



CYRUS R. **VANCE CENTER**
FOR INTERNATIONAL JUSTICE

Advancing Women in the Workplace



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South African
Legal Fellows
Network





Executive Summary

The underrepresentation of women in leadership roles in the legal industry is a complicated problem with many facets and contributing causes. While there is no single cause, several key factors are often cited as playing a role in perpetuating this gender disparity such as implicit bias and stereotypes, workplace culture and discrimination, work-life balance, lack of mentorship, and the gender pay gap.

The aim of this study was to delineate the barriers and challenges that affect women of colour in the legal profession and to determine why the advancement of women of colour to higher positions is slow and not prevalent.

Barriers affecting women in the legal profession:

The survey found that the most prevalent barriers affecting women in the legal profession are that women are undermined, gender discrimination, the male dominated sector, and the lack of promotion opportunities for women. In addition, respondents commented on the lack of gender equality, racism and discrimination, challenges preventing women from carrying out their jobs, no room for growth or senior positions for women, sexual harassment, and information not easily accessible to women.

There appears to be a systematic bias in the South African legal profession in terms of how work is allocated premised on gender, for example, the contrasting briefing patterns of male and female legal professionals. The consensus among study participants is that women are not briefed as much as males (89%) and, even when they are briefed, are disproportionately briefed when compared to male advocates (72%). Eighty-four percent are of the opinion that women, in general, and particularly black women, are not treated equally in the profession (81%). A substantial proportion of legal practitioners (47%) stated the lack of pay parity between male and female practitioners.

The study participants also mentioned the red tape or bureaucracy, incidences of nepotism, lack of funding and scholarships for further studies, strict admission requirements to law firms, and the difficulty in doing their articles and the language barrier. The socio-economic barrier relates to the low remuneration and salaries offered to candidates, classism based on higher education qualification, the high costs to entering the profession, and the fact that practitioners still have a monopoly.

Discrimination, bullying and sexual harassment:

Sixty-eight percent of respondents stated that there is discrimination in the workplace based on race, gender, sexual orientation, pregnancy, and marital status. This indicates a widespread perception of bias. Half the respondents have experienced bullying in the workplace and 31% have experienced sexual harassment. Respondents say they do not report bullying or sexual harassment because of fear of stigmatisation and victimisation. The prevalence of bullying suggests a potentially toxic culture within the workplace i.e., law firms, non-governmental organizations, and chapter 9 institutions. Sexual harassment can not only have severe consequences on the well-being and professional development of the victims, but can also negatively impact the overall workplace atmosphere.

Motherhood





A substantial proportion of survey respondents (63%) believe that women in the profession have faced disproportionate disadvantages due to motherhood. Mothers are disadvantaged based on workload, income, and upward mobility. Those respondents who were mothers (65%) reported a decrease in the rate/frequency of briefs and or workload due to family responsibilities. Mothers, in general, may be dealing with challenges related to managing both professional responsibilities and family obligations, which could result in increased stress and potential burnout. They may face hurdles in career progression, promotions, or salary increases compared to their male counterparts or women without children.

Work environment

Two thirds of respondents found their working hours convenient but agreed that flexible working hours might improve their work-life balance (86%). While a shift is required toward flexibility, participants stated that it is not happening quickly enough. Fifty-two percent of respondents feel they must act in a certain way to fit in. Close to three quarters believe that patriarchal and sexist practices are still embedded in the general legal culture.

Accelerating gender transformation

Recommendations from both the qualitative and quantitative study on accelerating gender transformation points to employers offering equal opportunities/treatment to male and female legal practitioners. The contrasting briefing patterns, or unequal work allocation, can have significant implications for the career trajectories of female legal professionals. If women are consistently assigned less complex or high-profile cases, it may hinder their ability to gain the experience needed for advancement within the legal profession. The lack of pay parity extends beyond work allocation and reflects a broader challenge in ensuring equal compensation for equal work. Organisations need to implement intervention programmes addressing gender transformation. In addition, women who are promoted must be allocated the requisite opportunities and resources.

Discrimination based on various factors can hinder the overall well-being of the workforce and impact organizational culture and productivity. Organizations need to address issues such as bullying and sexual harassment promptly to ensure a healthy and respectful work environment. One proposed intervention would be the introduction and implementation of a hotline to make it easier to report bullying and sexual harassment.

The survey results show that organisations that truly want to support and encourage women's growth and leadership should reevaluate their policies and update support systems to ensure that mothers are not disproportionately burdened or hindered in their professional growth. Implementing flexible work arrangements, such as telecommuting or flexible hours, can help mothers manage their work and family responsibilities more effectively, potentially reducing the real disadvantages.





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List of Abbreviations

Abbreviations	Definitions
ACHR	African Charter on Human Rights
BCEA	The Basic Conditions of Employment Act 75 of 1997 (the)
CAAU	Constitutive Act of the African Union
CATI	computer-assisted telephone interviews
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGE Act	Commission for Gender Equality Act 39 of 1996 (the)
Commission	Commission for Gender Equality
EEA	Employment Equity Act
Gender Policy Framework	South African National Policy Framework for Women Empowerment and Gender Equality (the)
KZN	KwaZulu-Natal
LPA	Legal Practice Act
LPC	Legal Practices Council
LRA	Labour Relations Act
NGO	Non-governmental organisation
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
SADC	Southern African Development Community
SAPS	South African Police Service
TAPI	tablet-assisted personal interview
the Plan	National Development Plan: Vision 2030
UN	United Nations





Introduction

Two years ago, we created the Advancing Women in the Workplace (AWW) program to support Black women in South Africa in accessing leadership roles within the legal profession through mentorship, professional development opportunities, and other tools.

As we celebrate two successful years of AWW and launch this survey on diversity and inclusion in the South African legal market, it is clearer than ever what we already knew back in 2022: that South Africa's legal profession is filled with brilliant, talented, ambitious, and accomplished women, but that there are still significant barriers preventing these women, especially Black women, from advancing to leadership and reaching the full scope of their talent and potential.

With this survey in hand, we can see that these barriers take many forms: from open infractions like bullying and harassment in the office or unequal compensation for women and men doing the same work to more subtle oppression like leaving women out of important conversations and "company culture" that force women of colour to change their behavior or appearance or code-switch to "fit in". Women who are mothers or caregivers face even more challenges, exclusion, and colleagues who question or underestimate their capacity.

But we aren't here only to identify these challenges, which are all too familiar to many of us who have persisted in careers in the legal field despite discrimination and barriers. AWW's vision is a legal profession where women practitioners build structures of knowledge and support and create opportunities for one another to succeed and grow.

We have already seen this through the popularity and impact of our mentoring program, which has paired 40 experienced mentors with 40 mentees, younger practitioners in the early years of their legal careers. Through this program, these young Black women have expanded their network, sharpened their skills, advanced to more senior leadership positions, and taken advantage of opportunities to collaborate with senior women in the profession. One mentee noted, "What distinguishes this project from the rest is its ability to create a safe and comfortable growing space outside the work environment. A real community and togetherness, which creates a platform where professionals who are in the middle of their careers can voice their concerns to each other, upgrade their skills, and learn how to better themselves".

As we conclude the first phase of this project, this is a moment to take stock of where we are, how far we've come, and where we go next. We know that major barriers remain – but we also see that women legal practitioners are building their own pathways to a brighter, more inclusive future. More than half of survey participants have their own firms – after facing harassment, exclusion, and discrimination in their early careers, they are stepping away from toxic environments and choosing to use their connections and power to create new spaces for women to succeed and excel.

South Africa has made many strides in advancing women in the legal profession, but the issue of diversity in the profession remains a critical one. In 2013, the Vance Center, the Law Society of South Africa, the Mail & Guardian, the South African Legal Fellows Network, and Wits School of Law teamed up and asked Plus 94 Research to conduct a demographic survey of large corporate law firms in South Africa. That survey found a concerning lack of diversity and inclusion in the South African legal profession, especially for Black women. Law firms hired women, but they did not stay at the firms or reach the level of senior associates or partners. Women comprised 53% of law firm lawyers, but the majority were not at the senior level, and the few who had reached the senior level were white. One quarter of equity partners were white women, while just 5% were Black women, and the only women at the managing partner level were white. The survey also found that the percentage of Black women declined as one looks higher up the corporate ladder





within large law firms. Nearly half of Black women professionally employed in large corporate law firms are candidate attorneys.

A decade later, this new survey seeks to build on the findings of the 2013 study and identify the real barriers women continue to face in their careers. The findings call for a cultural shift within legal workplaces to eradicate toxic elements and foster inclusivity. Leaders within the legal community must actively promote equal opportunities, fair treatment, and effective intervention programs. A collective effort is needed to create an environment where women, especially women of colour, can thrive and advance in their legal careers. We hope this survey will ignite commitment from relevant stakeholders and serve as a call to action for the legal community to continue creating environments and tools for women to succeed. The call to action resonates with urgency, emphasizing the shared responsibility of individuals, organizations, and the legal community as a whole to drive tangible change.

We are part of that call to action, and we will hold ourselves and our partners accountable for the steps we take toward this positive change. We hope to continue partnering with our South African Legal Fellows Network and other key stakeholders to find ways to support gender diversity and continue calling on organizations to reevaluate and update their policies to eliminate gender disparities, discrimination, and biases. We are launching another program to mobilize South African legal practitioners to advance gender and racial equity and inclusion at both the professional and community levels, recognizing the importance of addressing gaps and inequity throughout all sectors of the profession.

The work over these years has shown us the true spirit of the concept of 'Ubuntu' - 'I Am Because We Are' – which in South Africa is the Sotho saying, “Motho ke motho ka batho” (“a person is a person because of other people”). Our mentors, mentees, colleagues – we are all here because of and thanks to each other. We see this in the experiences and testimonials of mentees who have changed career pathways to achieve their dreams, inspired by interactions with and support from their mentors. AWW mentees, many of whom are in the middle of their careers, are already taking steps to organize a pay-it-forward model by adopting LLB students, candidate attorneys, or newly admitted attorneys to mentor in turn.

I am inspired by what we have learned from working with these phenomenal women through the AWW program. We have seen that women at all levels of their profession are eager to build and belong to communities of service where they thrive with people with the same challenges as them. I look forward to working with them, and to the future we are creating together.

Adaobi Egboka
Africa Program Director, Vance Center





Legal Framework: International and Regional Instruments

- **International instruments**

The Constitution of the Republic of South Africa, 1996, provides in sections 231 and 232 that international agreements are binding law in South Africa if they are (i) approved by Parliament, (ii) of a technical, administrative, or executive nature, or (iii) customary international law, unless such law is inconsistent with the Constitution or an Act of Parliament. International law (including international agreements) is also required to be considered by courts, tribunals, and other fora in interpreting the Bill of Rights (in terms of section 39(1)(b) of the Constitution) and courts must prefer an interpretation of legislation consistent with international law over an alternative interpretation that is inconsistent with international law (in terms of section 233 of the Constitution).

Against this background, the South African government has ratified the following relevant treaties:

- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which was adopted by the United Nations in 1979 and took effect in 1981. CEDAW seeks to, inter alia, eliminate discrimination against women in all fields and spheres, and holds both state and non-state actors responsible in the case of a violation of rights. South Africa ratified CEDAW in 1995. South Africa has submitted three reports to CEDAW: (i) its first periodic report in 1998; (ii) its second, third, and fourth (combined) report in 2008; and (iii) its fifth periodic report (due in 2015) in 2019. The Commission for Gender Equality (Commission) in its investigation into the CEDAW report in 2020 reflected that the State appears in its periodic reports to be doing “the bare minimum”. The CEDAW reports do not speak specifically to representivity in the legal profession.
- The International Convention on the Elimination of All Forms of Racial Discrimination, which South Africa ratified in 1998. This treaty calls upon State Parties to work towards eliminating race discrimination in every form and to promote understanding among races.
- The International Labour Organisation’s Violence and Harassment Convention, 2019 (No. 190), which South Africa ratified in 2021. Article 4 of the Convention recognises “the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment”.

In addition to these treaties, the Beijing Declaration and Platform for Action (the **Beijing Declaration**) was adopted by the United Nations on 15 September 1995. This resolution is not a binding treaty but was approved by 189 countries, including South Africa, which attended the *Fourth World Conference on Women*. The Beijing Declaration sets a visionary agenda for the empowerment of women and is used as a framework to assess the efforts of signatory states in support of women’s empowerment. By signing it, South Africa committed itself to eradicating the barriers hindering the empowerment and advancement of women. The Beijing Declaration is aimed at establishing the principle of shared power and responsibility between men and women, including shared power and responsibility between men and women in the workplace.





In September 2000, South Africa signed the United Nations Millennium Declaration. The Millennium Declaration provides that the equal rights and opportunities of women and men must be assured. In this regard, the State Parties resolved at item 20:

“to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable”; and

“to combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women.”

Drawing from the UN Millennium Declaration, South Africa and other members of the United Nations developed and agreed the Millennium Development Goals. The Millennium Development Goals include the goals to promote gender equality, empower women, and to improve maternal health.

South Africa ratified the African Charter on Human Rights (**ACHR**), also known as the Banjul Charter, on 9 July 1996. The ACHR incorporates several provisions that deal with equality. Notably, Article 3 provides that every person will be equal before the law and have equal access to its protections. Further, Article 15 provides for the right to “work under equitable and satisfactory conditions, and [to] receive equal pay for equal work.”

The Constitutive Act of the African Union (**CAAU**), ratified by South Africa on 3 March 2001, established the African Union. The CAAU states that one of the Union’s founding principles is “the promotion of gender equality”.

- **Regional instruments**

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women (the Maputo Protocol) was adopted by the African Union in Maputo, Mozambique, in July 2003. It was ratified by South Africa on 17 December 2004 and came into force on 25 November 2005. The Maputo Protocol guarantees women a number of rights, including the right to social and political equality with men and the right to control one’s own reproductive health. As a critical document on the protection of the rights of women in Africa, the Maputo Protocol requires member states, inter alia, to eliminate all forms of discrimination against women through appropriate legislative and institutional measures.

The Southern African Development Community (SADC) Protocol on Gender and Development was adopted by SADC heads of state on 17 August 2008 in Johannesburg. The SADC Protocol encompasses commitments made in all regional, global, and continental instruments for achieving gender equality.

LEGAL FRAMEWORK: DOMESTIC LEGISLATION AND REGULATION

The Constitution provides a normative framework that seeks, amongst other objectives, to achieve equality and the advancement of human rights and freedoms and to promote non-racialism and non-sexism in South Africa. It recognizes the right to equality and prohibits unfair discrimination on the grounds of one’s gender or race. It also makes provision for restitutionary/affirmative action measures to address the inequalities brought about by apartheid laws.

- The constitutional framework for equality





The Bill of Rights enshrines the rights to human dignity (section 10 of the Constitution) and equality (section 9 of the Constitution). Section 9 (the Equality Clause) provides that “everyone is equal before the law and has the right to equal protection and benefit of the law”¹ and that “[e]quality includes the full and equal enjoyment of all rights and freedoms.” It further imposes a positive obligation on the State to take “legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination” and provides a framework for the prohibition of unfair discrimination based on several listed grounds, including race, gender, sex, pregnancy, and marital status. The State enacted the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 to give effect to the Equality Clause.

The Equality Clause prohibits unfair discrimination on the basis of sex, gender, and race. Fair discrimination, such as affirmative action measures, is permissible and numerous cases promoting gender justice have come before South African courts.

The Equality Clause provides for formal equality and substantive equality. The former refers to equality of opportunity, whilst the latter refers to equality of results or outcomes. By recognizing substantive equality in concert with formal equality, the Equality Clause seeks to fulfil the transformative mandate of the Constitution. As was aptly stated in the High Court judgment of *Daniels v Campbell NO*²:

“the concept of equality must be understood in a substantive, rather than in a formal sense. Promoting substantive equality requires an acute awareness of the lived reality of people’s lives and an understanding of how the real-life conditions of individuals and groups have reinforced vulnerability, disadvantage and harm.”

These important principles are given effect to in several pieces of legislation, including:

- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)

Pursuant to the Equality Clause and to assist the State in discharging its responsibility to promote the attainment of rights and achieve equality, Parliament enacted PEPUDA in 2000. PEPUDA aims to provide: (i) measures to facilitate the eradication of unfair discrimination, including on the grounds of gender and race; (ii) procedures to determine circumstances under which discrimination is unfair; and (iii) measures to advance persons disadvantaged by unfair discrimination. This is not exhaustive.

PEPUDA states that no person may unfairly discriminate against any person on the ground of gender, including:

- systematic inequality of access to opportunities by women as a result of the sexual division of labour;
- gender-based violence;
- any policy that unfairly limits access of women to land rights, finance, and other resources; and
- discrimination on the basis of pregnancy.³

¹ Section 9(1) of the Constitution.

² 2003 (9) BCLR 969 (C).

³ Section 8 of PEPUDA.





Additionally, PEPUDA provides that no person may unfairly discriminate against any person on the ground of race, including:

- engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity based on race; and
- the denial of access to opportunities, including services or contractual opportunities for rendering services for consideration, or failing to take steps reasonably to accommodate the needs of such persons.⁴

South African Courts have interpreted these sections of PEPUDA not necessarily to exclude the application of racial and gender quotas. For example, in *Cape Bar v Minister of Justice and Correctional Services and Others*⁵ (the **Cape Bar Case**).

In the Cape Bar Case, the Cape Bar (i.e., the society of advocates in Cape Town) challenged the constitutionality of the Legal Practice Act 28 of 2014 (the **LPA**) through the mechanisms provided in PEPUDA. The Cape Bar alleged that the LPA and its regulations set rigid quotas for the composition of the Western Cape Provincial Legal Practice Council. The Cape Bar sought an order of invalidity to the extent that the LPA allowed for rigid quotas. The LPA, and its regulations, set out how the Western Cape Provincial Council was to be constituted. This was done in numerical form prescribing the exact demographics of the Western Cape Provincial Council. The court found that PEPUDA does not absolutely outlaw the use of quotas.

In the Cape Bar Case, the court stated that the use of quotas in this case was rational and an attempt to promote all racial groups' representation on the Western Cape Provincial Council. The court concluded as follows:

“It is perhaps fitting for all to be reminded that the election of black women to the governing structures of the profession is not in and of itself sufficient to fulfil the transformation objective of the legal profession. Transformation is an imperative that must extend beyond that, to addressing matters that include briefing patterns, attraction, retention and offering support to black and women legal practitioners, among others.”

- Laws regulating fair employment

(i) The Labour Relations Act 66 of 1995 (the LRA): The LRA is aimed at protecting all parties in the workplace and promoting economic development, fair labour practices, peace, democratisation of the workplace, and social justice. Of particular importance is section 187:

“Automatically unfair dismissals—

(1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for the dismissal is—

(e) the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy;

(f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour,

⁴ Section 7 of PEPUDA.

⁵ 2020 (3) All SA 413 (WCC).





sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status, or family responsibility”.

(ii) The Employment Equity Act 55 of 1998 (the **EEA**): The EEA regulates equity in the workplace through the promotion of equal opportunity and fair treatment in employment, the elimination of unfair discrimination (including on the grounds of race and gender), and affirmative action measures to ensure that people from designated groups have equal opportunity and are equitably represented in all occupational levels of a designated employer. Designated groups include black people, women (of all races), and people with disabilities (of all races and sexes).

A designated employer (an employer employing more than fifty employees) is required to take affirmative action measures in accordance with Chapter 3 of the EEA. The EEA defines affirmative action as:

“Measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer.”

Unlike PEPUDA, the EEA does not permit application of quotas.

The courts have confirmed that, in order for affirmative action measures to be lawful, they must be taken in accordance with an employment equity plan that has been developed and implemented in accordance with the requirements of Chapter 3 of the EEA.⁶ In order to develop and implement an employment equity plan, the designated employer must conduct an analysis of its workforce numbers per occupational level and determine whether there are policies and practices that result in barriers to the appointment or progression of people from designated groups.⁷ The designated employer must consult with representatives of the employees who represent the interests of people from designated groups as well as those who are not from designated groups.⁸ The targets and goals must be flexible and may not include rigid quotas.⁹

Affirmative action measures must be rational (i.e., they must be “designed” to achieve the goal of equal opportunity and equitable representation).¹⁰ Measures must not be random and must be taken in accordance with the provisions of the designated employer’s plan. Where there is no plan, the employer cannot rely on “affirmative action” to justify appointment or promotion decisions based on race or gender.¹¹ Affirmative action measures must be fair, meaning: (i) they must not go beyond what is required to achieve their purpose (i.e. where a target contained in the plan has been met at a particular occupational level, the employer cannot rely on affirmative action to justify a decision based on race or gender); and (ii) they may not establish absolute barriers to the appointment and advancement of people who are not from designated groups.¹²

There have been a plethora of cases dealing with affirmative action. For example:

⁶ *South African Police Service v Solidarity obo Barnard (Police and Prisons Civil Rights Union as amicus curiae)* [2014] 10 BCLR 1195 (CC).

⁷ Section 15(1) of the EEA.

⁸ *Munsamy v Minister of Safety and Security* [2013] 6 BLLR 695 (LC).

⁹ *South African Police Service v Solidarity obo Barnard (Police and Prisons Civil Rights Union as amicus curiae)* [2014] 10 BCLR 1195 (CC).

¹⁰ Section 11(1) of the EEA.

¹¹ *PSA of SA obo Helberg v Minister of Safety & Security* [2005] 2 BLLR 135 (LC).

¹² *South African Police Service v Solidarity obo Barnard (Police and Prisons Civil Rights Union as amicus curiae)* [2014] 10 BCLR 1195 (CC).





