female leaders attract more women to the bench and its leadership. The assertion was documented that increasing women's leadership comes with increasing defiance of patriarchal attitudes that hold to an extent in South Africa.

However, some masculinist tendencies remain, and some actions or inactions of female judges reinforce those patriarchal attitudes. Another observed trend was that most female leaders are deputies, leaving the ultimate leadership positions still male-dominated. There has been more advocacy to push the feminization agenda. In addition, more female judges are being appointed as leaders. However, the progress is slow and unsatisfactory and shows a lack of commitment to feminizing the bench, and offers female judges limited opportunities. Finally, the discussion identified room for improvement based on the observed progress and trends.



9

CONCLUSION



This report documented and updated issues surrounding female judges in leadership in South Africa's judiciary. It highlighted the points of attrition and barriers, facilitators of promotion, COVID-19 impact, and progress and trends. Barriers include patriarchal attitudes, lack of support, lack of political will and institutional gatekeepers' commitment, work-life balance, sexist practices, and personal traits of female judges. Promoters were women's self-confidence, judicial associations initiatives, and civil society activism. This report has demonstrated that the barriers to women's rise to the higher echelons outnumber the facilitators. As a result, progress toward female judges' appointment to leadership positions has been slow.

The report also drew attention to the trend wherein women comprise almost a third (31%) of the leadership. Yet, most of these positions are as deputies to men, essentially maintaining male-dominated leadership. It recommended that equal opportunities for all positions be made available. It emphasized the need for South Africa to seriously consider appointing a female chief justice soon as part of its gender transformation efforts and in line with SDG-5. The implications of COVID-19 were also discussed, stressing the effect and potential effect its arrangements and adaptations had on women's work-life balance and leadership. The report concludes with recommendations that follow from the findings and offer perceived benefits for five critical stakeholder categories: institutional gatekeepers, policymakers, civil society and advocacy groups, research and funding agencies, and female judges. This report adds to the call to transform the South African judiciary to support women in leadership equally. As one magistrate said, "Let's transform our judiciary, then we will have a transformed society."

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APPENDIX

Survey Instrument

Thank you for taking the time to participate in this survey which should take less than 10 minutes to complete.

This survey is being conducted to better understand the dynamics of gender inequality and obstacles that impact the retention and advancement of women to leadership roles in the judiciary. The research project is commissioned by the Institute for African Women in Law (IAWL), Washington D.C., USA.

Please note that your responses will be kept confidential, and your identity will remain anonymous.

For further inquiries kindly contact

info@africanwomeninlaw.com

Demographics

This section will collect your background information that will be useful in determining the multiple categories of survey respondents and inform future analysis for the study. Information given will be kept confidential and will not be traceable to you.

Gender

- Male
- Female
- Prefer not to say
- Other:.....

Race

- African
- Colored
- Indian
- White
- Prefer not to say

Level of Court

- Superior Court
- Specialized Court

Demographics

This section will collect your background information that will be useful in determining the multiple categories of survey respondents and inform future analysis for the study. Information given will be kept confidential and will not be traceable to you.

Gender

- Male
- Female
- Prefer not to say
- Other:.....

Race

- African
- Colored
- Indian
- White
- Prefer not to say

Level of Court

- Superior Court
- Specialized Court

Indicate the specific court you are currently working in. E.g. Constitutional Court, Supreme Court of Appeal, Western Cape Division (Cape Town), etc

.....

Years of Experience as Judge/Magistrate

.....

Leadership background

This section traces your leadership background and/or potential leadership trajectory within the judiciary. Where a question does not apply to you kindly skip.

There is an even playing field for both women and men judges to attain leadership positions in South Africa's judiciary.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly disagree

Points of attrition & barriers to retention

This section investigates the factors that hinder women judges' rise to the top ranks of the judiciary. For each statement given indicate your level of agreement or disagreement.

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Few women judges are in top leadership positions in the judiciary because they are not qualified enough.					
Society's perception of women's roles negatively affects women's leadership ambitions in the judiciary.					
There is a lack of group support (associations and civil society) for women judges with judicial leadership ambitions.					
Women are not confident enough to pursue leadership in the judiciary compared to their male counterparts.					
Challenges with work-life balance affect women's pursuit of judicial leadership compared to men.					
The nomination and appointment processes frustrate women judges' inclusivity in the judiciary's leadership.					
Sexual harassment hinders women judges' leadership ambitions in the judiciary.					
The gender and racial composition of the Judicial Service Commission adversely affects the number of women leaders appointed					
The criteria for appointing judicial leaders hinder more women from being pointed than men.					
There is a lack of political will by the executive (President) to appoint more women to the top positions in the judiciary.					

What other factors would you say hinder women judges' from seamlessly taking up leadership roles in the judiciary?

Facilitators of Promotion

This section examines the factors that enhance women's advancement in leadership within the judiciary. For each statement given indicate your level of agreement or disagreement.

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Criticism and advocacy by civil society organisations have contributed to increasing women leaders or women nominees for leadership in the judiciary.					
Women judges associations have helped women to rise to the top in the judiciary.					
Women's self-confidence has helped to advance their judicial leadership careers.					
Society's perception of women's roles positively affects women's leadership ambitions in the judiciary.					
The nomination and appointment processes have advanced women judges' inclusivity in the judiciary's leadership.					
Collegiality among judges both men and women encourage women judges to rise to the top.					
The gender composition of the Judicial Service Commission helps to increase the number of women leaders appointed					
The Judicial Service Commission is proactive in ensuring more women are appointed as leaders					

Progress & Trends

The current progress and trends made in women's leadership pursuits in the judiciary is the focus for this section.

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
A female chief justice will contribute to advancing women judges' in leadership					
Women leaders in the judiciary have attracted other women to the bench.					
With women judges as leaders in the judiciary, society's patriarchal attitudes are waning.					
Male judges easily work with female judges who are their leaders.					
There is more room for women's representation in the judiciary's leadership.					

How has Covid-19 impacted women judges in pursuing leadership roles and/or executing their leadership duties?

.....

Any additional notable trends and progress made regarding women in leadership in the judiciary?

.....

Recommendations

The section elicits ways to improve women's chances at going in for leadership positions in the judiciary.

What other changes will you make about the nomination and appointment process for leaders in the judiciary?

.....

What other factors would you say enhance women judges' ascension to leadership roles in the judiciary?

.....

Final Words

Do you have any final words?

.....

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Women in Law & Leadership

South African Judiciary