In *Solidarity v Minister of Safety and Security*,¹³ Solidarity, a registered trade union, challenged the employment equity plan of the South African Police Service (**SAPS**). Solidarity alleged that the plan established absolute quotas and contended therefore that it was invalid. The Labour Court accepted that it was permissible to set targets based on national demographics. However, it was insufficient to rely on overall demographics and to disregard the number of economically active people in each group. By disregarding regional demographics and the proportion of economically active people in each region, the SAPS plan failed to comply with the requirements of the EEA. The use of inflexible numerical targets amounted to quotas, which are unlawful. Whether a target is regarded as a quota depends on the degree of its implementation and flexibility. In this case, the court found that the manner the numerical targets were used was inflexible, which meant that they amounted to quotas as opposed to flexible targets and goals. The SAPS's employment equity plan was therefore found to be invalid.

(iii) The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (the **Harassment Code**)

The Harassment Code became effective on 18 March 2022 and repealed the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace. Every employer is required to take steps to comply with the provisions of the Harassment Code. The Harassment Code is intended to address the prevention, elimination, and management of all forms of harassment that pervade the workplace. The Harassment Code recognises that harassment, including sexual harassment and gender-based violence and harassment, which constitute unfair discrimination, may constitute a barrier to equity and equality in the workplace and must be eliminated.

(iv) The Basic Conditions of Employment Act 75 of 1997 (the **BCEA**). The BCEA provides national minimum requirements for, among other things, family responsibility leave, parental/maternity/adoption leave, and benefits and conditions of service, all of which are relevant and gender responsive statutory provisions.

- The Commission for Gender Equality

Section 181(1)(d) of the Constitution establishes the Commission as a state institution supporting constitutional democracy ("Chapter 9 institution"). Section 187 of the Constitution provides that the Commission must promote respect for gender equality and the protection, development, and attainment of gender equality. The Commission has the power to monitor, investigate, research, educate, lobby, advise, and report on issues concerning gender equality and further powers and functions prescribed under the Commission for Gender Equality Act 39 of 1996 (the **CGE Act**). Section 11(1) of the CGE Act requires the Commission to monitor and evaluate policies and practices of organs of state, statutory bodies or functionaries, public bodies and authorities, and private businesses, enterprises and institutions in order to promote gender equality.

The Commission has not conducted investigations into transformation in the legal profession, although it is empowered to do so, but in 2016 investigated and produced a report titled "Lack of Gender Transformation in the Judiciary" following complaints lodged by the Democratic Governance and Rights Unit of the University of Cape Town and Sonke Gender Justice Network (the **Commission Report**). The Commission Report noted that the judiciary remained

¹³ *Solidarity v Minister of Safety and Security* [2016] 5 BLLR 484 (LC).





untransformed and that the members of the judiciary are appointed from the members of the practising legal profession. It noted that it is “the culture prevalent within the profession, the attitudes of its members about gender issues ..., the status of women within the profession, and the practices both within the profession and within the judiciary ... [that] will affect the pace and the quality of gender transformation in the judiciary”.¹⁴ This report has led to a significant push towards transformation in the judiciary.

- Laws applicable to the legal profession

(i) Transformation of the judiciary

Section 174 of the Constitution provides that “[a]ny appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer” and that “[t]he need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.”

The Criteria and Guidelines used by the Judicial Services Commission when Considering Candidates for Judicial Appointment¹⁵ require the Judicial Services Commission to consider whether a candidate’s appointment would help to reflect the racial and gender composition of South Africa,¹⁶ and the Heads of Court have adopted the need for a transformed judiciary as a criterion for appointment of acting judges.¹⁷ Of the 253 judges of the Superior Courts in South Africa, 113 are women. The Judge President of the Supreme Court of Appeal and the Deputy Chief Justice of the Republic of South Africa are black women. It is further estimated that 51% of magistrates are women and, out of sixteen chief magistrates, ten are women.¹⁸

(ii) The Legal Practice Act 28 of 2014

The LPA established a new regulatory framework for the legal profession in South Africa in 2016, which came into full operation in October 2018. The LPA provides a legislative framework for the transformation of the legal profession in line with constitutional imperatives. As part of its objectives, the LPA intends to transform and restructure the legal profession into a profession which is broadly representative of the Republic’s demographics under a single regulatory body. This contemplates, amongst other aspects, removing any unnecessary or artificial barriers to entry into the legal profession and advancing constitutional values and public accountability by the profession.

The LPA creates mechanisms and mandates for transformation through: (i) the implementation of measures that provide equal opportunities to aspiring legal practitioners;¹⁹ (ii) programs to empower historically disadvantaged legal practitioners and candidate legal practitioners;²⁰ and (iii) legal education and training, having due regard to South Africa’s inherited legacy and constitutional dispensation.²¹ The LPA also makes provision for the establishment of a regulatory body, namely the Legal Practice Council (the **LPC**), which has the duty to develop programs to

¹⁴ Page 7 of the Commission Report.

¹⁵ Available at <https://www.lssa.org.za/wp-content/uploads/2023/05/20230417-Criteria-for-Judicial-Appointment-JSC-Approved.pdf>.

¹⁶ Paragraph 7.3.

¹⁷ By resolution at a meeting held on 3 April 2016.

¹⁸ See “Women’s Day: 100 years of women in the legal profession” Judges Matter (8 August 2023) available at <https://www.judgesmatter.co.za/opinions/womens-day-100-years-of-women-in-the-legal-profession/>.

¹⁹ LPA, section 3(b)(ii).

²⁰ LPA section 6(1)(b)(v).

²¹ LPA, section 6(5)(f)(i).





empower historically disadvantaged legal practitioners. The LPC reports annually to the Minister of Justice on progress made in implementing such programs. Furthermore, it is peremptory for the Minister to make regulations relating to the establishment of a mechanism to monitor progress on the implementation of the programs relating to the empowerment of historically disadvantaged legal practitioners and candidate legal practitioners.

- National Frameworks, Policies, and Strategies

South Africa has adopted or implemented a number of frameworks, policies, and strategies that are aimed at gender and racial inclusion. For example:

The South African National Policy Framework for Women Empowerment and Gender Equality (the **Gender Policy Framework**) was adopted by Parliament in 2000. It outlines South Africa's vision for gender equality and how it intends to realize this ideal, whilst recognizing the unique challenges that face women in South Africa such as poverty, access to land, and gender-based violence. The Gender Policy Framework provides guidelines and principles to ensure that the process of achieving gender equality is at the core of the transformation process in all structures, institutions, policies, and in civil society, amongst others. The Gender Policy Framework is not prescriptive, but it does attempt to set standards and norms for a national gender program.²²

On 19 February 2013, the National Development Plan: Vision 2030 (the **Plan**) was introduced as a means to promote inclusive growth, prosperity, and development in South Africa. The Plan's core objectives are to eliminate poverty, reduce inequality and unemployment, build human capabilities, and promote active citizenship. Notably, the Plan includes proposals to promote the socio-economic lives of women and to eliminate spatial segregation and unemployment to build a socially cohesive society.

On 31 August 2021, the Department of Mineral Resources and Energy launched the Women Empowerment and Gender Equality Strategy, to ensure women become active participants in the energy sector as, among other things, business owners, leaders, investors, researchers, and employees.

Other relevant policy documents include: (i) the Implementation Guide for the Monitoring of the Gender Equality Strategic Framework and Job Access Strategic Framework for the Public Service; (ii) a Strategic Framework for Gender Equality within the Public Service, 2006-2015;²³ (iii) the Women's Financial Inclusion Framework, 2019/2020; and (iv) the Gender Policy Framework for Local Government, 2011.²⁴

ENFORCEMENT AND IMPLEMENTATION

While the LPA purports fundamentally to overhaul gender and racial representation in the legal profession, and the LPC is charged with implementing measures to achieve this objective, very little progress has been made to implement policies to promote representation of women of colour, and the number of black female attorneys is still much lower than the number of white

²² For further information relating to South Africa's National Gender Policy Framework, please see here: https://www.dffe.gov.za/projectsprogrammes/environment_sector_genderstrategy/policy_framework.

²³ For further information, please see here: https://www.gov.za/sites/default/files/gcis_document/201409/dpsastratframework2006-2015241120060.pdf.

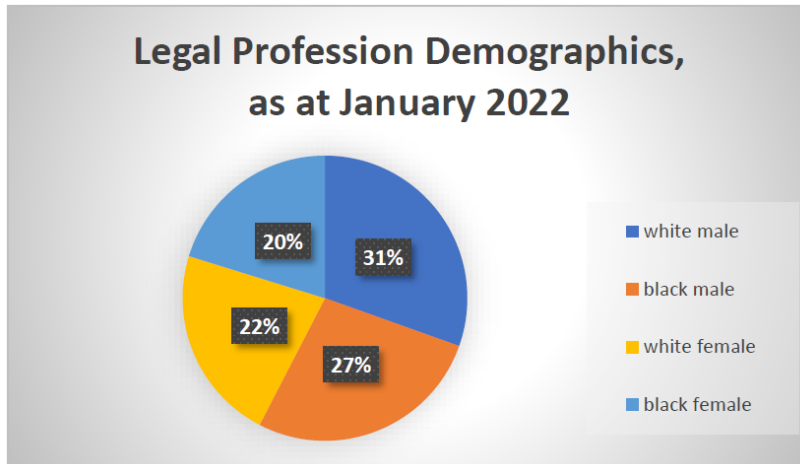
²⁴ For further information about frameworks, policies and strategies relating to gender inclusion, please see this depository as maintained by the University of Cape Town: <https://libguides.lib.uct.ac.za/c.php?g=194637&p=5592209>.





males, who still dominate the profession. In January 2022, the Law Society of South Africa (LSSA) reported the following statistics on representation in the attorneys' profession in South Africa.

***For purposes of these statistics "black" includes African, Coloured, and Indian:²⁵



Out of a total of 29 981 attorneys in South Africa registered on the roll of attorneys at the LPC, 53% are white and 47% are black. Further, 42% of all attorneys are female.

Further details of demographics:

White male attorneys: 31%

Black male attorneys: 27%

White female attorneys: 22%

Black female attorneys: 20%

These statistics from 2022 demonstrate a relatively significant increase in the number of black female attorneys from 2018 when, out of a total of 26 147 attorneys, 57% were white attorneys and 43% black attorneys (with 39% of all attorneys being female).²⁶

As regards admission numbers during the period 2013 to 2017, the following percentages were female:

2013: 58%

2014: 56%

2015: 58%

2016: 54%

2017: 60%

There has accordingly been a steady increase in female admitted attorneys.

²⁵ Law Society of South Africa, Statistics for the attorneys' profession, (January 2022), available at: <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/>.

²⁶ Law Society of South Africa, Statistics for Legal Profession 2017/2018, (April 2018), available at: <https://www.lssa.org.za/wp-content/uploads/2019/11/LSSA-STATS-DOC-2017-18.pdf>.





Of the attorneys admitted during the period 2013 to 2017, the following percentages were white:

2013: 49%

2014: 47%

2015: 45%

2016: 40%

2017: 37%

The number of white admitted attorneys is declining.

Fully white-owned firms have declined from 60% in 2016 to 49% in 2021, while fully black-owned firms have increased from 11% in 2016 to 19% in 2021.²⁷ Fully male-owned firms have declined from 53% in 2016 to 47% in 2021, while fully female-owned firms have increased from 20% in 2016 to 27% in 2021.

While the LPC has not directly implemented any policies to date, there is evidence that positive action is being taken by the various Bar councils and the LSSA (which represents the attorneys' profession). For example, as part of its existing transformation initiative, the Cape Bar has had a maternity policy in place in terms of which members of the Bar taking maternity leave are entitled to a six-month leave of absence without any loss of domestic seniority (this period may be extended on good cause shown), remission from Bar dues and partial remission from chambers rental and floor dues.²⁸ In addition, members on maternity leave may, at election, practise from home during their maternity leave period. The Johannesburg Bar and KwaZulu-Natal Bar also have similar policies in place.²⁹ Further, the KwaZulu-Natal Bar maternity policy encourages the various groups of advocates to support members who are on maternity leave by assisting them to: (i) collect outstanding fees and ensure that the member's practice remains sustainable when she returns from leave; (ii) adjourn the member's matters whilst she is on leave to dates when she returns to work; and (iii) discount or suspend group contributions.

At its Annual General Meeting of 29 October 2015, the Johannesburg Society of Advocates adopted a resolution making it unprofessional conduct for lead counsel to accept a brief or remain on brief where:

- there are three or more counsel on brief, including lead counsel for the same client or set of clients in the same matter; and
- no member of the team of counsel is a black person.

On the face of it, while this resolution indicates significant strides in addressing transformation at the Johannesburg Bar, it does not specifically benefit women.

²⁷ J Maggs, *Ownership by Gender and Race*, The State of the Legal Industry in South Africa 2021.

²⁸ See <https://capebar.co.za/transformation/>

²⁹ See <https://www.johannesburgbar.co.za/wp-content/uploads/2014/08/MATERNITY-POLICY-2-OCT-2012.pdf> and <https://www.kznbar.co.za/wp-content/uploads/2016/12/Society-of-Advocates-of-KwaZulu-Natal-Equality-and-Diversity-Policy.pdf>





The LSSA has historically held a Significant Leadership Program for Women Lawyers³⁰ which is a leadership programme for female legal practitioners intended to assist female practitioners to grow their law firms or further their legal careers.

³⁰ See <https://www.lssa.org.za/our-initiatives/significant-leadership-programme-for-women-lawyers/>.





Project Background

Introduction and Context

Women are powerful agents of change, and the far-reaching benefits of diversity and gender parity in leadership and decision-making are increasingly recognised in all spheres. However, women remain vastly under-represented in decision-making and high-ranking positions in politics, businesses, and communities. The law profession still notably struggles with gender diversity. In South Africa, the legal profession does not mirror diversity for proper representativity of the social diversity and dynamics of South Africa are not fully reflected. The under-representation of women in leadership positions is a concern and is reflected in a legal setting wherein the national statistics demonstrate that 27 223 registered attorneys in January 2019, of whom 12 084 (44%) were black, 11 055 (39%) were women, and 17.8% black women. This shows a clear under-representation of women of colour.

Research Background and Objectives

The purpose of this study is to:

1. Determine the number of senior/and or leadership positions that are held by black women in the legal profession, both in the private and public sectors.
2. Investigate the factors that affect progression of women legal professionals.
3. Provide a detailed segmentation of black women in the legal profession.

The analysis of the women segments will be conducted along the following dimensions: race, income levels, and level of qualification.

Realised Sample

A total of 100 senior female legal practitioners were successfully interviewed during the quantitative survey, and five legal practitioners during the focus group discussion.

Research Methodology: Quantitative

The initial approach to data collection was by means of computer-assisted telephone interviews (CATI) method and an online self-reporting survey. This is characterised by conducting telephonic interviews and respondents completing the survey online. However, due to challenges faced when applying the CATI and online survey approaches, the tablet-assisted personal interview (TAPI) or face-to-face approach was also utilised. Using a face-to-face approach allows the interviewers to build rapport with respondents, resulting in better quality data. Respondents are able to express themselves better in a face-to-face interview, avoiding misunderstandings.

The CATI, Online and TAPI data collection methods held the following advantages:

1. Preprogrammed questionnaire.
2. Limits potential interviewer mistakes. Cannot skip questions.
3. Inexpensive.
4. User-friendly.
5. Eliminates mistakes when data from different sources is combined. No separate data entry is required.
6. Allows for speedier data processing. Quick data downloads.





7. Applies relevant skips and checks. Checks inadmissible or inconsistent responses.

Survey Limitations

The purpose of the initial communications to individuals and corporations was to ascertain employment of female attorneys/advocates and then to recruit the female attorneys/advocates for the survey. In the absence of a sampling frame, Plus 94 Research sourced contact information from online sources or its proprietary datasets to recruit from corporations and law firms or to recruit individuals.

The initial survey did not have a screening question limiting participation to women legal professionals in leadership roles or positions. This resulted in the survey being administered to a total of 444 women legal practitioners of whom 344 records were of candidate attorneys and associates. Candidate attorneys and associates were excluded from the findings of this report. However, the database containing their responses is a valuable resource to observe the research objectives from the perspective of junior women legal practitioners. The database will be analysed to provide a report discussing the objectives from the perspective of junior black women legal practitioners.

The length of the survey resulted in potential participants starting the online version of the survey but failing to complete it. The success rate of the online survey was very low. Even after invitations and reminders were sent to the respective firms and individuals, the completion rate remained low.

The Computer Assisted Telephone Interview (CATI) method was also applied. Although interviewers scheduled appointments with potential respondents, many of these appointments were not honoured.

A third data collection option was applied namely the Tablet Assisted Personal Interview (TAPI) approach or the personal interview approach. Field teams were deployed to law firms and courthouses. The field teams (TAPI) were denied access to law firms as they required appointments but were not granted. Senior attorneys/advocates were difficult to intercept for interviews due to their busy schedules, rushing to court hearings or to meet clients for their last briefings before hearings.

The reach of the survey was predominantly in Gauteng because surveys were personally handed out for full comprehensive reporting.





Demographics and Profile

Focus Group Discussion Demographics and Profile

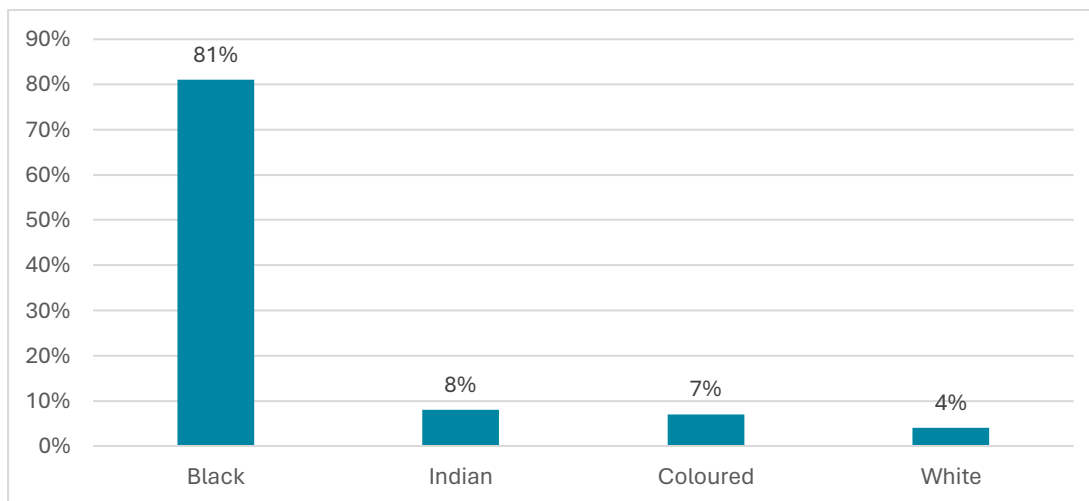
The demographic profiles of the five (5) respondents who participated in the focus group discussions are provided below. All interviewees were black women with legal experience.

1. Two of the interviewees have practised law for up to four years, two have practised law for five to nine years, and one interviewee has practised for 10 to 14 years.
2. All five have obtained an LLB qualification. One interviewee obtained a BA LLB qualification, two an LLM, and one a BCOM LLB qualification.
3. Four reported their areas of expertise as commercial and contract law, two were experts in labour, and one each was an expert in constitutional, public administration, family law, and finance and banking respectively.
4. All five interviewees specialised in commercial law while three also specialised in labour law.

Demographic Profile of Survey Respondents

Eighty-one percent of respondents are Black, 8% Indian, 7% coloured, and 4% white. All respondents confirmed their gender as female. None of the respondents selected Gender Binary, Gender Neutral or LGBTQIA+. Most women (64%) reported experiencing difficulties in the workplace based on their sexual orientation. This type of discrimination will constitute sexual harassment of women from men because of their (perceived or actual) heterosexuality.

Figure 1: Racial profile of respondents (n=100)

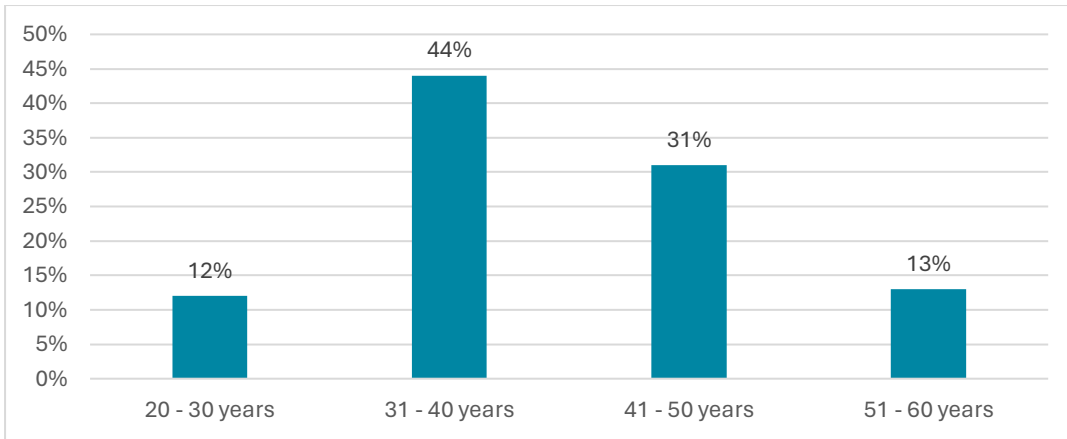


Five percent of the respondents have a disability. The largest proportion of respondents were aged 31 to 40 years, 31% were aged 41 to 50 years, 13% were aged 51 to 60 years, and 12% were aged 20 to 30 years.



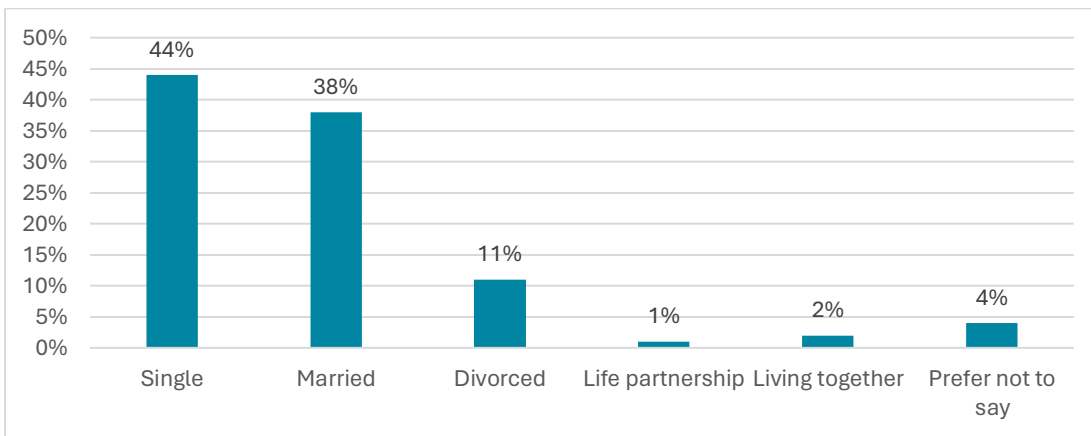


Figure 2: Respondents' age (n=100)



Forty-four percent of respondents were single, 38% were married, and 11% were divorced.

Figure 3: Marital status of respondents (n=100)



Of the married legal practitioners, 39% are aged 31 to 40 years of age, 45% aged 41 to 50 years of age and 16% were aged 51 years and older. This distribution indicates that the women in the sample married later in life.

Figure 4: Marital status of respondents (n=38)

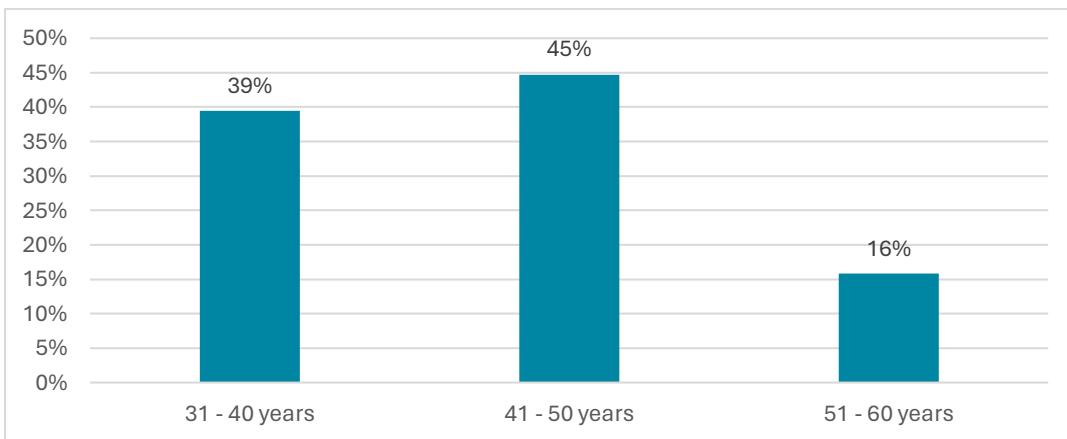
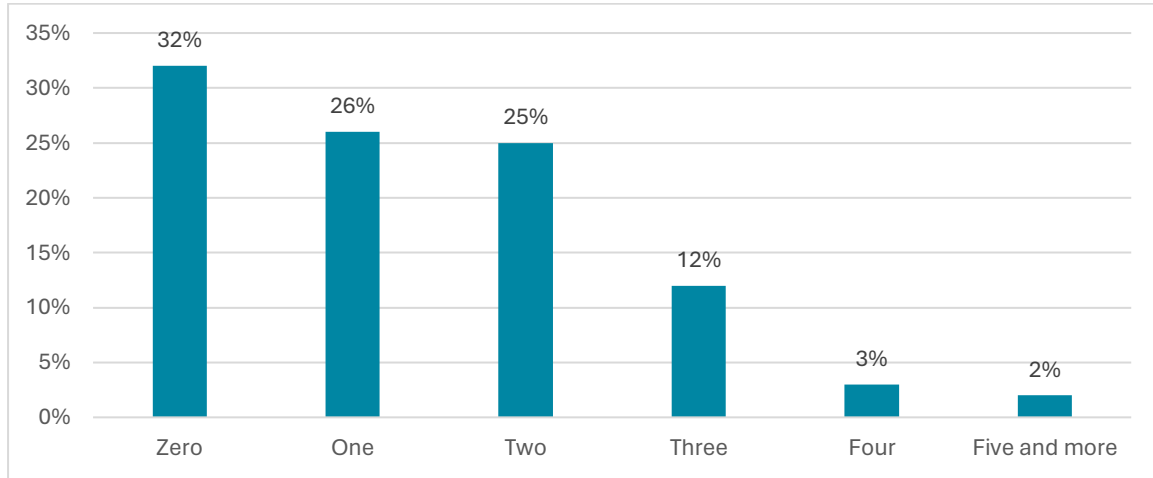




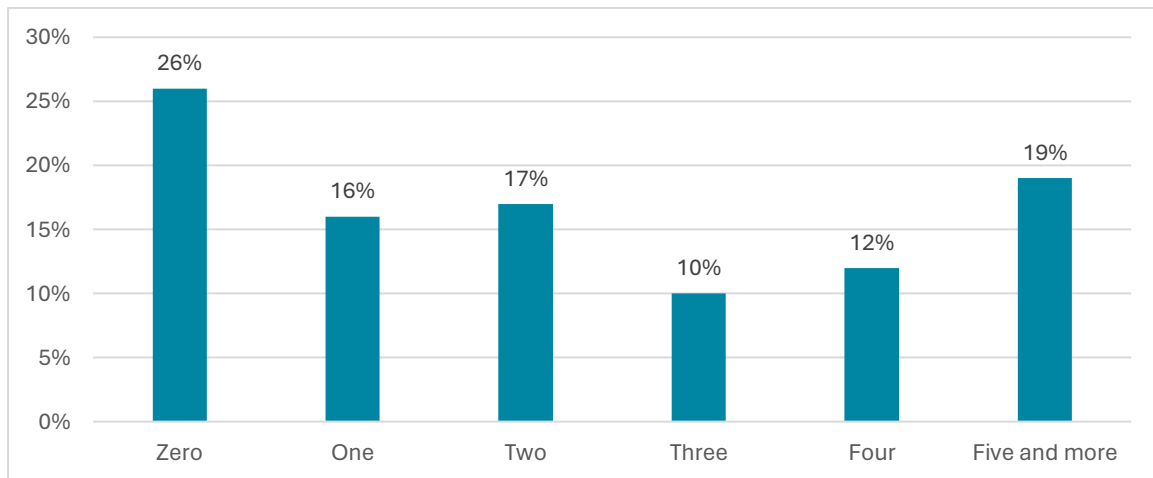
Figure 5 shows that 32% percent of respondents reported having no children, 26% had one child, 25% had two children, and 12% had three children.

Figure 5: Number of children (n=100)



Respondents were asked about the number of dependents they had, which included grandparents, siblings, or anyone they support monthly other than their children and/or spouse. Slightly more than one quarter (26%) reported having no dependents, 19% had five or more dependents, 17% had two, 16% had one, 12% had four, and 10% had three dependents.

Figure 6: Number of dependents (n=100)

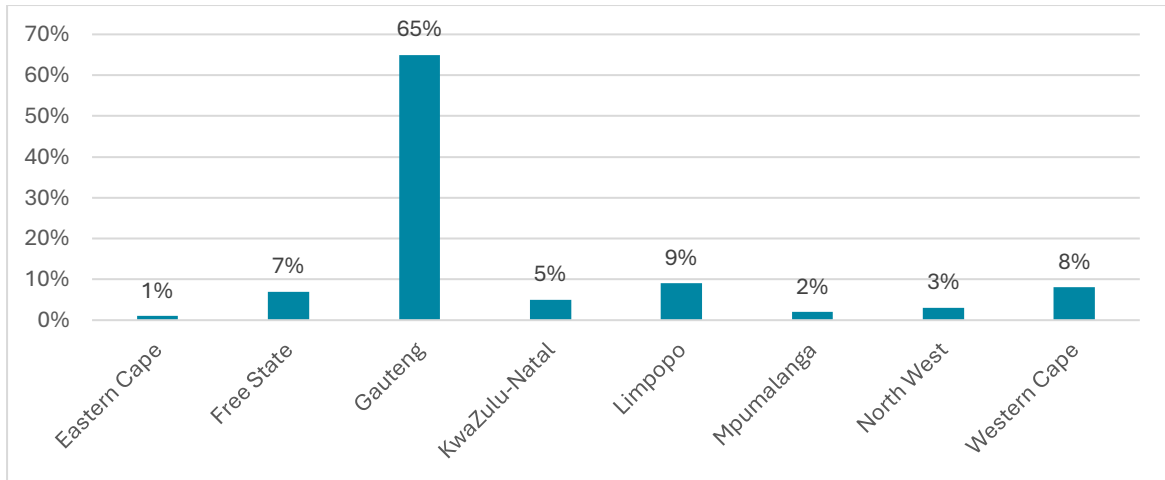


Close to two-thirds (65%) were based in Gauteng, and less than 10% in the other provinces respectively.





Figure 7: Provincial distribution of respondents (n=100)





Tertiary Qualifications of Legal Practitioners

Figure 8 shows that 60% of respondents obtained an LLB qualification, 16% an LLM, 10% a BA LLB, with smaller proportions obtaining a B Proc, B Juris, and BCom LLB qualification.

Figure 8: Tertiary qualifications (n=100)

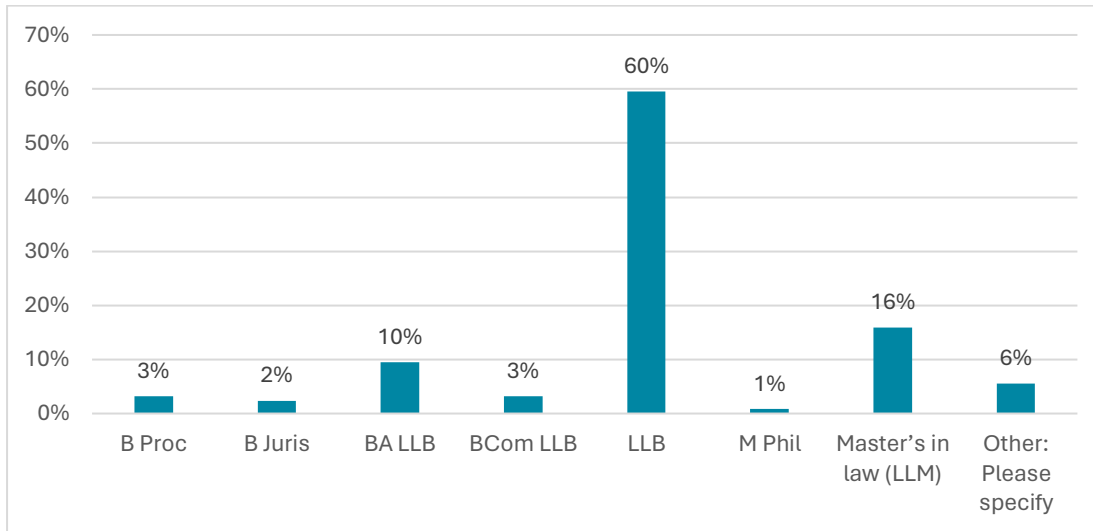
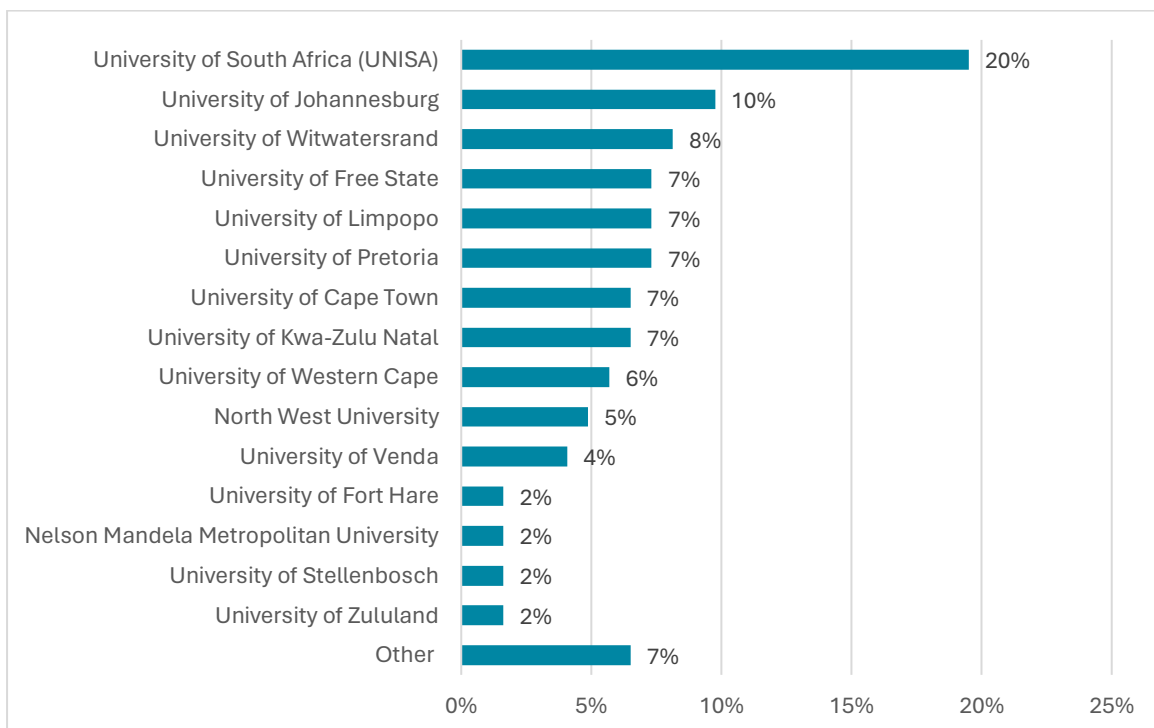


Figure 9 shows that 20% of respondents studied at the University of South Africa, 10% at the University of Johannesburg, 8% at the University of the Witwatersrand, and smaller proportions at other universities in South Africa. More than half (54%) of respondents completed their legal studies from 2010 to 2019, 31% from 2000 to 2009, 9% and 6% completed their studies before 2000 or from 2020 till 2022, respectively.

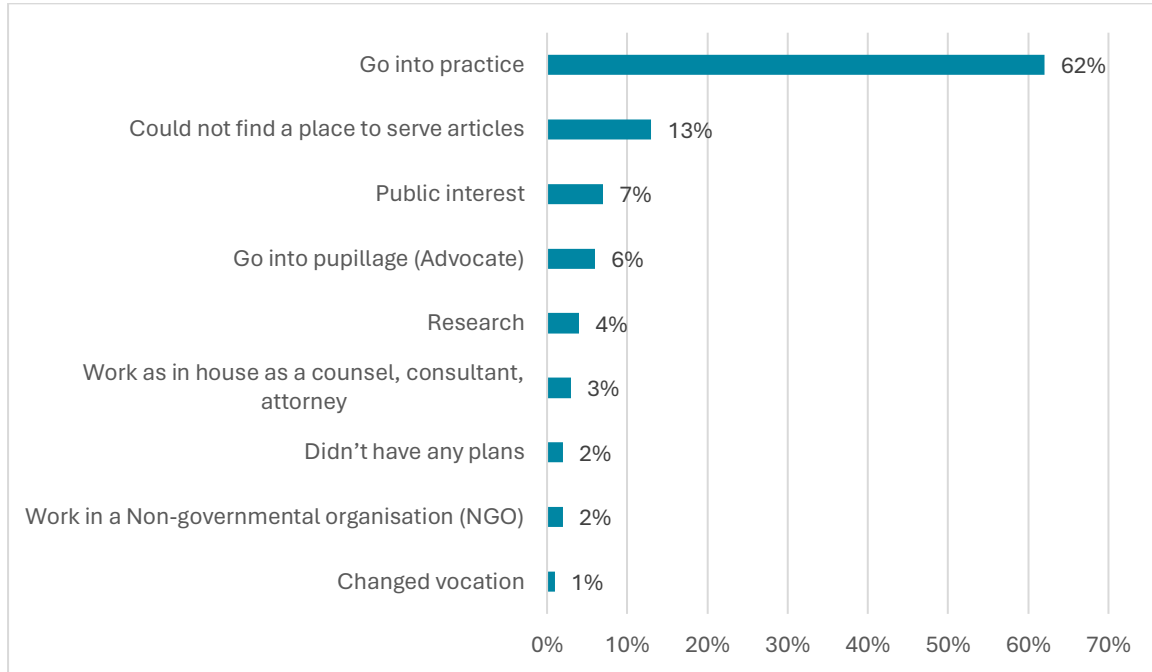
Figure 9: Tertiary institutions where respondents studied (n=100)





Sixty-two percent of respondents went into practice after completing their degree, 13% could not find a place to serve articles, 7% serve in public interest, and 6% went into pupillage. Smaller proportions opted for research or working as an in-house counsel or in an NGO.

Figure 10: Career path after completion of qualification. (n=100)



Close to three-quarters (72%) of respondents who went into practice found it easy to secure articles, 12% selected pupillage, 4% gave up, while another 12% did not go into practice.

Of the 12 respondents who did not go into practice, five would consider the option of going into practice, six are comfortable in their current situation, while one indicated that going into practice was no longer an option.

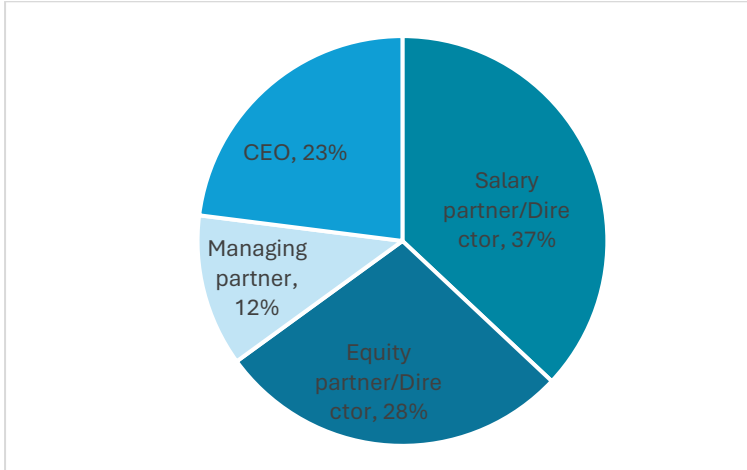




Place of Employment or Practice

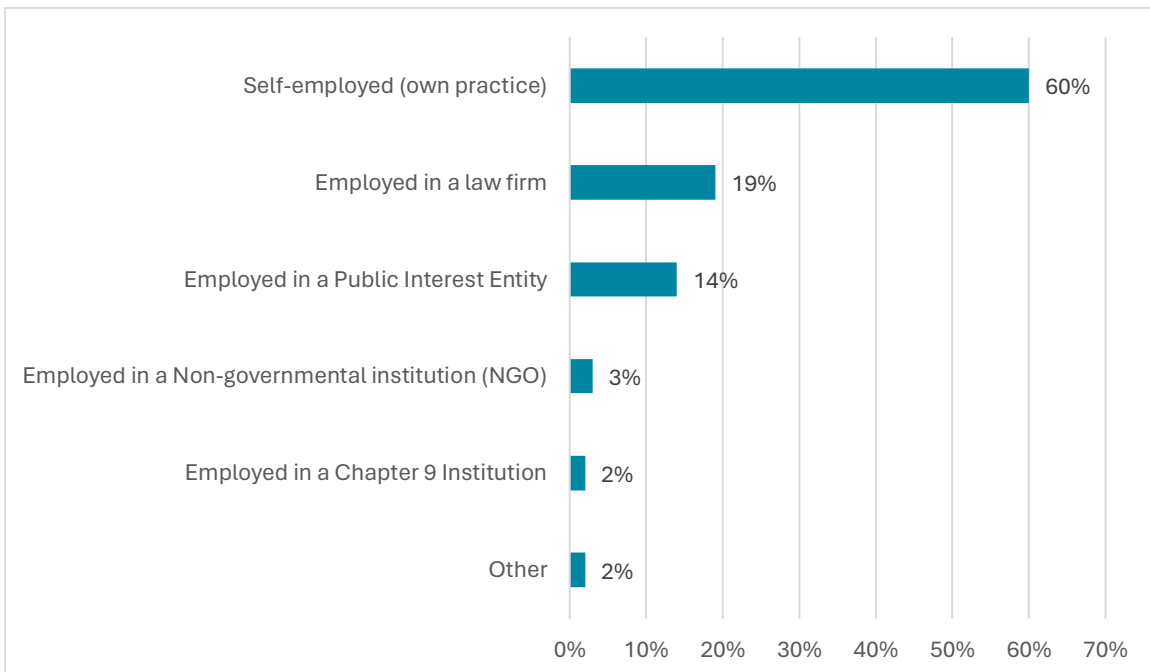
Seventy-two percent of respondents are currently in practice. Figure 11 shows that 37% are employed as a salary partner at a director level, 28% as an equity partner or director level, 23% at the CEO level, and 12% as a managing partner.

Figure 11: Employment level (n=100)



Most respondents (60%) were self-employed or had their own practice, while 19% were employed in a law firm, and 14% were employed in a public interest entity. Smaller proportions were employed in an NGO, Chapter 9 institution, or another institution.

Figure 12: Place of employment (n=100)



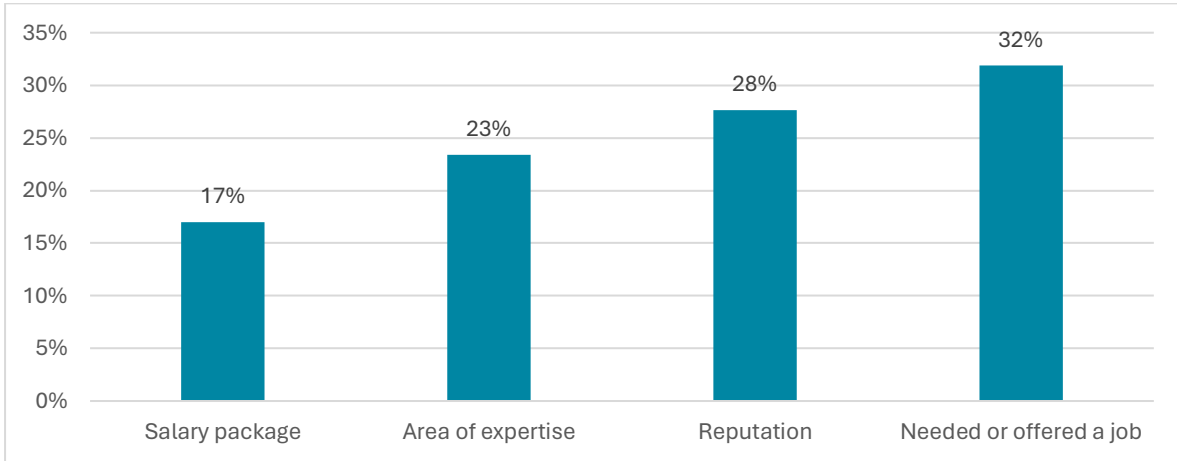
Respondents were asked to specify what factors influenced their decision to join the law firm/practice/place of employment where they are currently based. Less than half responded to this question because most were self-employed.





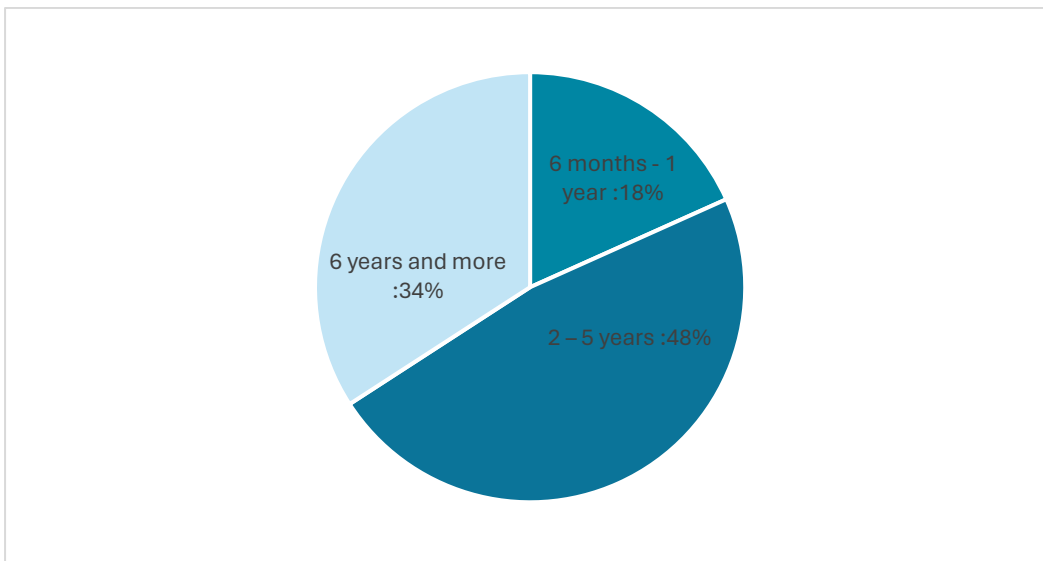
Of these, 32% needed or were offered a job, 28% considered the reputation of the institution, 23% reported that the offer coincided with their area of expertise, and 17% decided based on the salary package.

Figure 13: Factors influencing decision to join a new firm (n=47)



Most respondents (82%) were previously employed. Figure 14 shows that 48% were employed for two to five years, 34% for six years or more, and 18% for six months to a year. The majority left to explore other opportunities, or their contract expired, or to start their own practice.

Figure 14: Length of stay at previous employment (n=100)



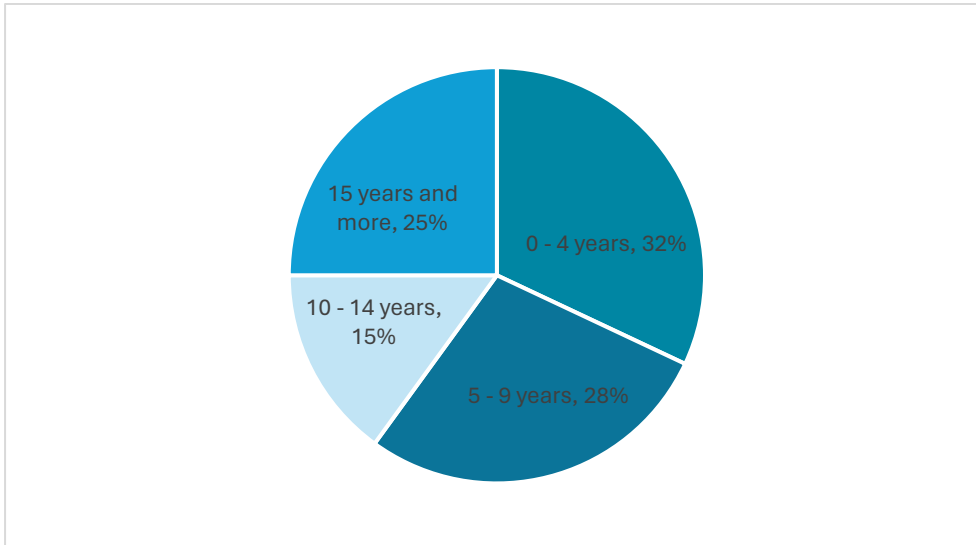


Experiences in the Legal Field

Thirty-two percent of respondents have been in practice for four years or less, 28% for five to nine years, 25% for 15 years and more, and 15% from 10 to 14 years (Figure 15).

Most participants were on the roll as an attorney (70%), with the remaining 30% as advocates. The highest proportion of survey participants, 78%, completed their articles and 22% completed a pupillage.

Figure 15: Number of years in practice (n=100)



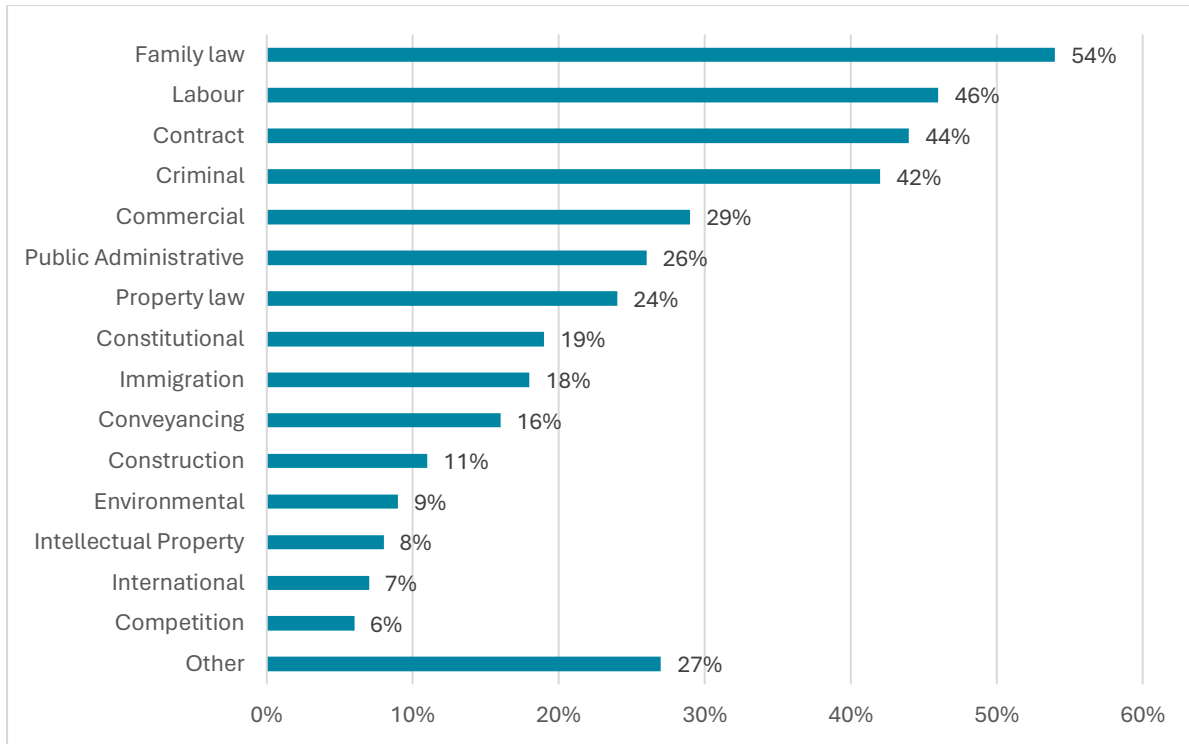
Area of Expertise

The largest proportion of respondents (54%) reported Family Law as their area of practice, followed by Labour (46%), Contract (44%), and Criminal (42%) Law. In addition, 29% practised Commercial Law, 26% Public Administrative Law, and 24% Property Law (Figure 16). A substantial proportion (27%) practise Other Law (options not in the questionnaire), which includes Personal Injury, Litigation, Notary, Surrogacy, Civil Law, Estate Law, Human Rights, and Cyber Law.





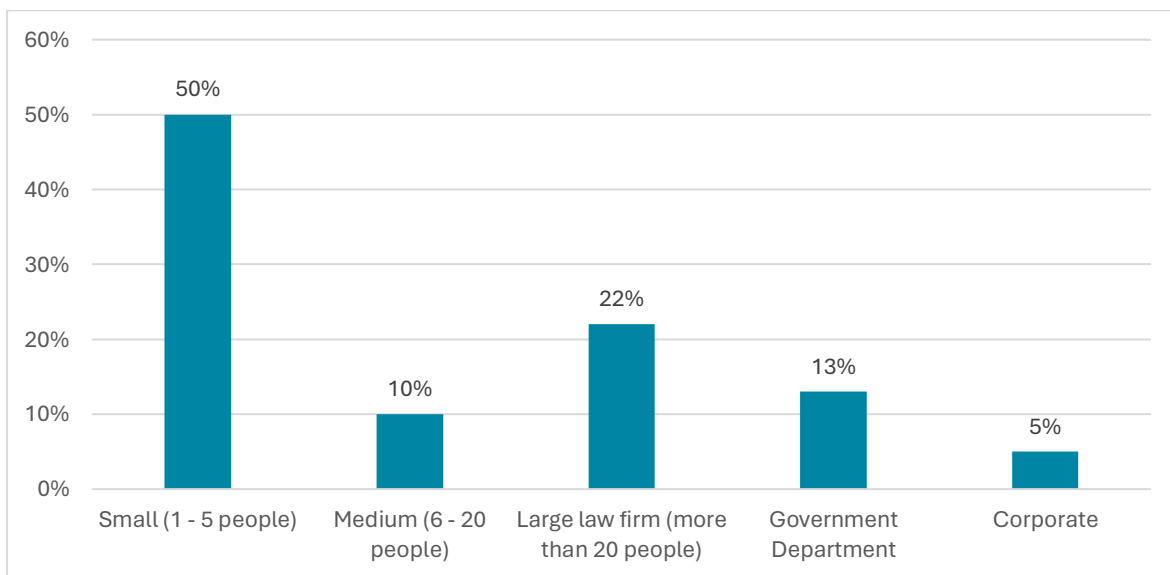
Figure 16: Areas of practice (n=100)



Factors that Affect the Trajectory of the Profession

The largest proportion of respondents (50%) are practising in a small law firm. Less than a quarter (22%) are practising in a large law firm, 13% in a government department, 10% in a medium-sized firm, and 5% in a corporate firm. Only 17% of respondents are at the Bar.

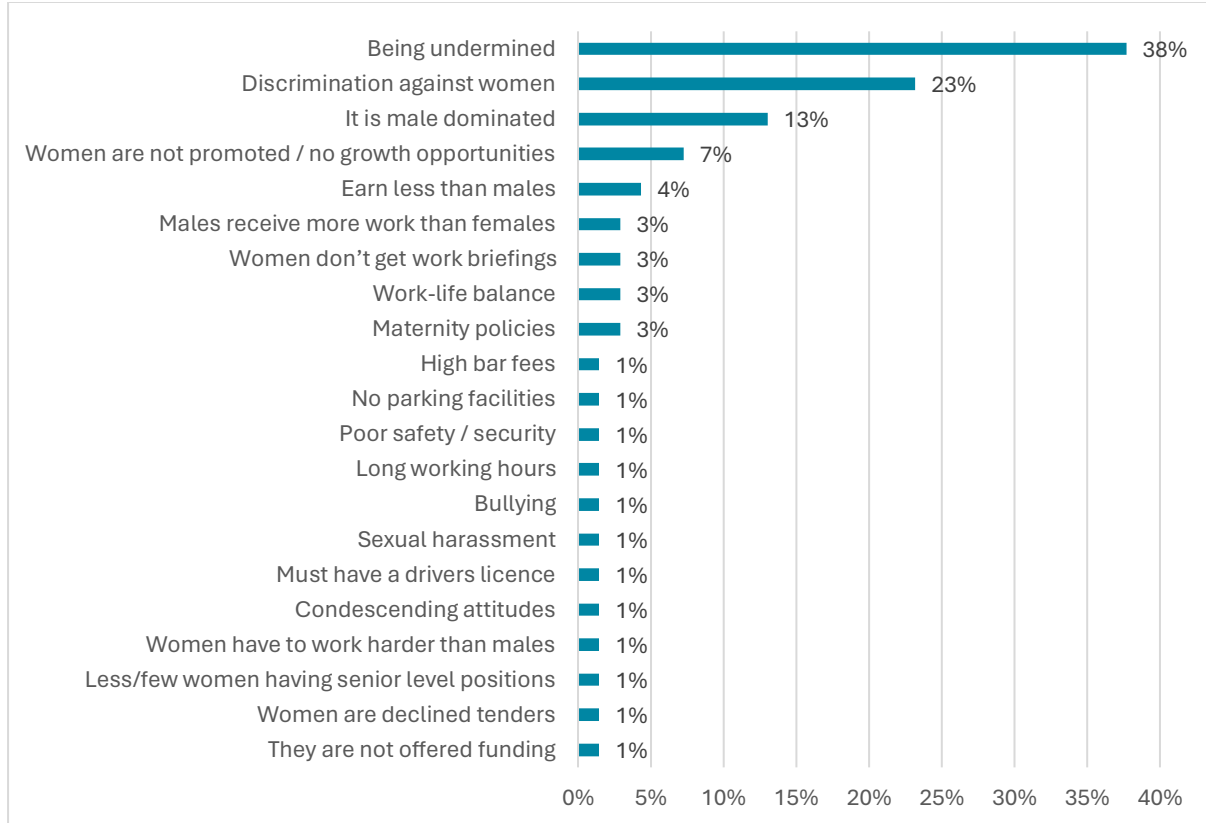
Figure 17: Type of law firm (n=100)





Respondents identified a number of barriers that affect women in the legal profession (Figure 18). A substantial proportion commented that women are undermined (38%), and 23% indicated discrimination against women. Thirteen percent consider the sector to be male dominated, while 7% indicate that women are not promoted or there are not growth opportunities for them.

Figure 18: Barriers that affect women in the legal profession (n=100)



Focus group discussants identified a number of barriers that impede women’s advancement in the profession including:

1. Respondents believed that the legal profession to be a “boys’ club” for years of even decades to come.
2. Difficult to manage or penetrate cliques.
3. Women are pushed more into family law or end up doing state attorney work.
4. Men need to be allies.
5. Difficult to get commercial work if a white male senior counsel does not offer it.
6. Unequal Remuneration.
7. Harassment.
8. Balancing their work-personal life (motherhood) and race.

(What are some of the barriers you can identify that affect women in the legal profession?)





According to interviewees, women are regarded differently because:

1. Women, especially black women, struggle to get work or get paid after working.
2. Male and white female advocates/professionals are viewed as more competent than black women.
3. Males and white females get more briefs than black women.
4. Male advocates have more work and charge more.
5. White female advocates have more access to work than black females.

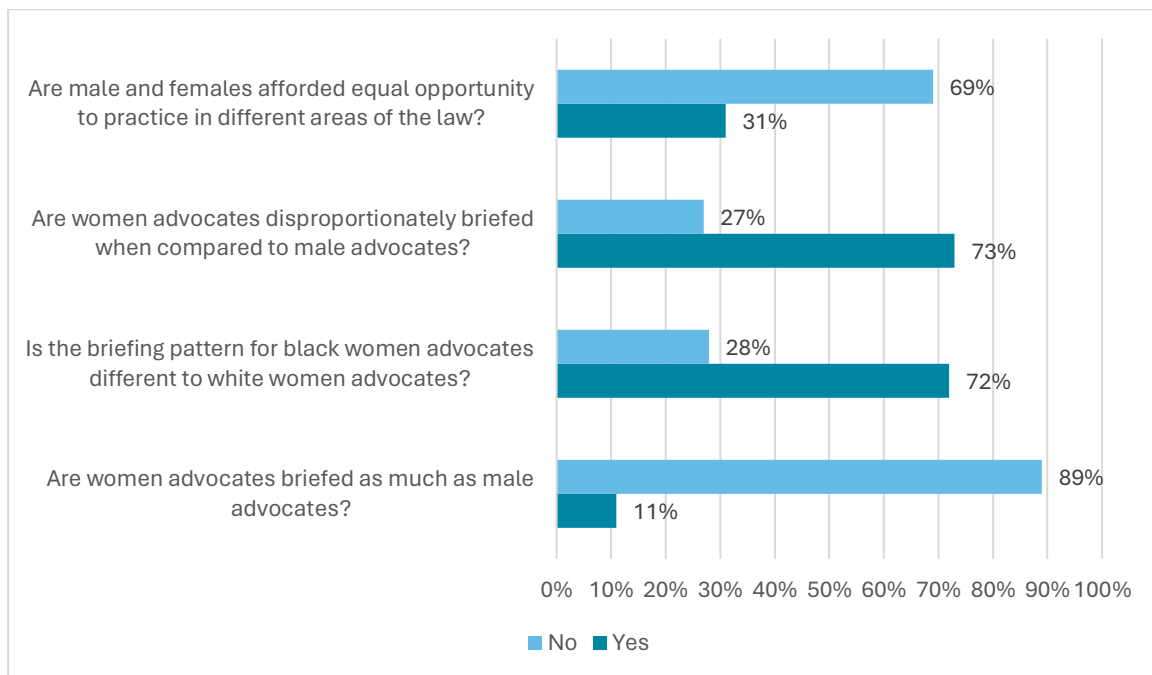
One interviewee who has been practicing for five years described her experience as “a struggle from the beginning to date” and does not expect her situation to improve. She is keen to remain in the profession but due to the high costs of practicing, believes this will be impossible in the long term. She also has found it difficult to obtain compensation from attorneys for completed work.

(Are women regarded differently from their male counterparts?)

Briefing in the Legal Profession

Figure 19 shows that 69% of respondents agree that males and females are not afforded equal opportunities to practise in different areas of the law. Close to three-quarters (73%) agree that women advocates are disproportionately briefed when compared to male advocates, and that the briefing patterns of black and white women advocates are different (72%). Most (89%) believe that women advocates are not briefed as much as male advocates.

Figure 19: Briefing patterns in the legal profession (n=100)





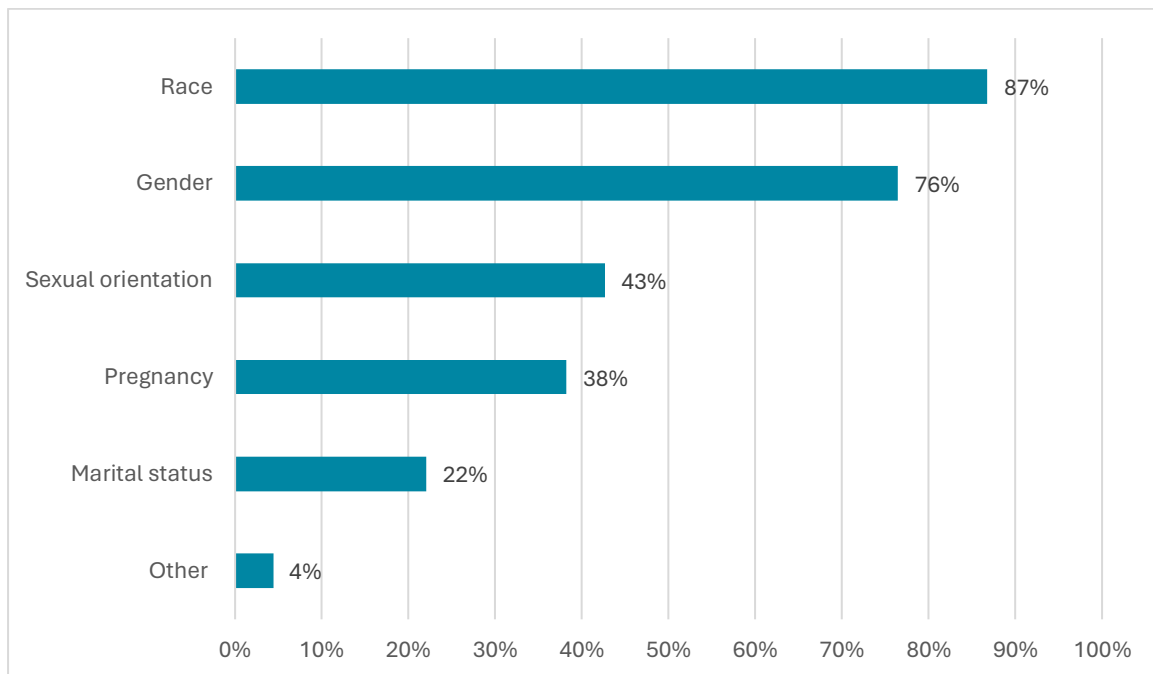
Discrimination, Bullying, and Sexual Harassment

It is important to note that 62% of the survey participants have their own firms, meaning that such discrimination and sexual harassment were incurred during the course of their career. This experience may be a driver as to why so many practitioners open their own firms and are now self-employed.

Discrimination

Figure 20 shows the type of discrimination that is prevalent in the legal profession. Approximately two-thirds of respondents (68%) consider there to be discrimination in the workplace. The type of discrimination that is prevalent in the workplace is based on race, gender, sexual orientation, pregnancy, and marital status.

Figure 20: Type of discrimination (n=68)



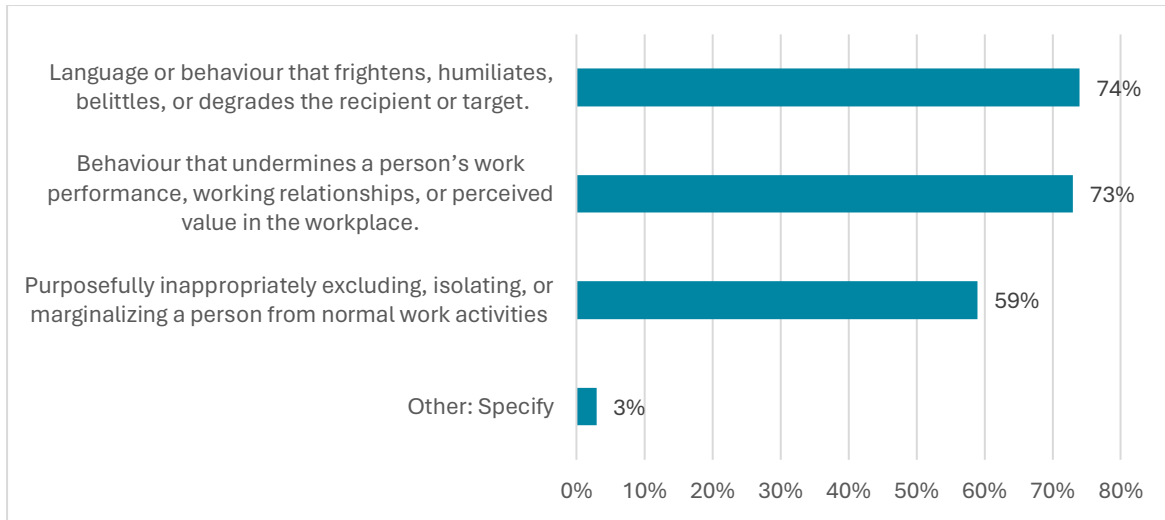
Bullying

Half of the respondents (50%) have experienced bullying in the workplace. Three-quarters (74%) consider bullying as “Language or behaviour that frightens, humiliates, belittles, or degrades the recipient or target” and “Behaviour that undermines a person’s work performance, working relationships, or perceived value in the workplace” (73%). Fifty-nine percent consider bullying as “Purposefully inappropriately excluding, isolating, or marginalising a person from normal work activities”.





Figure 21: Definitions of bullying (n=100)



The focus group participants defined workplace bullying:

1. When an advocate's personality or intelligence is attacked verbally or when a person is physically attacked.
2. Being shouted at, abused, or treated as inferior.

(How would you define workplace bullying?)

The discussant identified the following causes of workplace bullying:

1. Job insecurity.
2. The perception that there is not enough work or space for progression.
3. Lack of consequence.
4. Competitive environment.
5. Ego and role ambiguity.
6. Patriarchy and misogyny.

(What do you think are the causes of workplace bullying in the legal profession?)

Recourse if someone is bullied:

1. There should be processes in place at every workplace.
2. Approach Human Resources and try to address the situation.

(What is the recourse if someone is being bullied or have been bullied?)

How would you handle being bullied:

1. Depends on the severity. If it is bad, then report it.
2. Confide in someone trusted and keep it moving.





3. Keep it to myself. Accept it and block it to survive.
4. Talk to a senior and/or HR.
5. Talk to the perpetrator of the bullying.

(How would you handle being bullied)

The following reasons were given for discussants’ perception of the under-reporting of bullying in the legal profession:

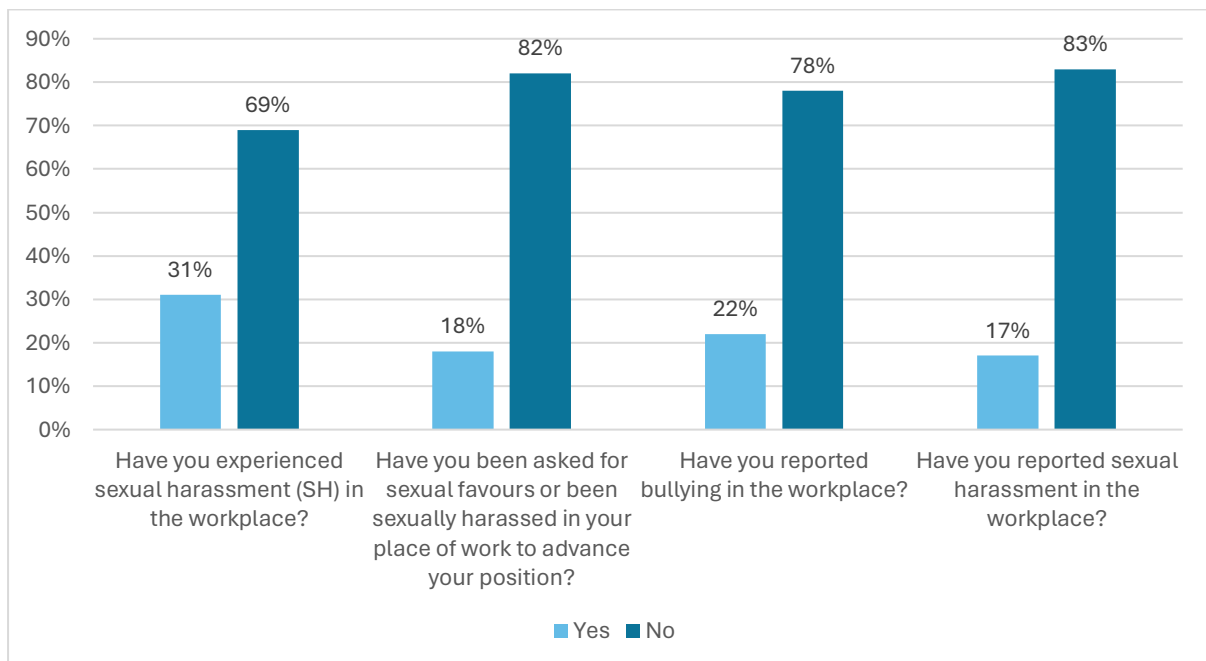
1. Workplace culture and profession condone it.
2. It is widely known but there are no consequences.
3. Usually committed by a senior associate with power.
4. People don’t want to be seen as problematic.
5. Partners are unaffected because they generate revenue for the firm.
6. HR considers the actions of the ‘victim’ rather than the perpetrator.

(Do you think bullying in the legal profession is underreported? Please elaborate)

Sexual Harassment

Figure 22 shows that 31% of respondents have experienced sexual harassment in the workplace, while 18% indicated that they were asked for sexual favours to advance their position. Less than a quarter (22%) have reported bullying in the workplace, while 17% have reported sexual harassment in the workplace.

Figure 22: Sexual harassment in the workplace (n=100)

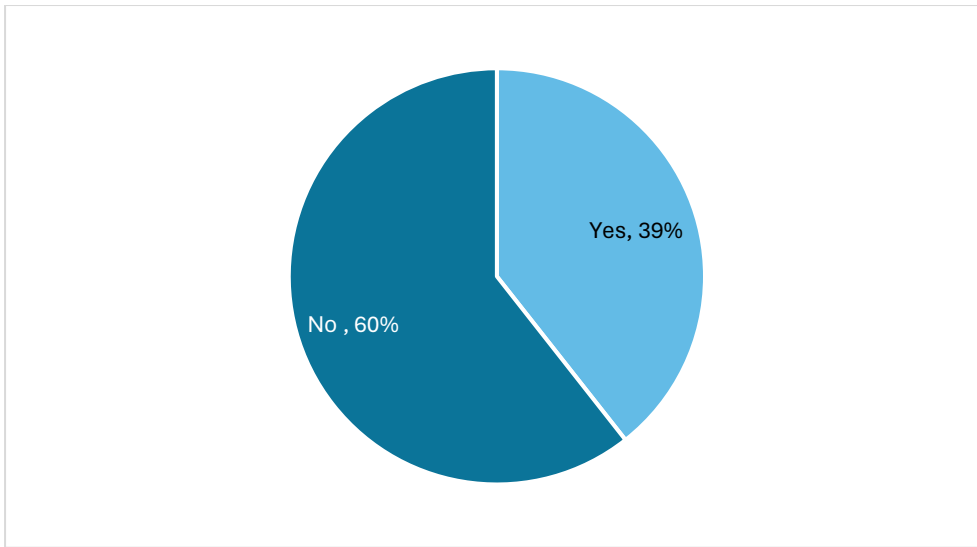


A substantial proportion (39%) have been bullied or sexually harassed in the workplace and did not report it, Figure 23.



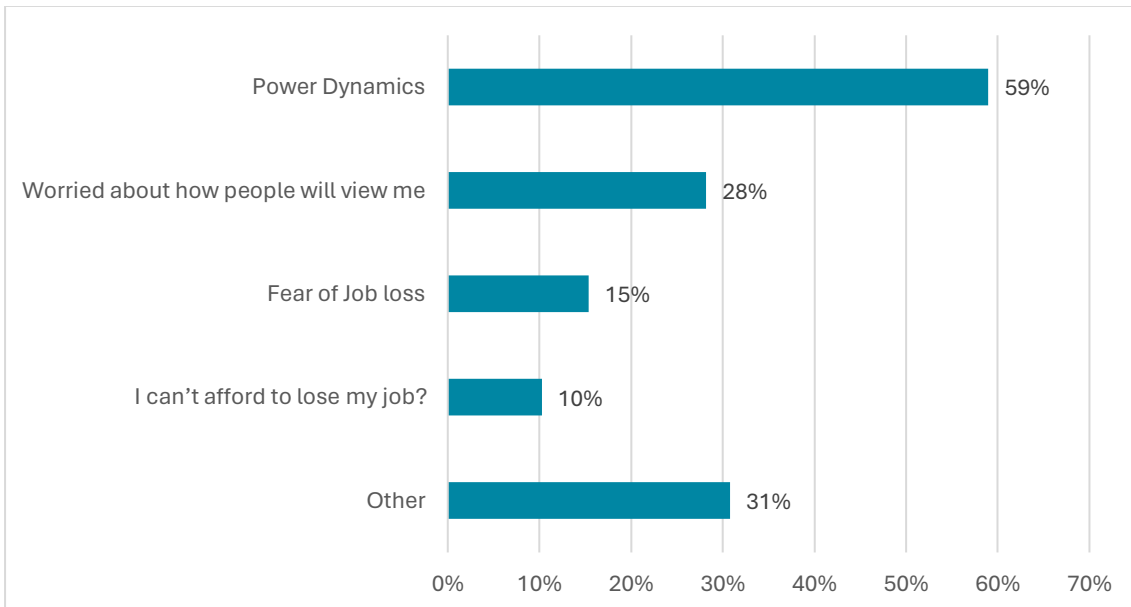


Figure 23: Sexual harassment and reporting in the workplace (n=100)



Those who experienced sexual harassment or bullying in the workplace did not report these incidents because of power dynamics (59%), worried about how people would view them (28%), fear of job loss (15%), and fear of losing their employment (10%). Thirty-one percent provided other reasons (not included in the questionnaire), which included reporting the incidents, but no action was taken or did not want to go through legal proceedings.

Figure 24: Reasons for not reporting bullying or sexual harassment in the workplace (n=39)



The focus group participants' definition of sexual harassment:

1. When the person receiving comments or experiences of an inappropriate nature feels violated thereby.
2. Advances of a sexual nature, sexual innuendo, or even physical attention. Overstepping of boundaries.





3. Being touched and spoken to inappropriately.

(How would you define sexual harassment in the workplace?)

What are the causes of sexual harassment:

1. Men providing women with assistance with work or getting briefs – believe they have a right to you.
2. Reciprocity. Payment in exchange for job.
3. Considered acceptable in our culture and other colleagues don't call perpetrators out.
4. Rigid adherence to gender roles and stereotyped constructions of masculinity and femininity.
5. Gap in values and understanding.

(What do you think are the causes of sexual harassment?)

Why is sexual harassment under-reported?

1. There is no recourse or support system.
2. Nothing is done once the matter has been reported. This should be an instant dismissal.
3. Reputational risk. Prevent leakage – keeping it under wraps.
4. Emotionally taxing. No energy to fight a large firm.
5. Perpetrators will be protected.
6. It is a matter of power dynamics and thereafter it becomes extremely difficult to address or report the matter.
7. People do not want to cause problems for themselves by reporting to a senior as they may end up being the ones who are ostracised.
8. Most incidents occur in private resulting in no evidence. This can be frustrating to the victim.

(Do you think sexual harassment in the legal profession is underreported? Please elaborate.)

Wellbeing in the Workplace

During the focus group discussion, participants considered the following as prevalent mental health ailments: stress, burnout, anxiety, and depression to a lesser extent.

Women are affected by these mental health issues with the following consequences:

1. *“It severely affects our personnel lives because we are trying to preserve everyone at work”.*
2. No work-life balance, hence the mental illness.
3. Unable to enjoy quality of life.



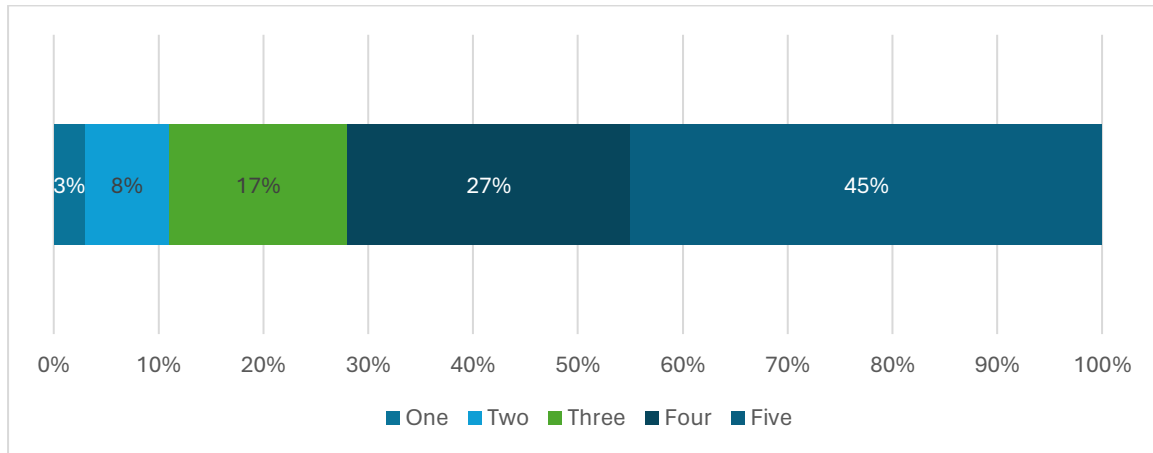


4. Constantly proving oneself which results in family neglect.
5. Constantly feeling anxious.
6. *“You learn to live with the condition. Realised I was constantly anxious only when I left the organisation. Not the way to live.”*

(What are the most prevalent mental health ailments experienced by women in the workplace?)

Figure 25 shows respondents rating the level of stress on a five-point scale with 1 being a low level and 5 a high level of stress. Close to three-quarters (72%) of respondents indicated high levels of stress in the workplace (levels 4 and 5).

Figure 25: Rate levels of stress in the workplace (n=100)

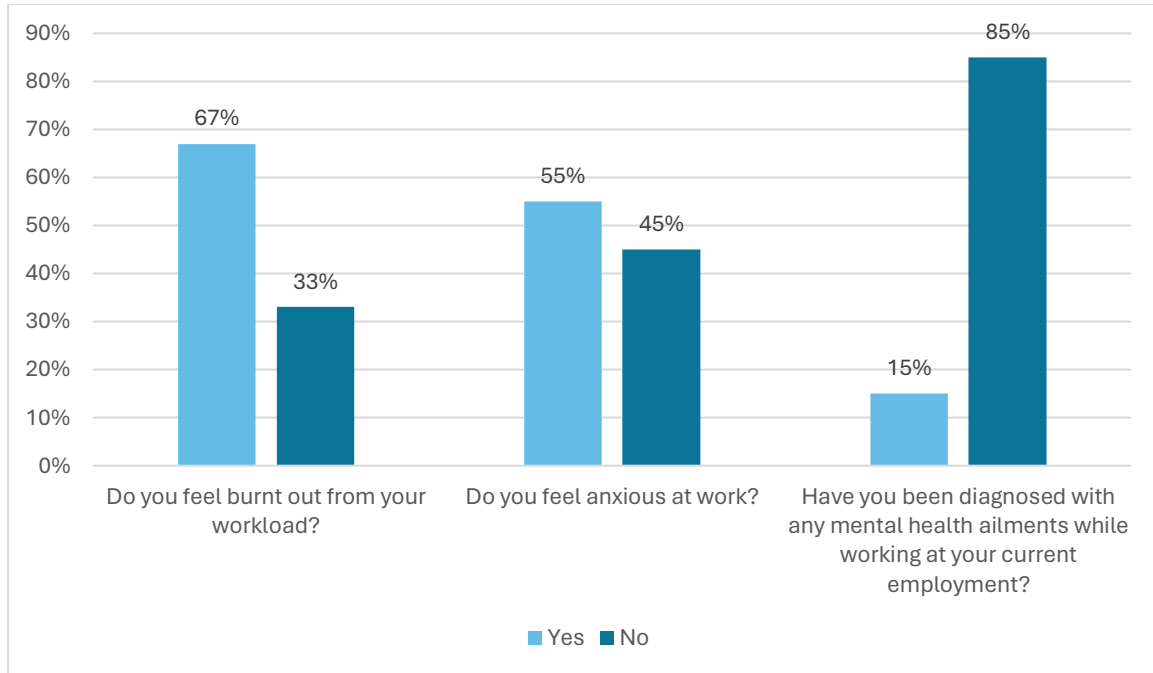


Approximately two-thirds (67%) reported feeling burnt out from their workload and 55% feel anxious at work, while 15% have been diagnosed with a mental health ailment (Figure 26). Of the 15% who were diagnosed with mental health ailments, close to 12 were diagnosed with anxiety, seven with burnout, and six with depression.





Figure 26: Mental health ailments in the workplace (n=100)



Focus group discussants proposed the following coping mechanisms for dealing with mental health ailments:

1. Meditation
2. Exercise
3. Therapy
4. Take time out
5. Learn to live with it
6. Be nice but avoid contact

(How do you cope or deal with these mental health ailments?)

They recommended the following mental health services or support:

1. Access to counselling at work. *“I think this type of support should be available widely.”*
2. Promote mental health awareness in the office, i.e., wellness days.
3. Free therapy and monthly yoga.
4. The Bar should provide four free therapy sessions if required.

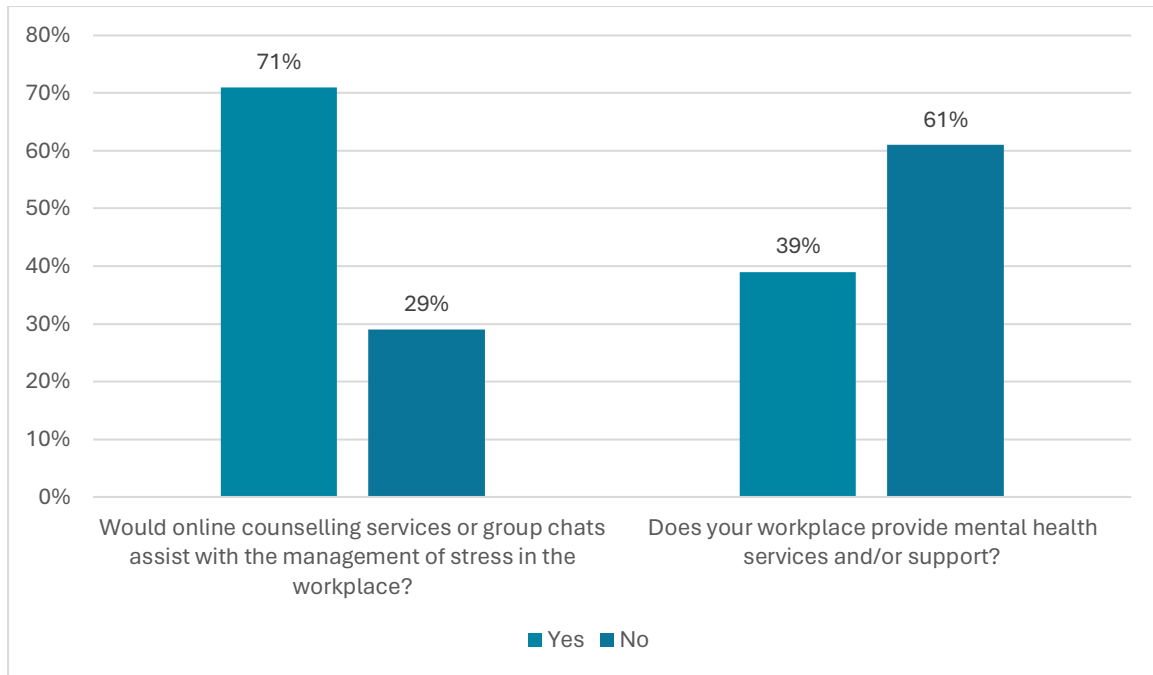
(What mental health services and/or support do you recommend should be provided in the workplace?)

Most respondents (71%) agreed that online counselling services will assist with the management of stress in the workplace, while 39% indicated that their workplaces provided mental health services or support.





Figure 27: Mental health support and services (n=100)





Motherhood

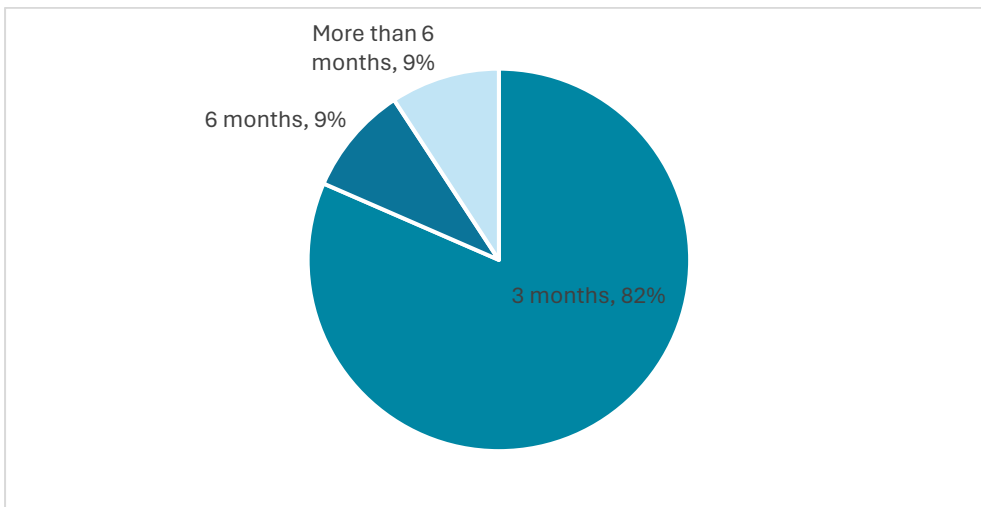
A substantial proportion of survey respondents (63%) believe that women in the profession have been disproportionately disadvantaged due to being mothers. The focus group participants provided the following reasons why they believe mothers are disproportionately disadvantaged:

1. From an upward mobility perspective.
2. Overlooked for opportunities.
3. Feeling of discrimination for having children.
4. Workload, income, and upward mobility.
5. *“As a mother and primary caregiver, you sometimes have to take time out of your practice therefore losing money”.*

(Do you think women in the profession have been disproportionately disadvantaged due to being mothers? Please elaborate.)

Approximately two-thirds of respondents (65%) were mothers. Of these, 68% indicated that maternity leave was an option in their profession. Eight out of 10 (82%) were on maternity leave for three months, and 18% were on maternity leave for six months or more.

Figure 28: Duration of maternity leave (n=65)



More than half (52%) of mothers received paid maternity leave and 62% were breastfeeding. Forty-four percent breastfed for six to 12 months and 28% each for three to six months and three months or less.

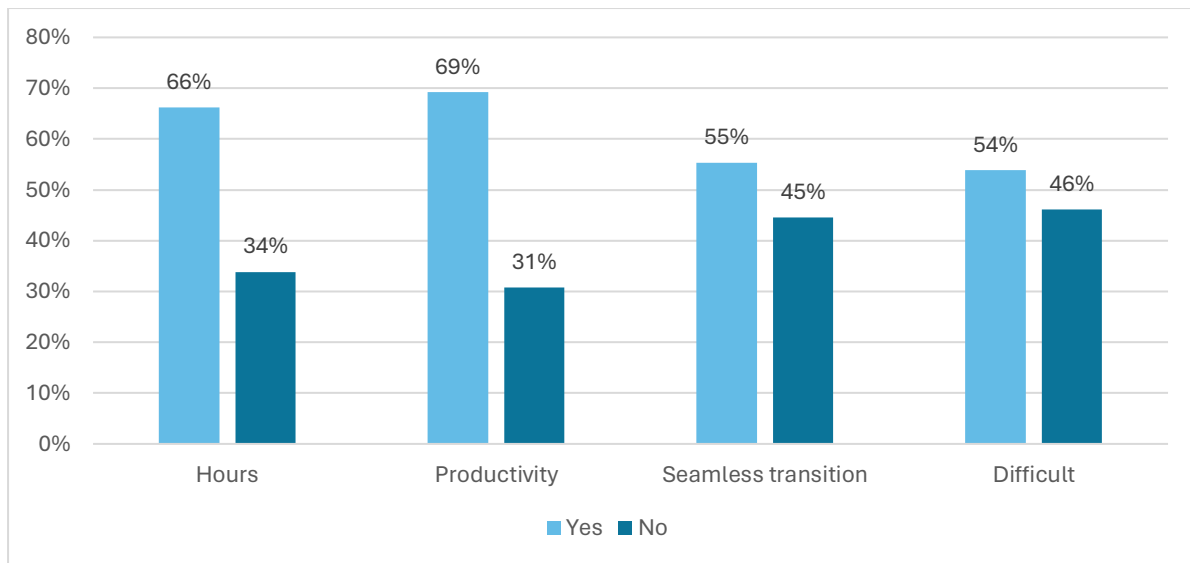
Just under half (49%) received support for breastfeeding after giving birth, while less than a fifth (19%) indicated that a designated space was made available for them at work to pump breastmilk. One fifth noticed a change in how their colleagues treated them since having a child/children.

More than half of mothers (54%) reported a decrease in the rate/frequency of briefs and/or workload due to family responsibilities. Figure 29 shows that 66% maintained their rates in terms of hours, productivity (69%), seamless transition (55%), and difficulty (54%).





Figure 29: Maintaining work rate in terms of ... (n=65)



The focus group discussants considered the importance of employer assistance for the following reasons:

1. Fairness in terms of allowing both parents to be involved, i.e., maternity and paternity leave.
2. Introduce flexibility and output-based measures.
3. Be supportive and understanding. Not making you feel undervalued or like a liability.
4. Provide more flexible hours.

Most focus group discussants believed that job flexibility does meet their work and personal needs, two commented that job flexibility helps to an extent but could be better, and another is struggling to manage time.

(How can employers assist mothers to balance their work responsibilities with their personal life?)

Motherhood (all respondents)

Close to six out of 10 (58%) respondents believed that mothers are unfairly discriminated against, and 88% agreed that it would be helpful to have day care facilities close to their places of employment or within the buildings where their offices are located (Figure 30).

Unfair discrimination is considered when:

1. Women must take time off to give birth and recover.
2. They are overlooked for opportunities because of the perception that they have less time.
3. Mothers are not supported. If not for labour laws, many females would not have jobs.
4. Mothers are seen as not being always available. Employers might appoint women who are not parents.

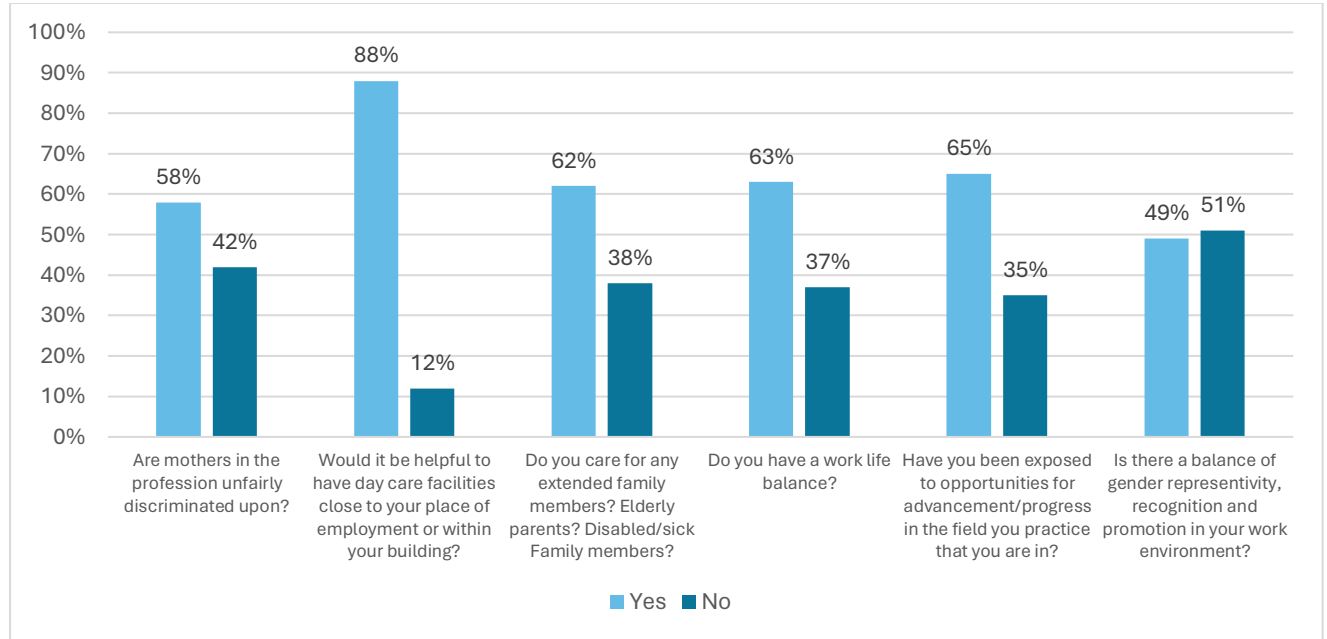




Figure 30 shows that 62% of respondents care for an extended family member and reported having a work-life balance (63%).

Close to two-thirds (65%) have been exposed to opportunities for advancement or progress in the field in which they are practising, and slightly more than half (51%) commented that there is no balance of gender representivity, recognition, and promotion in their work environment.

Figure 30: Perceptions of motherhood, work-life balance, advancement, and gender representation (n=100)





The Work Environment

A third of respondents reported a net monthly income of R10 000 to R 25 000, a quarter earned R55 000 or more, and approximately a fifth had a net monthly income of R35 000 to R45 000.

Figure 31: Average net monthly income (n=100)

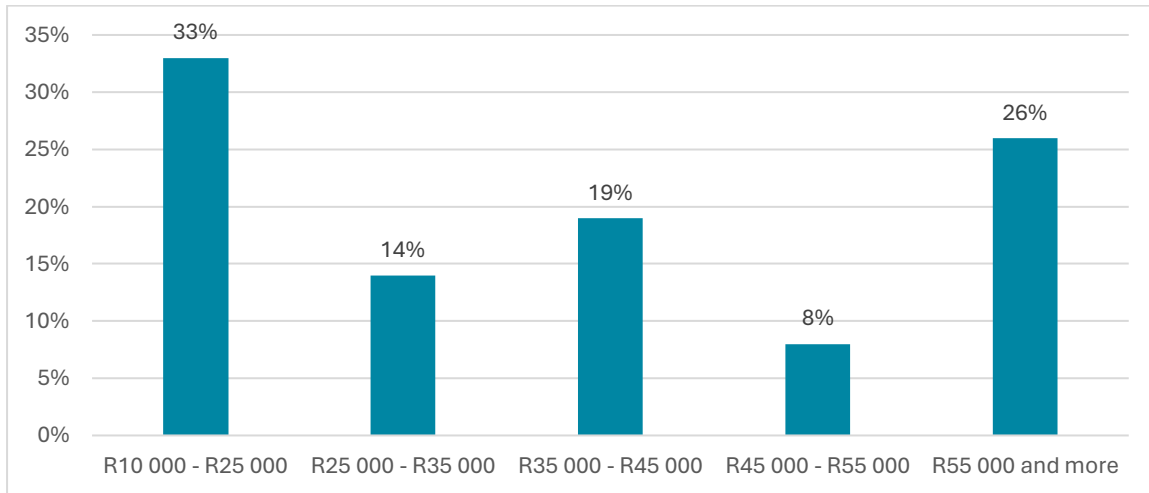
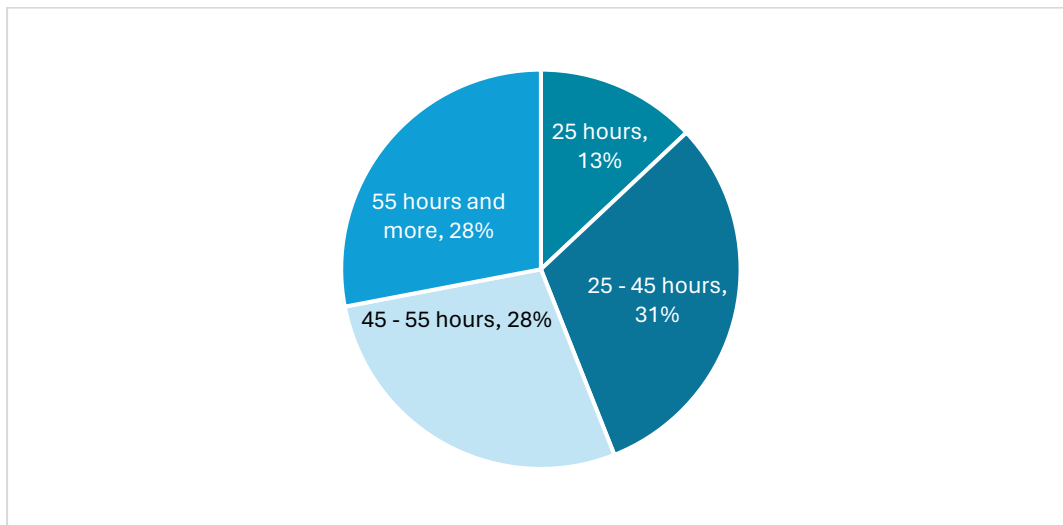


Figure 32 shows that, on average, 31% of respondents work 25 to 45 hours a week, 28% each work 45 to 55 hours or 55 hours and more per week, and 13% work 25 hours a week.

Figure 32: Number of hours worked per week (n=100)

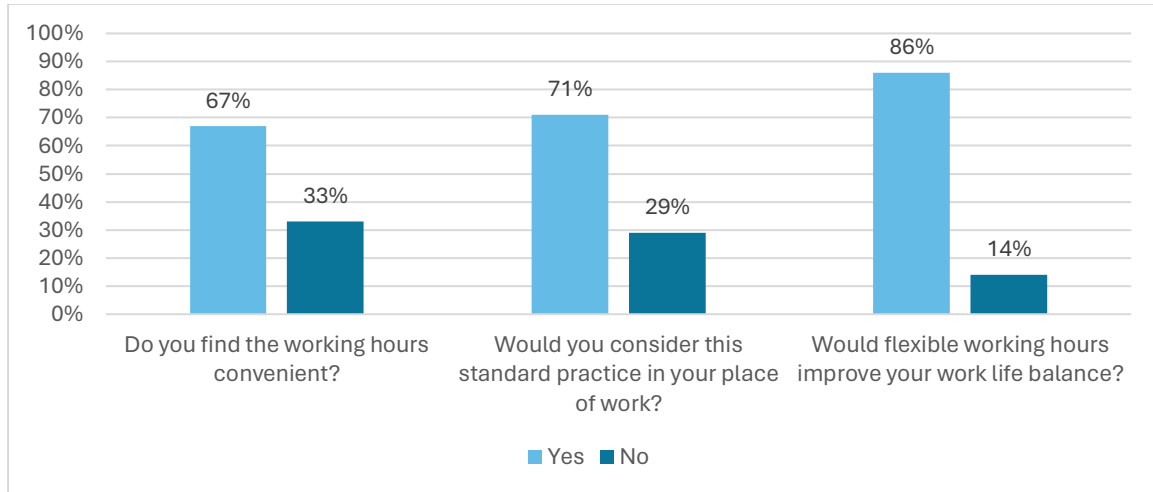


Two-thirds (67%) found their working hours convenient, while 71% considered the allocation of working hours as standard practice in their work. A large proportion (89%) believed that flexible working hours would improve their work life, while just over half (53%) believed that there is pay parity between male and female practitioners.





Figure 33: Responses to working hours, flexible working hours, and pay parity (n=100)



The following opinions were given in terms of flexible working hours:

1. It is available in some sectors where it is almost a necessity.
2. Flexible working hours is considered important. While a shift is required towards flexibility, it is not happening quickly enough.
3. After the COVID-19 pandemic it has been a reality for a lot of people and, as such, it has made work-life balance a reality.
4. Not all agreed on flexible working hours. *“No. I have two young children. Works to disadvantage as you feel like employers will think you are not working hard enough.”*

(Does your job give you the flexibility to meet the needs of both your work and personal life?)

Substantial proportions of respondents gave opportunities for promotion, working flexi hours, and billable hours in their workplaces a neutral rating (Figure 34). Approximately a third rated opportunities for promotion neutral, while a quarter considered it good.

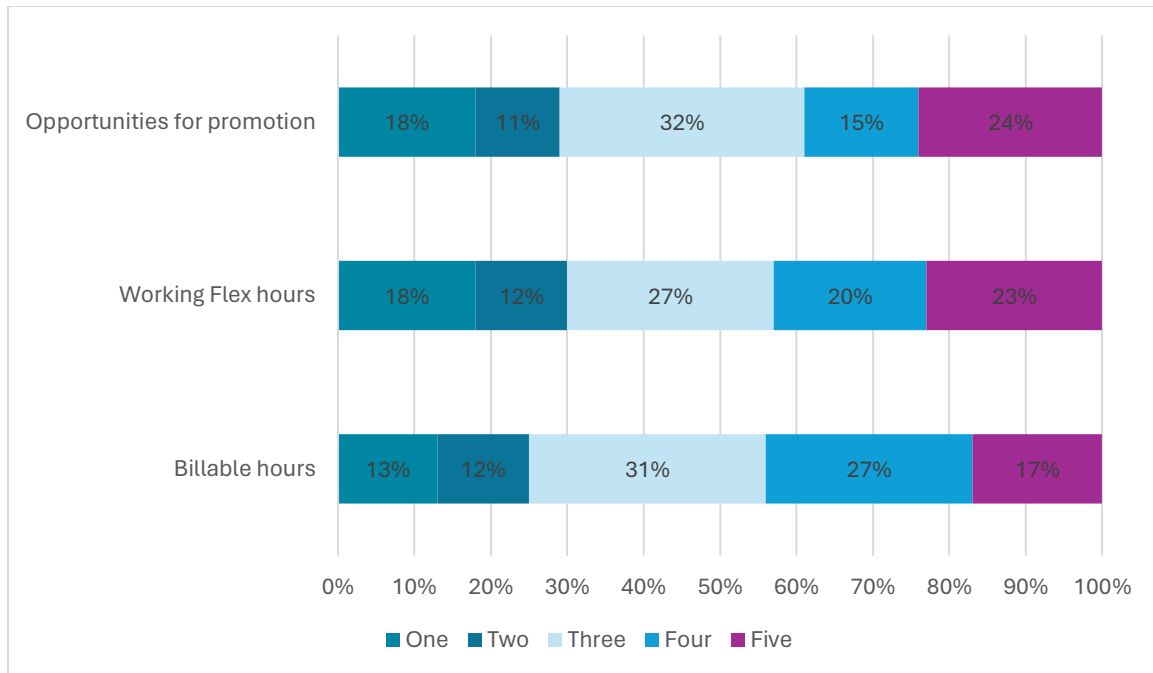
The highest proportion of respondents (27%) gave working flexi hours a neutral rating, 23% rated it as excellent, and a fifth as good.

Three out of 10 rated billable hours as neutral, 17% rated it as excellent, and 27% rated it as good.



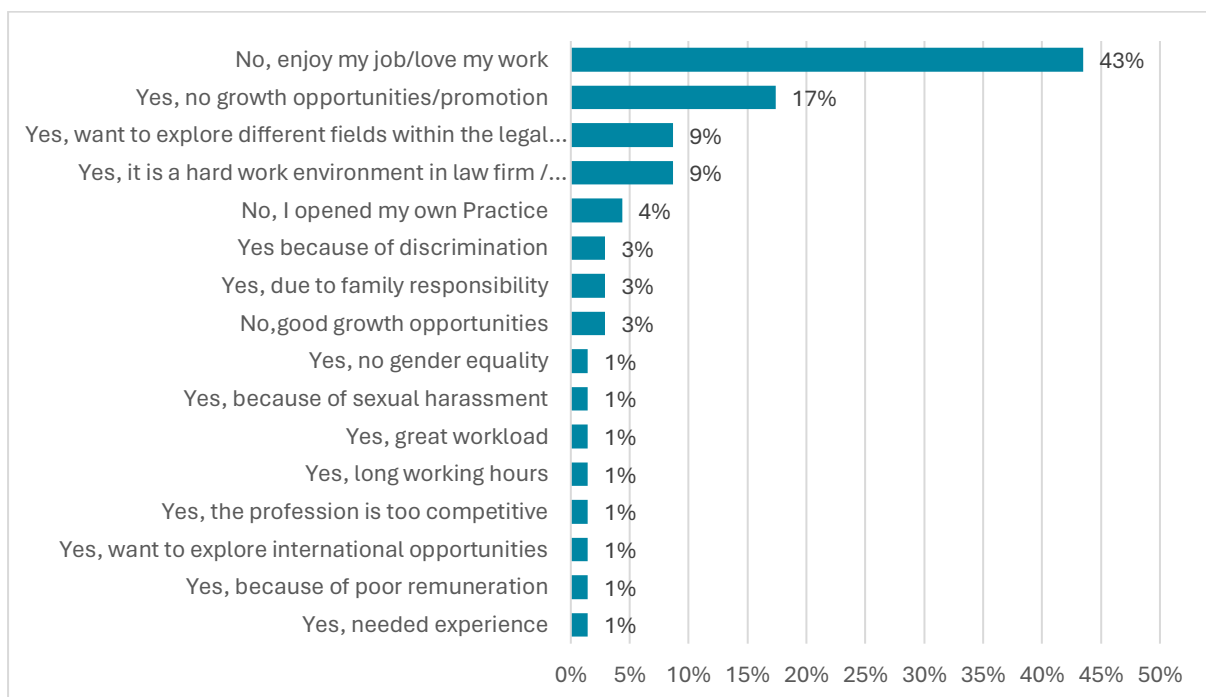


Figure 34: Rating opportunities for promotion, flexi hours, and billable hours (n=100)



Approximately two-thirds (63%) of respondents confirmed that their career aspirations have changed over time. Those who reported no change in career aspirations did so because they enjoy their job or love their work. The respondents whose career aspirations did change over time considered the following reasons: lack of growth opportunities or promotion, wanting to explore different field within the legal sector, the hard work and stressful environment, discrimination, family responsibilities, and the lack of growth opportunities.

Figure 35: Reasons for changed career aspirations (n=100)

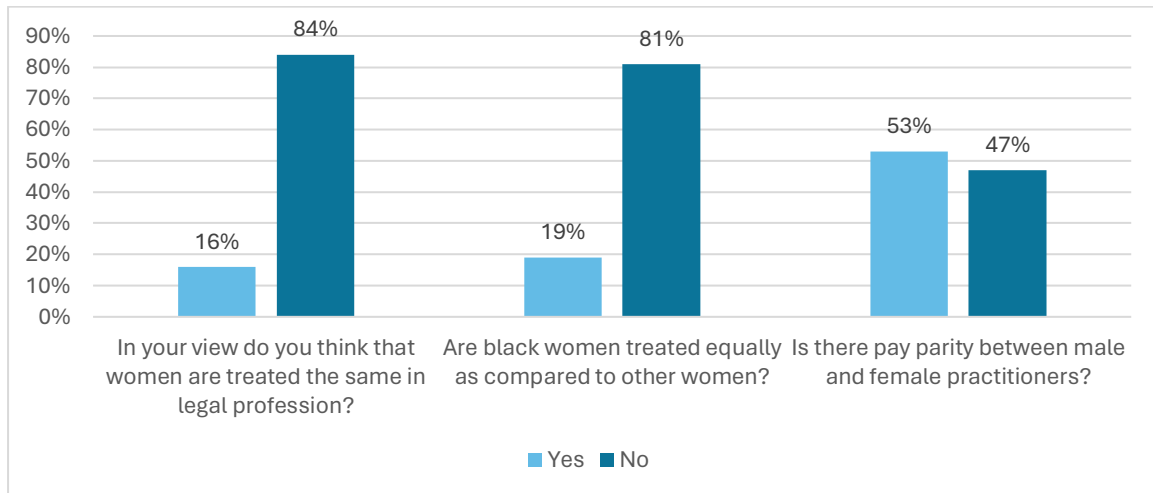




Most respondents (86%) aspire to reach a senior level in the legal profession, while 42% aspire to reach a senior level (i.e. Silk) as an advocate.

Figure 36 shows that 84% of respondents held the view that women are not treated the same in the legal profession and 81% of respondents believed that black women are not treated equally as compared to other women. These perceptions are from the perspective of black women in the legal profession.

Figure 36: Treatment of black women in the legal profession (n=100)



The focus group discussants believed that black women are treated differently when compared with other women.

Black women:

1. Find that their competence is always questioned.
2. Are still considered unequal.
3. Are considered to be at the “bottom of the barrel”, therefore treated differently or worse.
4. Are treated as if they do not exist. *“It is by our sheer determination that we stay in practice.”*

(Are black women afforded equal opportunity in the profession? Please elaborate.)

The focus group participants had different opinions on pay parity. According to them:

1. Men get paid more.
2. Pay parity does not exist.
3. Extreme differences in salaries.
4. Men charge clients more and are not questioned.

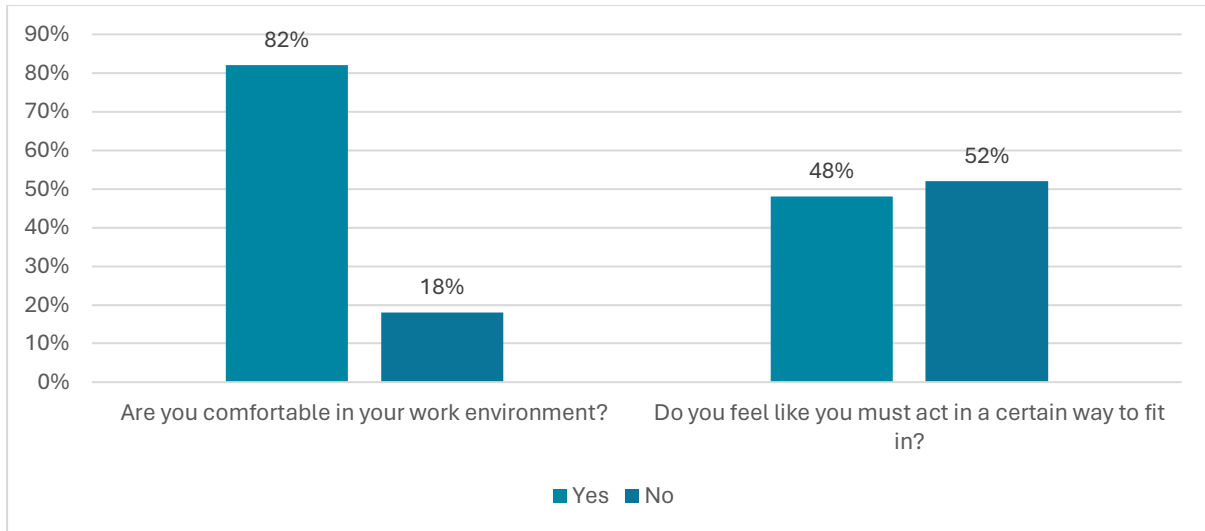
(What is your opinion on the following? Pay parity between men and women in the legal profession?)

Most women (82%) reported being comfortable in their work environment, while slightly less than half (48%) feel that they still have to act a certain way to fit in (Figure 37).





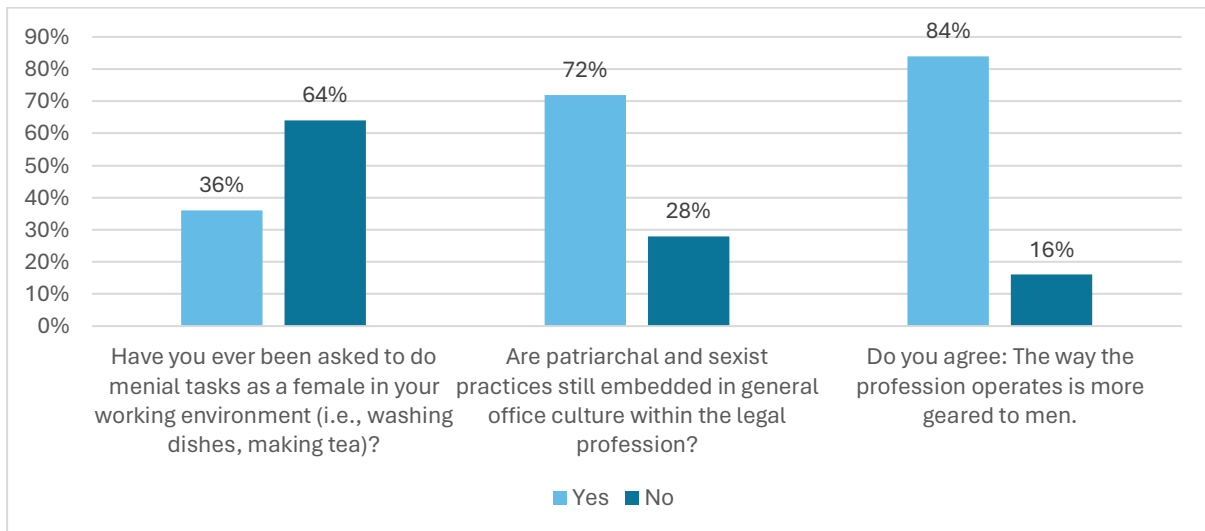
Figure 37: Fitting in at work (n=100)



Focus group discussants were of the opinion that code switching to “fit in” is still very prevalent. Black women are expected to communicate without accents or inflection; if they fail to do so the consequence is that they are not liked or appreciated.

Slightly more than a third (36%) of women have been asked to perform a menial task as a female in the working environment. Close to three-quarters (72%) believe that patriarchal and sexist practices are still embedded in general office culture within the legal profession, and 84% agree that the way the profession operates is more geared towards men (Figure 38).

Figure 38: Sexist practices in the workplace (n=100)

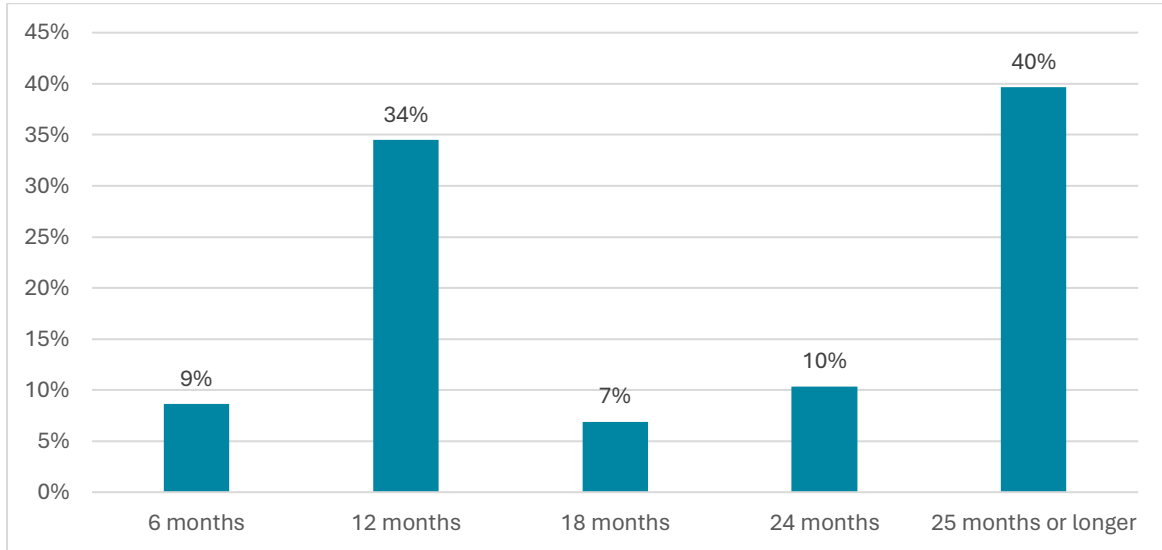




The Effects of Mentoring

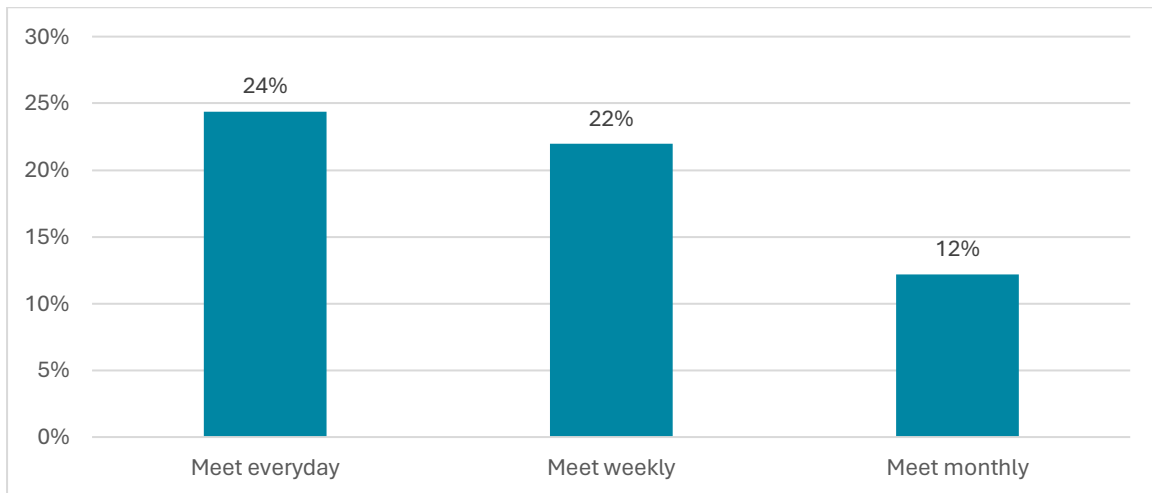
Most respondents (58%) had a mentor or currently have a mentor. Figure 39 shows that 40% had a mentoring relation for 25 months or longer, 34% for 12 months, 10% for 24 months, 9% for six months, and 7% for 18 months.

Figure 39: Duration of the mentoring relationship (n=58)



The most prevalent ways of maintaining mentoring relationships were through daily meetings (24%), followed by weekly (22%) and monthly (12%) meetings.

Figure 40: Maintaining the mentoring relationship (n=58)

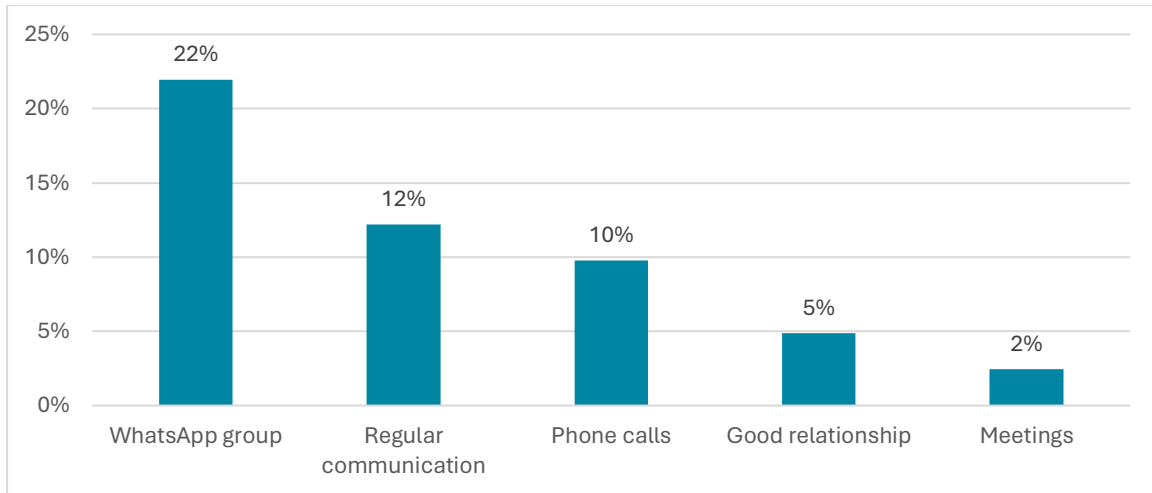


Participants also maintained the mentoring relationship through the use of WhatsApp groups (22%), regular communication (12%), phone calls (10%), keeping good relationships (5%), and through meetings (2%).





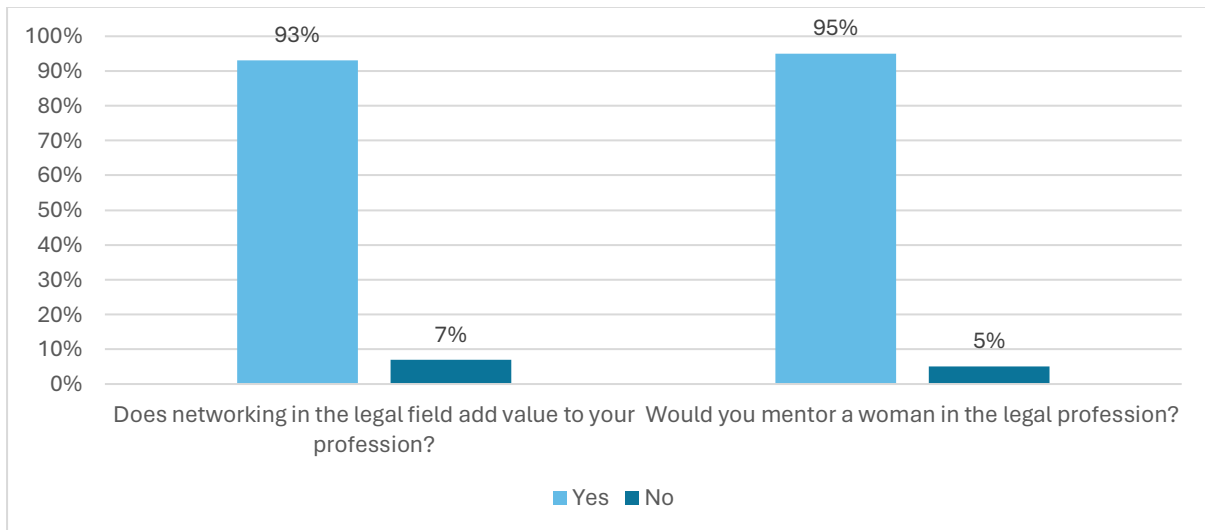
Figure 41: Maintaining the mentoring relationship (n=58)



Most mentees (93%) considered the mentoring relationship to be helpful. The mentor relationship benefitted them by learning to be more independent, gaining confidence, and networking. Three-quarters of the respondents who had a mentor reported that the mentoring helped them develop a network.

Figure 42 shows that 93% of respondents believed that networking in the legal field adds value to their profession, and 95% confirmed that they would mentor a woman in the legal profession.

Figure 42: Benefits of mentoring (n=100)

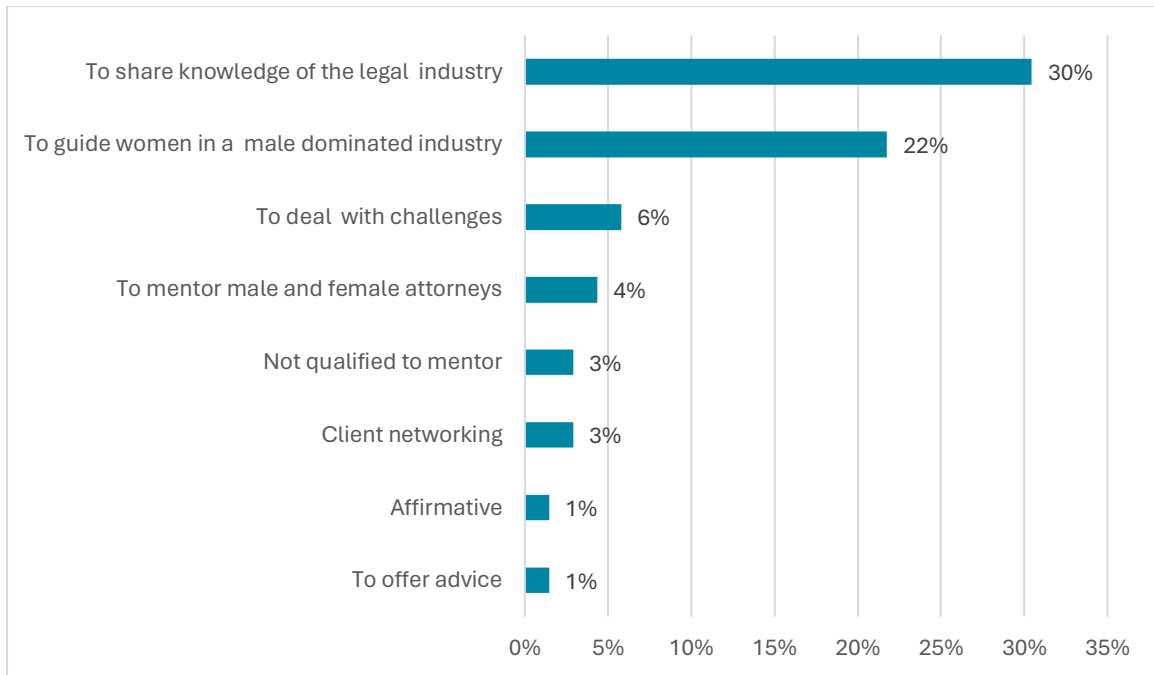


The legal professionals willing to mentor a woman in the legal profession gave the following reasons for doing so: a third confirmed that they wanted to, 30% want to share knowledge of the legal industry, and 22% wanted to guide women in a male-dominated industry (Figure 43).





Figure 43: Reasons for mentoring (n=95)



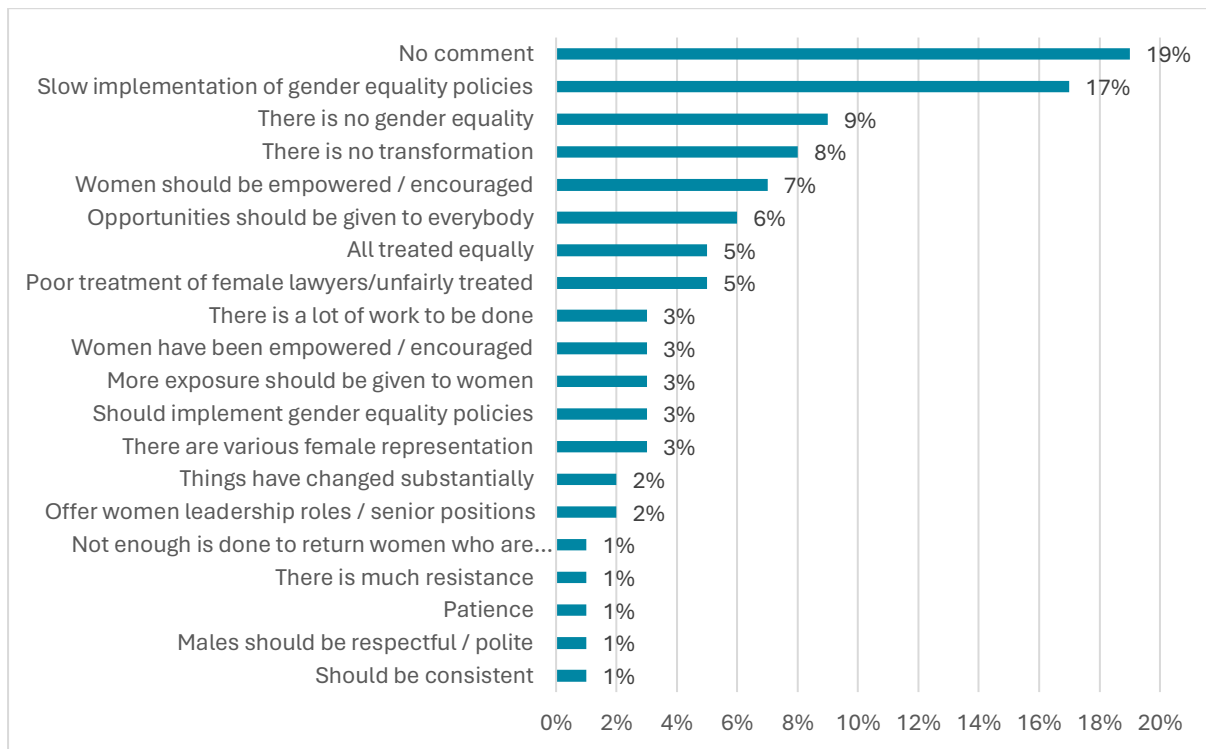


Gender transformation in the legal profession

“Gender transformation” refers to efforts to change gender and social norms to address inequalities in power and privilege between persons of different genders, in order to free all people from harmful and destructive norms. These norms include gender roles, expectations, stereotypes, and harmful attitudes, customs, and practices, including gender-based violence.³¹

Survey respondents were requested to provide comments on their perception of gender transformation in the legal profession (Figure 44). Respondents bemoaned the slow implementation of gender equality policies (17%), commented on the lack of gender equality (9%) and the lack of transformation (8%). Fewer commented on empowering or encouraging women, providing opportunities to everybody, treating everyone equally, and the poor or unfair treatment of female lawyers.

Figure 44: Comments on gender transformation in the legal profession (n=100)



What can be done to accelerate gender transformation in the legal profession?

Respondents provided comments on what can be done to accelerate gender transformation in the legal profession (Figure 45). A fifth (19%) suggested educating or creating awareness around gender transformation, and 16% recommended offering equal opportunities or equal treatment for males and females.

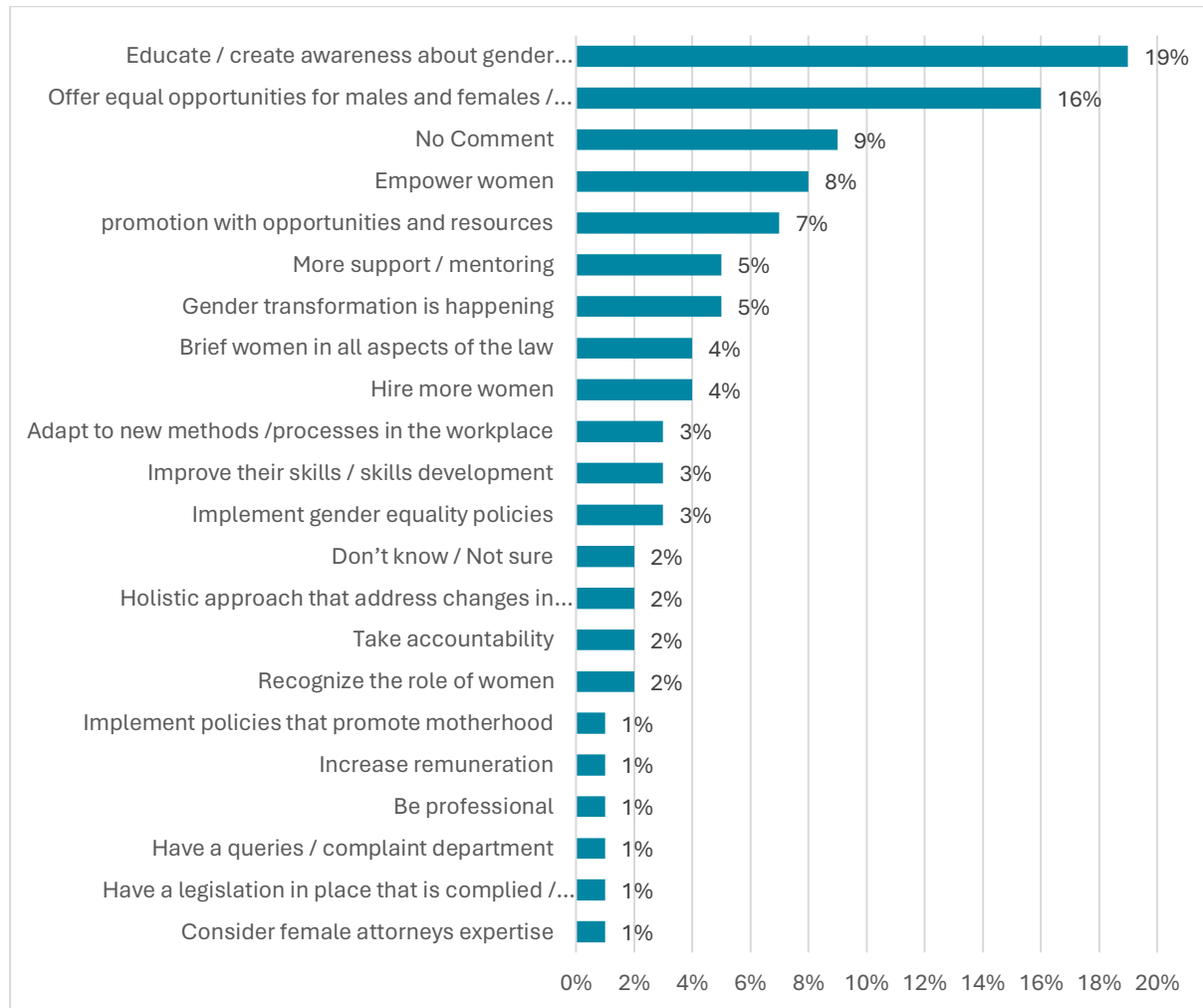
³¹ MenEngage Alliance, (2017) Policy Brief: Accelerating Efforts to End VAW: Engaging Men and Boys in Preventing and Responding to Violence Against All Women and Girls.





Smaller proportions recommended empowering women, promoting women and providing opportunities and resources, increasing support and mentoring, continuing with the gender transformation policy, briefing women in all aspects of the law, and hiring more women.

Figure 45: Recommendations to accelerate gender transformation in the legal profession (n=100)



The focus group discussants provided the following opinions on gender transformation in the legal profession:

1. Women and men need to be allies.
2. Formalised mentorship and real organisational targets.
3. The workplace is still extremely unequal. We have a long way to go.
4. More can be done to accelerate gender transformation. *There has been a change, but more could be done.*
5. Implement intervention programmes which are focused on gender transformation.





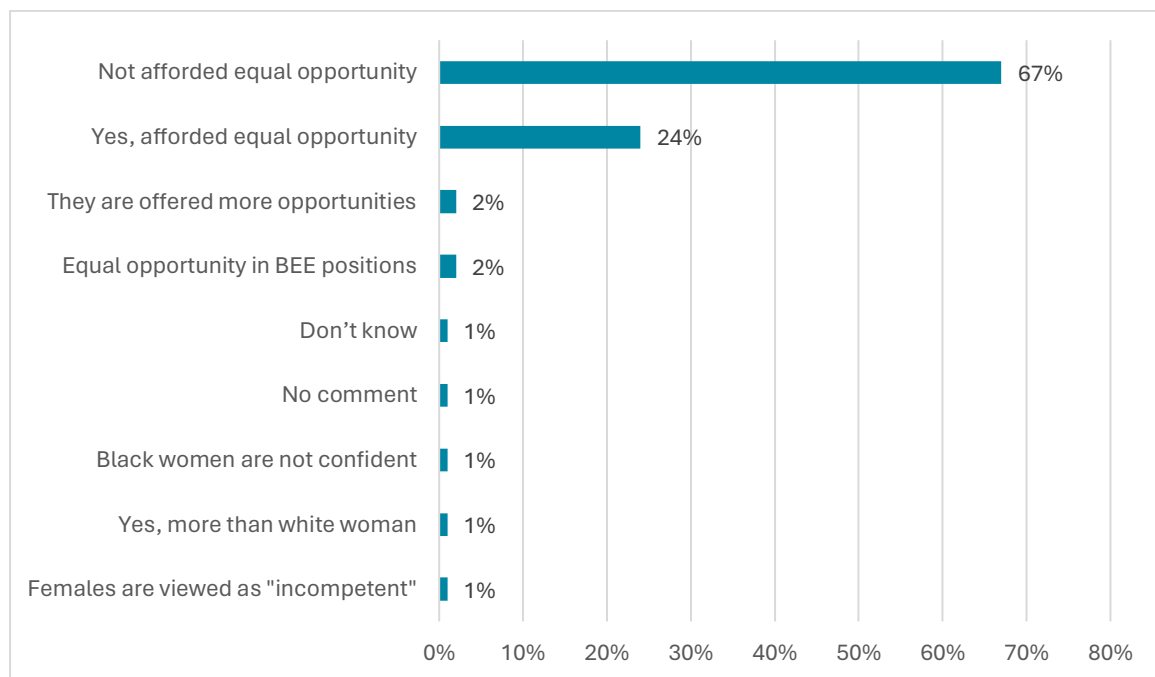
- Gender transformation is happening but at a slow rate forcing men to work with women and transfer skills in areas where they do not accept work.

(What is your opinion on gender transformation in the legal profession? What can be done to accelerate gender transformation in the legal profession?)

Equal opportunities in the profession

Figure 46 shows respondents' opinions on whether black women are afforded equal opportunities in the legal profession. Two-thirds (67%) of respondents believed that black women are not afforded equal opportunities in the legal profession, while a quarter (24%) commented that black women are afforded equal opportunities.

Figure 46: Equal opportunity for black women in the legal profession (n=100)



Focus group participants commented that equal opportunities are not afforded to black women because they are perceived as less competent and that most companies only provide opportunities for black economic empowerment purposes.

(Are black women afforded equal opportunity in the profession?)

Career paths

Interviewees provided the following reasons for being attracted to the legal profession:

- It is fulfilling to do something that you are passionate about.
- Not limited to one area of specialisation.
- Many opportunities across sectors or spheres.
- The work is stimulating and challenging.





5. Every industry needs law and a lawyer.
6. Legal exposure and understanding.
7. Owning and mostly managing own time.
8. Profession has regulatory and legislative oversight.
9. Everyone can find a niche (in or out of practice).
10. The profession is intellectually challenging.
11. Working on high-profile cases can make the profession quite lucrative.
12. The unique opportunity to help others and make a difference in their lives.

“... it is kind of fulfilling to do something that you are passionate about, I don’t think that if you don’t have passion for law, you will stick around.” – Focus group discussant 2

“There are so many opportunities across the sectors both in public and private.” – Focus group discussant 1

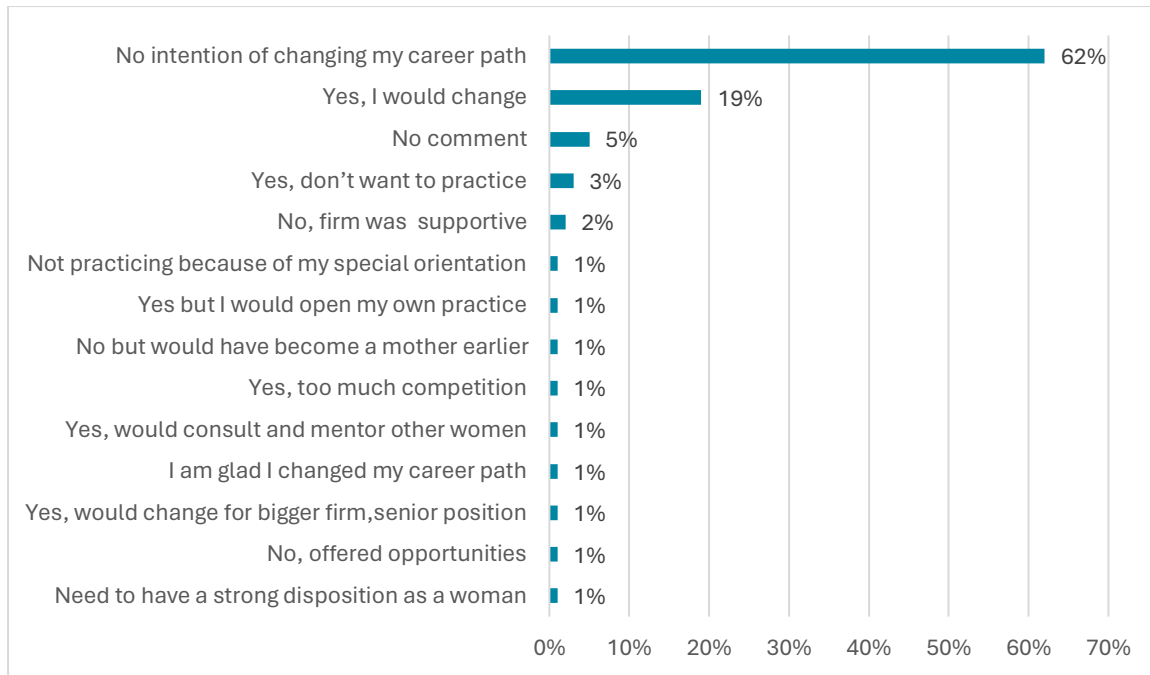
(What do you like or enjoy about the legal profession?)

Respondents reflected on their careers, specifically their thoughts on their chosen career path and whether they had any intentions of changing their career paths (Figure 47). Most respondents (62%) have no intention of changing their career paths, while approximately a fifth (19%) indicated that they would change their career paths.

Those who had no intention of changing their career paths commented on the support given by firms, would have opted to become a mother earlier, and is offered opportunities. Smaller proportions who intend changing their career paths will do so in order not to practise anymore, open their own practice, due to the competitive nature of the profession, consult or mentor other women, or would change for a bigger firm and more senior position.

Figure 47: Thoughts on chosen career paths (n=100)





Barriers to accessing the profession

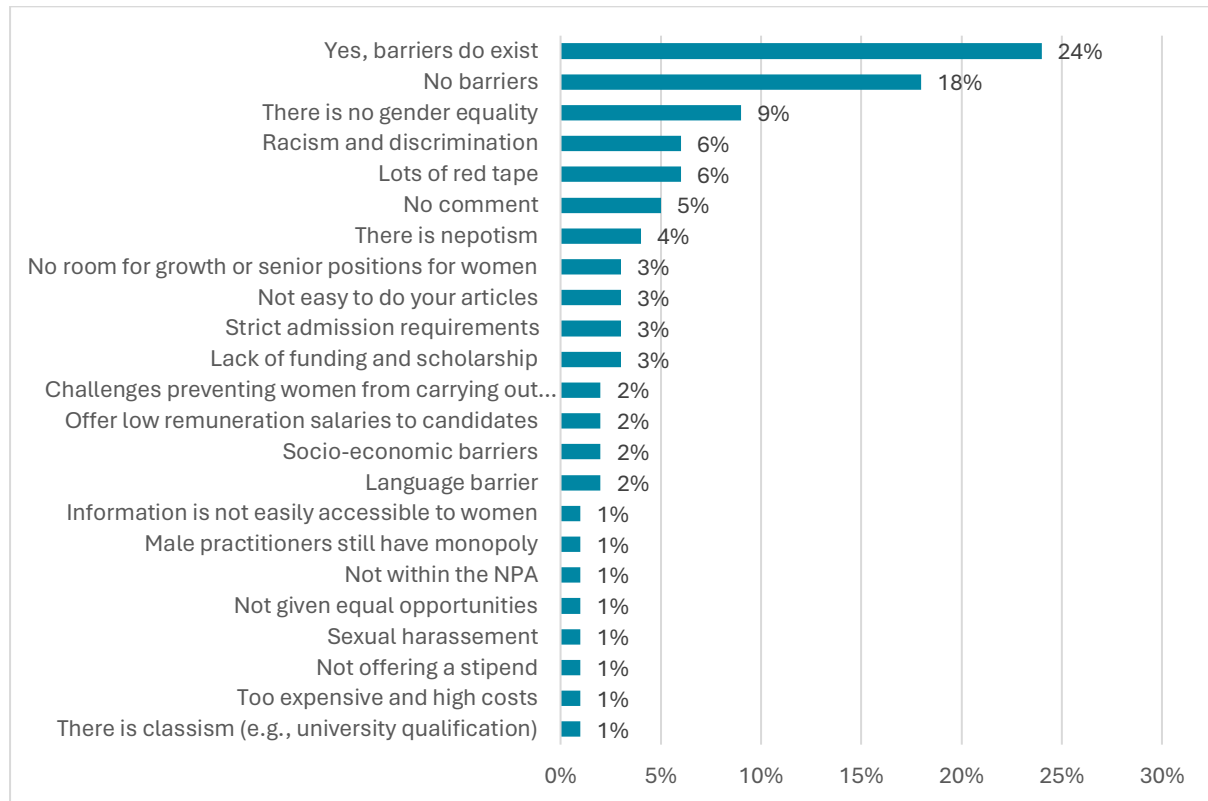
Respondents were asked whether they believed that barriers to accessing the profession and barriers within the profession still exist. A quarter (24%) believed that barriers do exist, while less than a fifth (18%) believed the opposite.

Smaller proportions, which make up 58% of the sample, provided the following reasons for the existence of barriers: they commented on the lack of no gender equality, red tape or bureaucracy, racism and discrimination, nepotism, lack of funding and scholarship, strict admission requirements, difficulty in doing your articles, no room for growth or senior position for women, language barrier, socio-economic barriers, offer low remuneration and salaries to candidates, challenges preventing women from carrying out their jobs, classism e.g. university qualification, too expensive or high costs, not offering a stipend to candidates, sexual harassment, not given equal opportunities, male practitioners still have a monopoly, and information is not easily accessible to women.





Figure 48: Perceptions on whether barriers to accessing the profession and barriers within the profession still exist (n=100)



Focus group discussants believed that barriers to accessing the profession and barriers in the profession still exist for the following reasons:

1. The majority of black children struggle or cannot afford to get into the top universities, which limits their chances of getting into big law firms.
2. Government has assisted more by funding candidate attorneys, but firms still refuse to take on candidate attorneys (who are mostly black females) even when they are funded.
3. Being a female is still a barrier in the legal profession.
4. The fact that the Bar or Legal Practices Council (LPC) does not assist with recovery of fees. The 97-day payment period is a huge barrier.

"Mentorship programmes will go a long way in closing the pay gap. This gives us the confidence to receive higher-paying jobs and the confidence to demand what we deserve. There should be more programmes like this." – Focus group discussant 2

"In my opinion, although much has changed in terms of race transformation in the legal profession, many organisations still need to work hard towards gender transformation." – Focus group discussant 4

(Do you believe that barriers to access the profession and barriers within the profession still exist? Please elaborate.)





Conclusion

While there has been an increase in the percentage of female and black attorneys over the period 2013 to 2022, a significant disparity in female representation persists within both the attorneys' and advocates' professions relative to the total number of white (particularly male) practitioners. While there are significantly more women being admitted as attorneys annually, the representivity observed at the junior levels declines as practitioners become more senior.

Several factors play a role in this skewed representation of women in the legal profession, including pre-existing social networks dominated by male professionals based on established relationships; clients and colleagues who question the intelligence, talent, and experience of female practitioners; unequal distribution of work to female practitioners; a lack of face time by female practitioners as a result of them remaining primary child caregivers in society; maternity leave as an obstacle to achieving target billable hours; a referral system that is slanted in favour of men; and gender stereotypes and gender bias which remains in the legal profession.

With the enactment of the LPA (which exists alongside an array of labour legislation), South Africa has no shortage of laws to promote gender equality and transformation. However, current research points to the limited extent to which policies have been implemented under the reformed legal framework and indicates that policymakers, legal leaders, and other influential actors must take more positive systemic action to address ongoing gender-related exclusion, marginalization, and discrimination within the legal profession.





Acknowledgement

We acknowledge the following contributors that made the research possible:

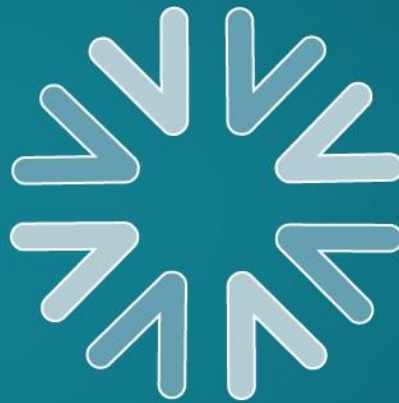
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CYRUS R. **VANCE CENTER**
FOR INTERNATIONAL JUSTICE

Thank You



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RESEARCH